

Sapere l'Europa, sapere d'Europa 4

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# Cultural Heritage

## Scenarios 2015-2017

edited by  
Simona Pinton and Lauso Zagato



**Edizioni**  
Ca' Foscari





Cultural Heritage

## **Sapere l'Europa. Sapere d'Europa**

4



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# **Cultural Heritage**

## Scenarios 2015-2017

edited by Simona Pinton and Lauso Zagato

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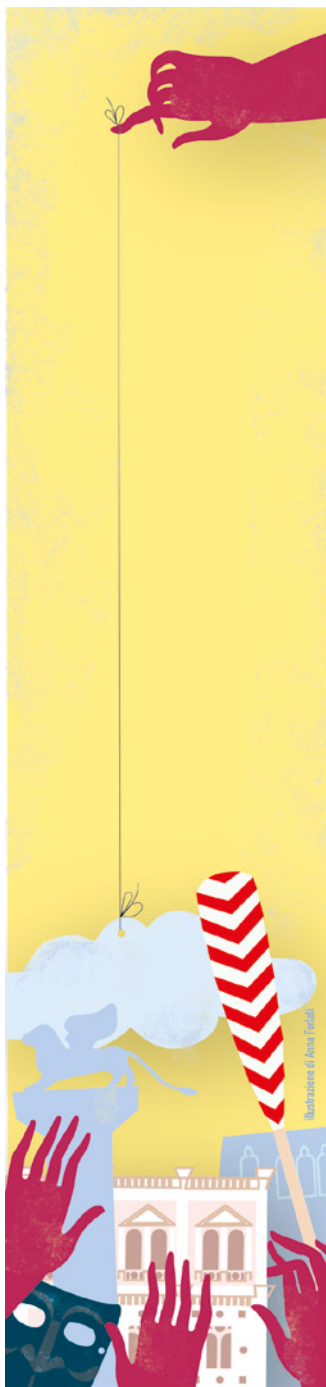


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# Cultural Heritage. Scenarios 2015-2017

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## Abbreviations

### Acts and Bodies

ACHPR	African Commission on Human and Peoples Rights
ACHR	American Convention on Human Rights
AI	Amnesty International
AP I	Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977
AP II	Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977
ASF	Avocats Sans Frontières
ASIL	American Society of International Law
AU	African Union
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CJA	Center for Justice and Accountability
COE	Council of Europe
COP	Conference of State Parties
CPCPAC	Committee for the Protection of Cultural Property in the Event of Armed Conflict
DEA	Demoethnoanthropological
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court on Human Rights
ELC	European Landscape Convention
EP	European Parliament
EU	European Union
FARO Convention	COE Framework Convention on the Value of Cultural Heritage for Society
GA	General Assembly of the United Nations
GAOR	General Assembly Official Records
HCHR	High Commissioner for Human Rights
HRC	Human Rights Committee
HRCo	Human Rights Council

**Cultural Heritage. Scenarios 2015-2017, 13-16**

HRW	Human Rights Watch
IACoHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court on Human Rights
ICA	International Council of Archives
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICH/PCI	Intangible Cultural Heritage/Patrimonio culturale immateriale
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICOM	International Council of Museums
ICOMOS	International Council on Monuments and Sites
ICPRCP	Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation
ICRC	International Committee of the Red Cross
ICSIGH	Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage
ICPPDCE	Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILA	International Law Association
ILC	International Law Commission
ILO	International Labor Organization
IOs	International Organizations
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
Istanbul Convention	COE Convention on Preventing and Combating Violence against Women and Domestic Violence
IUCN	The International Union for Conservation of Nature
MICT	The Residual Mechanism for International Criminal Tribunals
MPEPIL	Max Planck Encyclopedia of Public International Law
NGOs	Non-Governmental organizations
NHRIs	National Human Rights Institutions
NURC	National Unity and Reconciliation Commission
OAS	Organization of American States
OAU	Organization for African Unity
OSCE	Organization for Security and Cooperation in Europe
PCIJ	Permanent Court of International Justice
Riv. Giur. Ed.	Rivista giuridica dell'edilizia



SADC	Southern African Development Community
SC	UN Security Council
SCCHL	Steering Committee for Cultural Heritage and Landscape
SCOR	Security Council Official Records
SG	UN Secretary General
TC	Trial Chamber
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TRC	Truth and Reconciliation Commission
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
TRIPS Council	Council for Trade Related Aspects of Intellectual Property Rights Agreement
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Program
UN Doc.	United Nations Document
UNEP	United Nations Environment Program
UNESCO	United Nations Educational Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNDP	United Nations Development Program
UN SR	UN Special Rapporteur
UNTS	United Nations Treaty Series
UPR	Universal Periodic Review
WTO	World Trade Organization
WIPO	World Intellectual Property Organization
WSO	World Summit Outcome
1907 Hague Regulations	Regulations concerning the Laws and Customs of War on Land, annexed to the Hague Convention of 18 October 1907 respecting the Laws and Customs of War on Land
1949 GC IV	Convention (IV) relative to the Protection of Civilian Persons in time of War, 12 August 1949
1954 Hague Convention	Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 14 May 1954
1970 UNESCO Convention	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970
1972 UNESCO Convention	Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972
1989 UNESCO Recommendation	Recommendation on the Safeguarding of Traditional Culture and Folklore, 15 November 1989
1999 Hague Protocol	Second Hague Protocol for the Protection of Cultural Property, 26 March 1999
2001 UNESCO Declaration	Universal Declaration on Cultural Diversity, 2 November 2001
2003 UNESCO Convention	Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003
2003 UNESCO Declaration	UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, 17 October 2003

2005 UNESCO Convention	Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005
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## **General Abbreviations**

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art. / artt.	article/articles
CdS	Cons. di Stato/State Council
D. Leg. / Leg. D.	Decreto legislativo/Legislative decree
D. L. / D. L.	Decreto legge/Decree law
<i>contra</i>	contra
<i>ex art.</i>	ex art.
fol.	Following
L.R. / R.L	Legge regionale/Regional law
para. / paras.	paragraph/paragraphs
sec.	section

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## **Cultural Heritage. Scenarios 2015-2017**

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Luigi Vero Tarca  
(Cestudir Director)

I am particularly pleased to welcome this important volume. I do this under two titles: as the Director of Cestudir (Study Center for Human Rights) and as a professor of Theoretical philosophy. I could also pay attention to my position as a simple citizen of this planetary society, which, by entering into the so-called age of technique, has to face many difficult questions and unknown variables even unthinkable until yesterday. If, in these uncertain times, we need some help, I think this book may perhaps make some contribution in this direction.

It is an important book. First and foremost, because cultural heritage is more and more a central issue as for the human rights matter. Indeed, it is becoming increasingly clear that an individual exists as a true human person only to the extent that he/she belongs to a culture, so that the mere survival of the single individuals of a people does not at all guarantee for that people the real right to exist. In this regard, I like to remind that the Statute of the Center I am currently heading sets forth the commitment to the “valorization and promotion of the territory, including the safeguarding of the material and immaterial cultural heritage of Venice and its hinterland” (art. 2(2)). It is no coincidence that in 2014, under the steering of former Director Lauso Zagato, particularly interested in this field of research, we devoted the annual reflection on human rights to “Cultural Rights in the Universal Declaration of Human Rights”, having been engaged in a thematic workshop on art. 27 of the UDHR, an article too often overlooked. In this historic moment, it is crucial that these rights, which are very concrete and strongly linked to geographical, social and cultural identities, become the subject of interest by those who really care for human rights, because if they are neglected, they could be interpreted and applied in a manner that, distinguishing and emphasizing the universal and special rights as opposed to each other, would end up in overthrowing their meaning by encouraging the emergence of feelings far distant from those to which the defence of human values has to be inspired.

The treatment of cultural heritage as the object of a fundamental right represents, in some sense, an enlargement of the notion of ‘human rights’. Such phenomenon of extension, which is gradually becoming tendentially unlimited, is one of the most remarkable features of the current situation. This is particularly so because it thrives in a twofold direction: in the sense of equating, within the various spheres, between ‘ordinary’ and ‘extreme’

cases, on one side, and in the sense of enlarging (or at least of specifying and making explicit) the values that we have to consider as human rights (which is precisely the case for the right to safeguard traditions, including manual ones), on the other side. For example, with regard to the first aspect, gender violence tends to be equated (in the provisions of the Istanbul Convention) to inhuman or degrading behaviour, if not to real torture. As for the second aspect, cultural rights tend to be raised to the rank of primary rights even if they do not immediately touch the body and the lives of people.

All of this obviously involves considerable progress, even though it is exposed, as it is inevitably for every human experience, to risks. We understand this aspect if we pay attention to what is an essential feature of the defence of human rights, which we can summarize in the following way. By identifying fundamental human rights, we intend to set some points that are assumed as unquestionable, both in negative and in positive terms. For example, in the negative, slavery and torture are forbidden, while, in the positive, good and satisfactory working conditions (but also rest, leisure, education, health and so on) are guaranteed. In other words, on a lot of things human beings can be distant, and even in contrast, from each other, but there are some steady, fixed elements that are undeniable values for all of them. So, if we are able to keep our eyes fixed on these points and to assume them as a reference system, we will be sure to travel, albeit perhaps with some clutters, in the right direction.

Now, by equating (at least tendentially) even weaker rights to those that constitute the strong core of human rights having the character of indisputability and therefore of universality, while at the same time extending the field of what is considered a human right, we run into the risk to weaken the borders, thus compromising the incontrovertible and absolutely binding nature of fundamental rights. This dynamic, moreover, represents a specific feature of our time, when all of what has previously been considered undeniable appears to fail and, conversely, even worth aspects once considered marginal assume the role of fundamental values. In short, we can understand here - in the loss of a stark distinction between what is *a priori* and what is *a posteriori*, between what is valid *de jure* and what is valid *de facto*, *i. e.* between what is considered fair by everyone and what simply manages to impose on everyone - a distinctive trait that is typical of our age, with all its propulsive pushes but also its own unknown aspects and dangers.

These are extremely delicate and complex issues, which can be tackled in a productive way only by keeping in mind the various levels within which these issues move. One of the great merits of this book is to make an important contribution in this direction. This is due to the capacity to hold together, in a sensible and rigorous manner, many heterogeneous levels of reasoning. And for that we thank the promoters of the venture, today

also editors of this volume: Simona Pinton and Lauso Zagato. This volume brings together highly theoretical considerations with essays of a purely juridical nature and with more specific topics related to particular areas, up to those that deal with extreme concrete practices and situations. The interweaving of all these skills and of all these levels of interest bestows on the work as a whole a particular taste and a value that I think is not exaggerated to define as of the first order.

This is the reason why we believe that this book can be only the first step - albeit indeed very significant for its richness and amplitude, which is not merely quantitative - of a path that is highly interesting and stimulating not only for law scholars or for intellectuals (referring to this term in a strict sense) but also for all those who have in mind a positive future for human experiences and for the cultural traditions in which those are realized and incarnated.

Venice, 30 May 2017



## Cultural Heritage. Scenarios 2015-2017

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Luisella Pavan-Woolfe

(Director, Venice Office of the Council of Europe)

The CoE Faro Convention proposes a broad and innovative concept of CH. This is defined as a “set of resources inherited from the past and recognised by communities as the continuously evolving reflection and expression of their values, beliefs and traditions”.

According to this perception, objects and places are not important in themselves from a CH perspective. They are important because of their meaning to people and the values they represent.

Venice, together with Marseille (France), Pilsen (Czech Republic) and Viscri (Romania), is one of the four ‘laboratories’ chosen by the CoE to test the implementation of the Faro Convention in Europe.

The city of Venice, Ca’ Foscari University, other local higher education institutions and numerous Venetian civil society associations have demonstrated a clear interest for the principles of the Convention and wholeheartedly embraced the approach.

Not by chance the Conference, which provided the inspiration for the present volume, took place in Venice in November 2015 at Ca’ Foscari University, livened by Simona Pinton and Lauso Zagato’s knowledge and enthusiasm for CH.

The stimulating and learned debates of the Conference are still topical, as recent developments in the CoE’s work on CH testify. These are *Strategy 21* and the *Blood Antiquities Convention*.

The CoE European Cultural Strategy for the twenty-first century, Strategy 21, builds on the pioneering work and the *acquis* of the CoE in the area of culture and heritage, and in particular on a number of treaties which, transposed into national legislation, have become reference texts for most European countries. These are:

- the European Cultural Convention (ETS no. 18), signed in Paris on 19 December 1954;
- the Convention for the Protection of the Architectural Heritage of Europe (ETS no. 121), signed in Granada on 3 October 1985;
- the European Convention for the Protection of the Archaeological Heritage (revised) (ETS no. 143), signed in Valletta on 16 January 1992;
- the European Landscape Convention (ETS no. 176), signed in Florence on 20 October 2000;

- the Faro Convention (CETS no. 199), signed in Faro on 27 October 2005.

Launched by the Ministers of the forty-seventh CoE Member States in April 2017 in Limassol (Cyprus), Strategy 21 draws much of its inspiration from the Faro Convention, which introduced a paradigm change in the way we look at CH and at the democratic participation of citizens in the definition of heritage, in its management and enjoyment.

For a long time, the CoE has been focusing its activities in the field of heritage on democracy and human rights. The Granada and Valletta Conventions highlight issues dealing with preservation, restoration and protection of the architectural and archaeological heritage. At the same time they also look at heritage from a human rights perspective in so far as they promote public access to heritage sites and stress the importance of knowledge and education on the value of heritage.

However, the radical and almost revolutionary shift in conception came with the Faro Convention. The Faro Convention sees heritage as an essential element in the development of participatory democracy. As individuals and communities identify themselves in a place, its traditions and history, they feel compelled to look after it and be responsible for its management in a sustainable way. Thus, while previous conventions concerned with the issues of conservation and restoration, the Faro Convention focuses on people, citizens for whom CH should be preserved. In so doing, it helps public authorities and civil society to address some pressing societal questions. How do we combine social cohesion and cultural diversity? How can we enhance quality of life and the living environment? How do we develop democratic participation?

The focus on rights is absolutely central to this approach. The Faro Convention recognizes the rights relating to CH as inherent in the right to participate in cultural rights, as defined in UN and CoE texts. Everyone, alone or collectively, has the right to access CH and benefit from it. Everyone has the responsibility to respect the CH of others, as well as their own.

Strategy 21 relies heavily on the Faro Convention's approach and should be seen against the backdrop of changes that took place in the concept of heritage from the seventeenth century onwards. The rediscovery of values of antiquity during Renaissance and Enlightenment brought about the need to protect the objects of the past and transmit them to future generations. In the nineteenth century nation States turned to the past to acquire an identity of their own. National heritage policies then emerged to protect, conserve and restore the monuments of bygone days. And in the twentieth century, after the destruction of two world wars, emphasis and international efforts switched to how we should preserve and restore antique vestiges.

In the twenty-first century, the CoE, through the adoption of Strategy



21, sees CH in all its components, tangible and intangible, as a powerful factor for the refocusing of our societies on the basis of dialogue between cultures, respect for identities, appreciation of diversity and the sentiment of belonging to a community of values. CH is also regarded as a key factor in social and economic development and an invaluable resource in the areas of education, employment, tourism and sustainable development.

The new strategy redefines place and role of CH in Europe and provides guidelines to promote good governance and participation in heritage identification and management. It also helps to disseminate innovative approaches to improve quality of life and environment of European citizens. It sets challenges, recommends actions and highlights best practices to be followed by all actors and stakeholders – government, local authorities, and civil society.

One of the innovative aspects of the strategy is the practical text, defining how heritage can become today a resource for three key aims: social cohesion, economic development and increase of knowledge through lifelong learning. It is also the first time that recommended actions are illustrated by practical examples, provided by the countries themselves, which give an overview of how heritage management is carried out in Europe today.

Strategy 21 recognises the key role that CH can play in building democratic societies. It also highlights that heritage is at risk because of demographic changes, natural disasters, mass tourism, side effects of economic crisis, terrorism and various forms of international crimes. About the risks linked to destruction both in peace and war time and the trafficking of cultural assets and artefacts (which *Cultural Heritage. Scenarios 2015-2017* also explores), the CoE latest answer has been the Convention on Offences relating to Cultural Property (the Blood Antiquities Convention).

The heinous tearing down of Palmyra in Syria and the dismantling of Nimrud in Iraq prompted the organization to address the issue of the vulnerability of historic sites and annihilation of humanity's heritage which threatens our democratic values, identity and memory.

Adopted in Nicosia in May 2017, the Blood Antiquities Convention is the first criminal law treaty to prevent and combat the illicit destruction of cultural property and its trafficking by strengthening criminal justice responses while facilitating co-operation on an international level.

CoE's response to new dangers regarding CH as well as the broad strategy that proposes to safeguard cultural heritage for present and future generations recognise that heritage is a nonrenewable common good, and that the society as a whole (the State as well as citizens and professionals) is responsible of its conservation, protection and enhancement.



## **Cultural Heritage. Scenarios 2015-2017**

edited by Simona Pinton and Lauso Zagato

Giulia Narduolo

(Deputy of the Cultural Committee, Italian Chamber of Deputies)

When I participated in the international Conference about *Cultural heritage. Scenarios 2015* at Ca' Foscari University on 26-28 November 2015, it was shortly after the Cultural Committee of the Chamber of Deputies had hosted Maamoun Abdulkarim, Director-General for Antiquities and Museums in Damascus, who illustrated how the situation of Syria and Iraq's CH was collapsing after ISIS jihadists had brutally murdered Khaled al-Asaad, the Chief of antiquities for the ancient city of Palmyra. An event that deeply impressed the international community, as it was not only a horrible war crime against a civilian, but it also showed IS supporters' utter contempt and hatred against a world heritage site.

Unfortunately, intentional destruction of CH is an everyday occurrence not only in the Middle East, but also in many other places all over the world. A threat against one people's CH is a threat against one people's identity. To defend one people's culture and, more extensively, to promote cultural pluralism is an effective way to reinforce peacekeeping. As members of the Cultural Committee of Italian Parliament, we worked on these concepts and we passed a resolution requiring the Ministry of Culture to make every effort in international settings to strengthen UNESCO's action in the protection of endangered art and culture.

And in fact, thanks to this Parliamentary initiative, the 'Blue Helmets for Culture' were launched during the UNESCO General Conference of Paris in November 2015: a UN specialized organization engaged in the safeguard of CH at risk in conflict areas around the world. The first task force, named *Unite4Heritage* was officially established in February 2016 with the agreement signed by the Italian Government and UNESCO in Rome. It is important to highlight how Italy's institutions have played a major role in reinforcing the principle of 'cultural peacekeeping', which not always has been sufficiently considered by international diplomacy involved in the resolution of the worst conflicts all over the world.

During the last two years, the work of the Cultural Committee has also regarded the field of ICH, a theme that has never been discussed extensively in institutional political context. I was the speaker for the Committee for Law no. 44 of 8 March 2017 on the preservation and enhancement of ICH: this act modifies Law no. 77 of 20 February 2006 by including the cultural practices and elements inscribed on the 2003 UNESCO Convention's Lists of Intangible Cultural Heritage (for Italy there are six). Law no. 77 of

2006 is a fundamental act in the Italian legislation for UNESCO heritage sites, as it states that these sites are excellences of Italian cultural and natural heritage and constitute essential features for Italy's representation on a global scale. For this reason the recognition of intangible elements as part of Italian representative CH was simply due.

However, apart from the ratification of 2003 UNESCO Convention (Law no. 167 of 27 September 2007) and Law no. 44 of 2017 (specifically regarding UNESCO heritage lists), no comprehensive law on the safeguard of ICH is present in the Italian legislation. It was exactly to solve this *vacatio legis* that the project team coordinated by Prof. Marco Giampieretti worked on a text that I have recently presented at the Chamber of Deputies as the Draft Law on the Safeguard of the Intangible Cultural Heritage (no. 4486).

At the same time, the team has worked on the Ratification of the Council of Europe Convention on the Value of Cultural Heritage for Society, signed in Faro on 27 October 2005 (no. 4485), since Italy has not fulfilled it yet, and I have presented a draft text together with the above mentioned one on ICH. The topics of the two laws are clearly interrelated and therefore a joint discussion of both texts in the Cultural Committee would be highly recommended. Of course, the opening of an institutional debate about the value of CH and, in particular, about its intangible elements, must be stimulated and accompanied by a vast academic support. In this sense, the publication of this periodical comes at a very propitious moment.

I want to thank especially Professor Zagato, Dr. Pinton and Professor Giampieretti for involving me in this distinguished project. I will work for a rapid approval by Italian Parliament of both the ratification of Faro Convention and the law on ICH, even though most probably we will not succeed during the present legislature. Nevertheless, the foundation stone has been laid.

## Cultural Heritage. Scenarios 2015-2017

edited by Simona Pinton and Lauso Zagato

Franco Posocco

(Guardian *Grando*, Scuola of San Rocco)

Gentili amici, cari colleghi,

a warm *benvenuto* to you all from the Scuola Grande di San Rocco in Venezia.

I am particularly glad to receive and greet so many people interested in the conservation and preservation of the common heritage, the *non-material* intangible culture.

The tradition, the language, the behaviour are the fundamentals of our civilization. Without them we are not persons, because the past time is the precondition for the present and for the future, the base of the 'humanism'.

For our society, so quickly changing, often in worse, is necessary to maintain values and expressions of memory and identity.

The Scuola Grande - *scuola* is a Greek Byzantine word significantly meaning 'association of solidarity' - has several centuries of work to assure to the Republic of Saint Mark both help and tolerance to the poor, to the ill, to the foreigner.

The treasures of art and the charitable help were going together to assure a strong base to the social paleo-democracy of the common state. For this reason, we think that Venice is the right place to explain and to discuss this problem so emergent and impelling. With other eminent experts examining the different aspects of the great theme at issue, Prof. Clive Wilmer (Master of the English Guild of Saint George) and Prof. Maria Laura Picchio Forlati of the University of Padua are representing the spirit of the Schools. We thank them for their commitment to explain and discuss our values and common traditions.

According with John Ruskin and taking into account the work of other Venetian Scuole Grandi, they will provide an insight on the dimension and the importance of those confraternities for the history of the Serenissima Republic.

We expect the result of this Conference to inspire our activities in the years ahead.

The Scuola Grande is engaged to maintain alive this patrimony and heritage, because Venice represents for all the place of culture, tradition and memory.

Venice and its significant sites belong to the entire humanity and are the common house, represented by the stones, as Ruskin said, but also by the 'in-tangible', 'non-material' spiritual heritage.

I wish you an engaging discussion and 'keep going'.

Thank you for the attention and congratulations to the organizers.



## **Cultural Heritage. Scenarios 2015-2017**

edited by Simona Pinton and Lauso Zagato

Fabio Gava

(President, Venice Foundation for Peace Research)

It is my pleasure to welcome the publication of this work, which also allows me to spend a few words about Fondazione Venezia ('Venice Foundation') for Peace Research, which I have now the honour to preside for some years.

The Foundation was established in 1999 under the Veneto Regional Law no. 55 and has the purpose of carrying out research activities, also in co-operation with national and international institutions, on issues related to security, development and peace; issues that now more than ever reflect the anguish of our society.

Among the founders, in addition to Veneto Region, the City of Venice, the Cini Foundation, the Veneto Institute of Science Letters and Arts, there are representatives of different religious movements such as the Lutheran Church and Don Germano Pattaro Center of theological studies.

Today the Foundation includes the University of Venice and the University of Padua and the Querini Stampalia Foundation.

The research program originally focused on the following thematic areas:

- the control and reduction of armaments and of defence systems: in particular, the reorientation of NATO also in view of its enlargement to the Eastern European countries;
- the basic democratic requirements that States must guarantee to maintain peace and security at international level;
- the concept of peace between theology and culture: the attitude of the great religions, in particular Islam and Buddhism, on peace;
- the management and prevention of conflicts, with special attention to conflicts in the Mediterranean shores.

Lately the Foundation has also focused on:

- the role of memory in building peace and in the process of European integration;
- the guarantees of access to natural resources, starting from the problem of access to water to finally address the problem of a sustainable climate.

The Foundation has always made its researches available not only to the scientific community at large, but also to a wider public, in order to favour a deeper awareness and debate on major social issues. For this precise reason, several international conferences have been organized.

In chronological order, the topics discussed at the conferences have been:

- the role of inter-governmental organizations in humanitarian emergencies;
- the rule of law and democracy as preconditions of peace;
- the control of armaments and fight against terrorism by UN, NATO and the EU;
- the ethnic-linguistic minorities in Europe between national and democratic citizenship;
- the memory and reassurance to provide the future with peace;
- the future of peace: the Mediterranean scenario.

Since 2014, the Foundation has been also dealing with cultural issues, including the current publication.

In particular, it has started a collaboration with the American artist Debra Werblud aimed at creating an internet site called *Blind Spots* (<http://www.blindspots.eu/>), designed to collect visual and acoustic contributions from poets about peace.

This site of *Blind Spots* is linked to the site of the Foundation, a site in which we are publishing the papers' production that the Foundation itself has edited in the two series 'Quaderni' and 'Volumi'.

In 2015, the Foundation contributed to the organization of the international Conference on *Cultural Heritage. Scenarios 2015* which consolidated the ongoing collaboration with Ca' Foscari University and other institutions aimed at developing the research on "The Safeguarding of Intangible Cultural Heritage as a Transnational Value of Democracy and Access to Peace Itineraries". The present volume is part of this research program.

The safeguard of CH is a topic linked both to the prevention and management of conflicts and to the basic requirements of efficient democratic societies, issues that are at the heart of the Foundation's research activity.

In 2016, the Foundation started also a collaboration with the festival *La Palabra en el mundo* which is today at its tenth edition. Every year *La Palabra en el mundo* brings together poets of different nationalities who carry on moments of public dialogue with people in a way that poetry itself becomes an universal vehicle of peace. Culture, therefore, is promoted as a fundamental element of knowledge that can foster peace.

Heritage and cultural identities are no longer considered elements of diversity, but new means that may lead to peace, as UNESCO pointed out and as strongly advocated by the CoE.

Personally, and on behalf of the Foundation's Board of Directors, I thank the editors Simona Pinton and Lauso Zagato for this wide and qualified work on issues now more than ever actual, especially after the violence we have witnessed against unique cultural goods in the world in the name of a meaningless ideology.



## **Cultural Heritage. Scenarios 2015-2017**

edited by Simona Pinton and Lauso Zagato

Gian Angelo Bellati

(Director, Unioncamere - Eurosportello Veneto)

A great challenge is the one faced by this interesting study about 'culture' in many of its meanings and with respect to many subjects that deal with it, not least the EU.

Reading the book we understand how Italy is still the most sensitive country on this issue, but also the country which has been showing the best ways to preserve an immense wealth.

Yes, financial instruments and tax aids are important, like those guaranteed by the law 1089/39 which allowed Italy to involve private property in the great challenge of preserving cultural heritage; but it is also important to have knowledge and skills, such as artisans, for example, where, again, Italy proves to be at the forefront of the world.

But today's challenge is also to be able to define the right value of the cultural heritage not only 'tangible', but also 'intangible', a theme on which this work performs important insights.

The hope is that a new protection for tangible and intangible heritage in Europe may emerge that keeps this immense wealth alive.

The experience of our office, as part of the Enterprise European Network of European Commission (normally called Eurosportello) on the Venetian territory to bring Europe closer to citizens and businesses, has been in the sense of a growing awareness of the primary role that our country and the Veneto Region can play in many matters relating to these fields, even through European projects involving other European countries and regions.



## **The Experience of Pro Loco Associations and the Network of UNPLI**

Gabriele Desiderio  
(UNPLI Office Director)

I am proud to contribute to this publication that collects the documents of an interesting conference held in Venice on 26-28 November 2015 on *Cultural heritage. Scenarios 2015*.

It has been an important opportunity to show to the academic world the activities carried out throughout Italy by the network of Pro Loco associations who daily operate on the territories in order to promote and protect the Italian ICH.

UNPLI (Unione Nazionale Pro Loco d'Italia) is the Italian network of more than 6,300 Pro Loco associations. Many Italian towns and small cities have a Pro Loco, a civic membership association of volunteers that works with schools, local businesses and institutions to devise ways to enhance the town and attract visitors. The first Pro Loco was born in 1881. Pro Loco are closely linked with local communities of which they are expression. From 2003 UNPLI started to work on the safeguarding of the ICH with several national projects.

Pro Loco associations have been the instrument for the involvement of the local communities in the projects concerning the ICH because they already worked for the promotion, enhancement and transmission of many local traditions. The 2003 Convention is the instrument for raising the awareness of Pro Loco associations of their strategic role in the safeguarding the Italian ICH, working in a network with experts and institutions. Since 2007 UNPLI created a national library with all the documents (books, dvd, cd) collected from Pro Loco, municipalities, universities, schools and many other associations through our projects and activities.

On 2010, UNPLI launched the web channel on You Tube *Memoria Immateriale* with more than 1,400 videos and interviews to craftsmen, musicians, local experts and many other people on their connection with the CH of their regions. The channel is an important example of how the local communities have been involved in our activities. We have created it, and we constantly nourish it, with the cooperation of individuals and groups, in order to approach the techniques of craftsmanship, social practices, rituals, festive events, knowledge and practices concerning

nature and universe, performing arts, oral traditions and expressions, memories, etc.

In 2012 UNPLI has been accredited to the UNESCO's ICSICH.

In 2013 UNPLI created the website of the ICH NGO Forum (<http://www.ichngoforum.org>) and manage the linked Facebook page *Intangible cultural heritage and civil society*. The Forum is the platform for communication, networking, exchange and cooperation for NGOs accredited by UNESCO to provide advisory services to the ICSICH in the framework of the 2003 UNESCO Convention. NGOs are a pillar for the safeguarding of the world's living traditions, together with the holders of these traditions and the States. The Forum also welcomes NGOs that are active in the field of ICH and are in the process of accreditation.

The ICH NGO Forum organizes meetings and symposia on shared international challenges in the safeguarding policies and practices of ICH, and is particularly committed to follow the implementation and the evolution of the 2003 Convention. Periodic meetings take place simultaneously with the sessions of the Convention's General Assembly (every two years in June) and of the ICSICH (annually in December).

UNPLI is working with other Italian associations, accredited by the ICSICH, local and regional authorities, universities and experts, in order to build a national network of exchanging experiences, best practices and raise awareness of the importance of the Italian ICH and the 2003 Convention.

# Cultural Heritage. Scenarios 2015-2017

edited by Simona Pinton and Lauso Zagato

## Preface

### This Volume, This Series

Simona Pinton, Lauso Zagato  
(Università Ca' Foscari Venezia, Italia)

1. This volume represents the fourth accomplishment of the editorial undertaking of *Sapere l'Europa, sapere d'Europa*. It elaborates on the issues presented at the International Conference *Cultural Heritage. Scenarios 2015* held at Ca' Foscari University on 26-28 November 2015.<sup>1</sup> The event has been particularly successful thanks to the significant participation of governmental and non-governmental institutions and associations, in addition to Ca' Foscari University, in particular Cestudir (Studies on Human Rights Centre), and MacLab (Management of Arts and Culture Laboratory). Namely: the Council of Europe Office in Venice; the University of Florence, the Department of Education and Psychology; the Erasmus University of Rotterdam; the UNPLI (National Union of Italian 'Pro Loco'); the Venice Foundation for Peace Research; the Simbdea (Italian Society for Museum and Heritage Anthropology); the Unioncamere - Eurosportello of Veneto; the City of Venice Europe Direct; the Scuola Grande of San Rocco and the Coordinamento Scuole Storiche of Venezia; El Felze; Faro Venezia; Arzanà; il Sestante. We would like to express our sincere gratitude for their support. Furthermore, distinctive significance has characterized the participation at the Conference of Giulia Narduolo as representative of the Cultural Committee of the Italian Chamber of Deputies. Her presence has acted as a catalyst for an active cooperation that has started to lead to important normative achievements as reported in the Appendix of this volume.

In conclusion, the editors are truly pleased to have completed this ambitious project, challenged by a considerable amount of papers, more than 40, on one side, and by an expansive interdisciplinary nature of the writings. Finally, our heartfelt thanks to Edizioni Ca' Foscari - Digital Publishing for their assistance in the realization of this enormous editorial effort and their guidance at the most delicate steps.

<sup>1</sup> The Conference took place at various Ca' Foscari facilities (aule Baratto and Archivio at the Ca' Foscari Palace and aula Morelli at Malcanton-Marcorà Palace), and in Scuola grande of San Rocco.

2. The Series involves a historical notable group of authors - Picchio Forlati, Tamma, Zagato, Pinton, Lapicirella Zingari, De Vido, Bellato, Sciorba, Da Re - who has been active in the scientific-editorial experience for long.

The body of work is complemented with contributions by proff. Clemente, Goisis, Scovazzi, Giampieretti, El Felze's President Saverio Pastor, and others who collaborated in the previous publications. As indicated in the cover of each past volume, the Series *Sapere l'Europa, sapere d'Europa* aims at "approfondire i profili legati al processo di integrazione europeo, non ignorandone i risvolti più burocratici e discutibili ma sapendo guardare al di là di essi" (examining the elements of the integration process in Europe, not ignoring the most bureaucratic and questionable implications but knowing to look beyond them).

One could argue whether a volume with the title *Cultural Heritage. Scenarios 2015-2017*, without a specific reference to the European regional scenario, does coherently fall within the scope of the Series. A careful reading of the Table of contents can easily dispel any doubt: the core of the intellectual adventure that follows is in fact the Faro Convention, with its ongoing implementation's experiences and Venice as the focal point. In the preface to the previous volume of the Series, *Citizens of Europe. Culture and Rights*, we wrote about it (Zagato, Vecco 2015): the Faro Convention, along with the ELC and the recent Istanbul Convention, should be acknowledged as the "sweet fruits that Europe has brought to us even in the dramatic circumstances of the beginning of this millennium".<sup>2</sup> So, even though the scope of the research extends to a global perspective, the volume certainly concerns *Sapere l'Europa, sapere d'Europa*.

3. The Conference on *Cultural Heritage. Scenarios 2015* from which this volume originates had been designed as a fluid combination of both theoretical discussions and cultural practical experiences. In particular, all extra-curricular activities had been chosen to let the participants experience the Venetian traditional practices and knowledge. On the one hand, the food experience focused on the Marco Polo route and the opportunity to taste Middle East dishes and recipes; on the other hand, a dinner was organized at the Cooperativa il Cerchio in Sacca Fisola, reached by a motorboat ride across the lagoon, enjoying the dishes prepared by the cooperative's cooks, among whom there are vulnerable people. Before each culinary event, the leaders of the associations offered detailed descriptions of the quality ingredients and preparations of the dishes, and explained the

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2 Zagato, Lauso; Vecco, Marilena (2015). "Prefazione". Zagato, Lauso; Vecco, Marilena (a cura di), *Citizens of Europe. Culture e diritti*. Venezia: Edizioni Ca' Foscari, 9-13, DOI 10.14277/978-88-6969-052-5.

motivations and the goals behind their job and commitment.<sup>3</sup> The second day concluded with a unique visit to the Scuola Grande of San Rocco (Scoletta, Sala terrena, Sala capitolare, Sala dell'Albergo) whose *teleri* frescos were described by a captivating young expert. A boat cruise towards the Arsenal concluded the Conference for the 'remaining participants', on Saturday afternoon. Entering the Arsenal from the side of the Lagoon, the participants were lectured on the boat by the eloquent historical and military recount of Commander Zanelli, a renowned expert on the topic. On the ground, we visited some 'Tese', accompanied by the thought-provoking telling of Alessandro Ervas. This moment marked the emotional climax of the whole intellectual journey embodied in the Conference.

4. In its internal structure, the volume mirrors the Conference architecture in four sessions, titled according to the idea of a constant lively CH in which the soul dominates,<sup>4</sup> an idea we tried to translate by using tense verbs rather than nouns. Namely: "CH Blazes", "CH Inspires", "CH Condenses", "CH Either Finds Hearts' and Hands' Care or Dies". The volume remains faithful to the event from which it originated, recapturing the particular structure of the Conference referred by prof. Clemente, in his Chairman's Notes,<sup>5</sup> as a 'sandwich': the academic part - the four sessions - has been layered between an introduction and a conclusion merging together according to the idea of: "in the end my beginning". In this way, the Conference undertook a cyclical pattern, a 'circular wave' - end/principle - that was not apparent in the initial phase,<sup>6</sup> but developed deep-

3 Regrettably, a more extended explanation of the work of each association is not included in this volume.

4 This choice has been agreed upon by the Scientific Committee of the Conference in charge of selecting the papers and the speakers and constituted by: Luigi Perissinotto, Fabrizio Panozzo, Simona Pinton, Elide Pittarello, Michele Tamma, Luigi Tarca, Lauso Zagato of Ca' Foscari University; Maria Laura Picchio Forlati of Scuola Grande di San Rocco; Pietro Clemente, Honorary President of Simbdea; Giovanna Del Gobbo, University of Florence; Marilena Vecco, Erasmus University of Rotterdam.

5 Pietro Clemente has been the chairman of the fascinating Section 3 of the Conference on "CH Condenses", opened by prof. Wilmer, Master of the Guild of S. George (London) as the key note speaker.

6 We are honored to include in this volume the contribution of dr. Pellizzon, Director of the Research Office at Ca' Foscari University, together with dr. Silvia Zabeo, of the same Office. It was not possible, for different reasons, to receive a written contribution by Commander Zanelli. We decided to include the abstract, originally written by dr. Peranetti (former officer at Veneto Region) for the *Papers Preview* (<http://www.unive.it/media/allegato/centri/CESTUDIR/CulturalHeritage-April2016.pdf> [2017-12-19]). The end/principle introductory section of the volume has been enriched by Francesco Calzolaio's paper, president of the Venti di cultura association, by the above-quoted prof. Clemente's Chairman's Notes, and by a brief presentation of the theoretical 'stones' on which the 2015 Conference (and this book) have been built, by Lauso Zagato.

er in significance as the presentations unfolded. The Conference, in fact, started with the session “CH Blazes”, opened by prof. Venturini’s lecture on the international law applicable to the intentional destruction of CH, and continued with prof. Scovazzi’s lecture on the return of cultural objects illegally removed. The final session – “CH Either Finds Hearths’ and Hands’ Care or Dies” – ended with a sub-session dedicated to “Traditional Knowledge, Lagoon, Sustainability”. The fascinating closing remarks made by Alessandro Ervas from the Associations El Felze and ArcheoClub Venice, at the second sub-session of the Conference – session opened by prof. Vallerani’s lecture – have been dedicated to the ongoing ‘cultural sterilization’ of Venice: a meaningful expression coined by Alessandro during an important debate held at the Venice Arsenal in late summer 2015, in the realm of an event promoted by “Stories Under the Felze”.

In the volume, the presentation of Alessandro Ervas has been rendered as *à tout azyimuth* interview with Saverio Pastor, an interview that concludes the volume by offering a concrete application of the principle of “in the end my beginning”.

At this point, it should be clear what we intend by using the concept of a ‘circular wave’ permeating the scientific part of the volume: a concern, but also a sincere desire, to bring together the living forces present in Venice, those forces that identify with this unique city and genuinely care for it.

5. Now a few comments regarding the essays. First, the choice to have the essays written in English is intended to make the volume’s subjects accessible to an international audience. This, however, produced a delay in the publication deadline and a non-homogeneous quality of the form due to the lack of availability of professional translation services. Second, in the two years debate following the Conference, the choice between the expressions heritagization and patrimonialization has resolved in favor of the former. Consequently, the first sub-section of the section “CH Inspires” is under the title “Heritagization and Communities”.<sup>7</sup> However, some articles still use the word ‘patrimonialization’, and the authors’ preference has been respect.

Third, we immediately noticed, after the arrival of the abstracts in response to the Conference’s ‘call for papers’, the unforeseen development of ten dissonant from what we meant when we thought and proposed the topic of the first session on “CH Blazes”. We are still surprised of the outcome, but it’s worth mentioning how what was initially perceived as an apparent misleading development has turned into a refreshing opportunity to let ourselves be involved in something inherently favored by the CH’s inner spirit to be alive, constantly creating innovative and unanticipated work streams.

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7 The two sub-sections are unified by the opening paper of prof. Arantes, from the University of Campinas, Brazil.



6. We do not want to close on a pessimistic note. The first brief sub-section of the final section – “CH or Finds Hearths’ and Hands’ Care or Dies” – is titled “Traditional Knowledge and Communities”. Prof. Macmillan’s essay, dedicated to “The Problematic Relationship between Traditional Knowledge and the Commons”, opens the way to a high-level research on the protection of the TK. This research must be conducted in light of the nexus that explores the extent of the safeguard of tangible and intangible CH, and the TK in the perspective of common goods.

More than any other place in Europe, Venice is the right workspace for carrying out this research.<sup>8</sup>

The next commitment of those working on the heritagization’s issue, and fighting ‘cultural sterilization’, is to promote an intellectual co-operation to benefit local communities, also by establishing an intellectual service structure. Interested scholars must be able to contribute, through their specific disciplines, to the efforts, accomplished or in progress, of local HCs dealing with the complex challenges they have ahead. This is our final, strongest expectation: the online availability of this volume can provide a useful tool to cope with the looming key problems and inherent issues of CH.

Venice, 20 December 2017

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<sup>8</sup> At the time of the 2015 Conference, some interesting proposals had been suggested and are still under scrutiny. Among others, it is worth mentioning the one stirred by prof. Arantes, and focused on a joint research on the protection of TK (among the Universities of Ca’ Foscari, Padova and Campinas). This proposal offers the chance to combine the Italian and Brazilian’s fields of research. Among others, is the relevant issue of connections and differences between the TK of indigenous people and the TK created by the expertise and practices of artisan communities that do not fall under that concept, yet



**Introduction**  
**In the End my Beginning**



# Cultural Heritage. Scenarios 2015-2017

edited by Simona Pinton and Lauso Zagato

## Opening Remarks

Lauso Zagato  
(Università Ca' Foscari Venezia, Italia)

**Summary** 1 Introduction. – 2 The Cultural Heritage in the Age of Heritagization. – 3 A New Role for the Legal Dimension in the CH Studies. – 4 Last Premises.

### 1 Introduction

For sake of clarity and in order to contextualize the papers this book presents, I want to briefly suggest some premises on which the 2015 November Conference has been built and which help to track down the interdisciplinary research framework that holds them up.

### 2 The Cultural Heritage in the Age of Heritagization

First, and above all, we strongly endorse the central role of CH in the present scenario, in the light of the statement that launched the Conference: “today, cultural heritage manifests itself in real life as well as in the imagination of individuals, communities and groups, and mankind, with an overwhelming force”.

That is, we are aware that at stake is the phenomenon of the so-called *heritagization*, a term used in 2005 by Hartog “to indicate a process where heritage affirmed itself as the dominant category, including if not overwhelming cultural life and public policy” (quoted in Tufano, in this volume).<sup>1</sup>

This is not a value-based judgment, nor do we underestimate some *side, even problematic, aspects related to the heritagization*. Not only the sub-section dedicated to “Heritagization and Communities”, of the section “Cultural Heritage Inspires”, but also various papers in different sections and sub-sections of the volume, deal with such “side aspects”.<sup>2</sup>

1 With a critic approach to the matter, see Lowenthal 1998, quoted in Pinton, in this volume.

2 Moreover, these issues have been discussed in previous volumes of the series *Sapere l'Europa, sapere d'Europa*: see Tamma 2015, Scieurba 2015.

Rather, the volume, not unlike the Conference from which it originated, is *in primis* characterized by the acknowledgment – without any reticence – of the paradigmatic shift (Kuhn 1962, 27 and *passim*) intervened in the last decades, at the end of which “the ways in which we look at cultural heritage have evolved dramatically from monument and museum collection to encompassing a complex matrix of meaning, values, associations and related concepts” (Viejo-Rose 2015, 2). Remaining into the connection between memory and CH, the author now quoted guides us to understand what is really at play (Viejo-Rose 2015, 17) “the models for understanding both memory and heritage have moved on from a hierarchical vision by which the brain and social authorities ran the show, to one of web-like network of interconnections [...] to today’s ‘cloud model’”, with its symbiotic balance of inputs and outputs. According to Viejo-Rose, the cloud bears a resemblance with Deleuze’s “world-memory” concept (1989), “where no one singularity of persons, place or group stands out of a continuum of life made up of metamorphoses and perhaps also metaphors”.<sup>3</sup>

Before moving out of the premise on *heritagization*, we have to address the widespread criticism for which if we talk of a process where everything can become CH, then nothing would be CH. But this criticism is not going beyond a vision of CH as hierarchies between different levels (of importance) of cultural objects. On the contrary, in the *heritagization wave*, CH has to be conceptualized as a process – or, if we prefer, as the always provisional result of processes – of social cultural production, not as a sum of cultural properties. In this perspective, every qualified cultural process entails the process of heritagization, as it will be explained in this volume. Concluding on this point, we have also to be careful when managing the notion of *metacultural* as supported by qualified authors (Kirshenblatt-Gimblett 2004; Ciminelli 2008, 2011, among others; see also Bellato, in this volume). Indeed, as underlined by Tauscheck (2008, quoted in Bendix 2009, 190 ff.) “heritage practices appear to be moving out of the shadows of meta-existence and talking on the shape of tradition themselves”. In short, probably we are already beyond the impalpable dimension of the *metacultural*.

### 3 A New Role for the Legal Dimension in the CH Studies

Secondly, at the time of the Conference we already underlined some of the issues concerning the relationship among the existing international legal instruments on CH. On one side, there exists an enriched dialogue between UNESCO’s treaty bodies; while a mutual contamination between

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3 From a different perspective on the relationship between memory and CH see Zagato 2012.

legal instruments is ongoing, on the other side. Namely, among the UNESCO instruments primarily, but also between the 2003 UNESCO Convention and the 2005 Faro Convention (Zagato 2014, 2015). It is true that there is a difference on the subjective and territorial (at local, national and international) level of application of the two instruments. However, the Faro Convention is open for accession, upon invitation from the CoE, to non-European States, and a real interest to be part of the Convention has already been manifested by some countries of the Southern Mediterranean area.

As a consequence, the centrality of the legal dimension in CH studies emerges with emphases. The jurist, not only is in charge to facilitate the understanding by CHs, other groups, stakeholders in general, and by specialists of other disciplines, of the ‘terminological opaqueness’ of the new legal instruments. Moreover, the jurist must help to properly address the central issue on “what impact do new components of world heritage regimes have on the meaning and daily practice of inheriting, owning, and – potentially – selling ‘culture’” (Bendix 2009, 183). Even more, his task emerges on the complex relationship between the international protection of the CH and IPR instruments of protection.

#### 4 Last Premises

The other premises – perhaps it would be better to speak of ‘preliminary considerations’ – are strictly connected to the previous ones.

The third premise concerns the relationship between human rights and CH. Today we cannot deny, or even ignore, the belonging of CH to the human rights sphere. Rather, this belonging has been articulated more precisely through the recognition of a specific human right to CH, a right sets forth in the Faro Convention (Preamble and art. 1(a)) as a *basic* human right.<sup>4</sup>

However, several human rights specialists – but also, symmetrically, anthropologists and scholars of social sciences – remain skeptical about the existence of such a right, and a precise account of these thoughts will be provided in the volume, sketching also possible interpretative ideas.

Today the existence of a precise right to CH as a key aspect of the general right to culture, as referred to in art. 15(3) ICESCR, can no longer be called into question, even in the light of the Shaheed Report (para. 22), for which ‘references to cultural heritage have emerged in international human rights instruments and in the practice of monitoring bodies’.

4 This issue has been discussed in the second sub-session on “Cultures, Rights, Identity” of the main session on *Cultural Heritage Inspires*.

Fourthly, authors agree on the unitary nature of CH, including both tangible and intangible elements. We know well the risks and effects of parceling the concept of CH and, as a consequence, of parceling the different disciplines dealing with CH. Most importantly, it should be emphasized (Blake 2011, quoted in Zagato in this volume) the sharp ‘cultural racism’ that has supported and still supports the efforts of keeping the radical separation between the tangible and intangible dimensions of the CH: this obviously at the expense of the latter, and of the knowledge and expressions associated with it. Also under this profile, the Faro Convention marks a turning point.

Finally, we also agree that the topic of CH leads inevitably to the issue of common goods. The nature of CH as a common good is underlined by a number of authors’ papers in this volume: what emerges does underline the need to go beyond the simple claim of the CH as a *unus* among the common goods. The different classifications of common goods currently available, in fact, remain notoriously inadequate: from the limitation of the notion of CH to that contained in the 2004 Italian Code – but the same applies to other countries –, to the reckless attribution to IPRs of the CH character.<sup>5</sup> This means that the time has come for developing a thorough study on the *same theory of common goods* by the network of scholars working on CH. For the CH jurists, in particular, this will require to go deeper into the definition of taxonomic profiles of matter.<sup>6</sup>

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5 The latter idea presents serious dangers. There is no space here to go deeper into the issue but... can someone seriously think about IPR as common goods? In that case... “vexilla regis prodeunt Inferni!”.

6 On the need to produce an adequate taxonomy of the common goods phenomenon cf. Marella 2011, 2012.



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## **A Stone above the Other** The Chairman's Note

Pietro Clemente  
(già Università degli Studi di Firenze, Italia)

1. In Venice, I have been very impressed by the International Conference on *Cultural Heritage. Scenarios 2015*. I appreciated the formula of the organizers and of the Scientific Committee to actively engage local actors and I appreciated an *excipit* equally focused on the protagonists of the Venetian heritage. The formula envisions a sandwich, in which the two pieces of bread are the stakeholders, or even the agencies of the “civil society” (to use the Gramsci language) in the host city. The associations, the “Scuole Grandi”, the civil corporations and artisans’ confederations, the artisans, the Arsenal, the universities, the Pro Loco, the world of the gondolas all were part of the sandwich, also the associations that are engaged in tourism, all are committed to the safeguard of CH. In between, we had the academics, the scholars of international law, and their UNESCO interlocutors, but also the cultural anthropologists, the historians, the scholars on the war, post-conflict and peace, and the protection of common goods. The Conference was organized and delivered for those who really cares and are affected, to produce some concrete results from the meeting and to stimulate immediately a feedback on what is in progress about CH. Then, it has to be appreciated also the intent to close the Conference underlining the urgent needs, giving to scholars a sense of usefulness and responsibility. From the formula of the Conference in Venice, I have drawn several advantages, and I think it will be useful to remake this formula, also to remind to the scientific community that it is useless if it does not dialogue with the world of practical workers. I enjoyed seeing the cultural anthropology being included into an interdisciplinary Conference, a Conference where maybe I did not understand all the issues raised; but the things I learnt and the climate I lived have been all new. And I live in a climate that is not anymore defined by the internal academic conflicts, but is made by the living knowledge and relationship in a more transparent way. I learnt a lot in Venice: both from the world of practice and from the theories and the interpretations offered.

2. The choice to name the sessions by using active verbs about the CH, that

were therefore catalogued as fire / soul / condensation / is transmitted to the heart and to the hands or dies/ has been right and original. In these titles, heritage becomes a 'transcendent subject' which operates through people who make and refer to it. The heritage therefore does not have the nature of the transcendence of the 'bad power' in which it is often identified (the power that embalms, falsifies, crystallizes), but it has the nature of the immanence of being in life, or even in civil society. So if it burns, it is because it is on fire, or because it produces pain, distress, not-fulfilled passions. It is engaging anyway, as well as when it animates or gives life to actions, even to conflicts. Then heritage becomes a 'condensation' because it always captures the subject in order to concretely manifesting it, it captures the interest of participants to transmit it, otherwise the CH will die. If heritage becomes transmitted (in a way that keeps ambiguity between a moral imperative and a reflective form), this happens through a practical knowledge. It happens through the hands (about handcrafts was written "with the mind in the hands"), and out of strength and passion, located in the heart, with no public or private action that favour it or impose it.

Sometimes during the Conference it was told that "the burning side of the heritage" prevailed also in the other sessions, because of the topics of complaint (the absence of the role of the public administration, etc.), underestimating that when something burns means that it is placed in public scenarios, means that it animates people, means that it favours processes against solitude. Therefore, the initial and final interventions of civil society have made me thinking and writing that the heritage is as if each person were there to put his stone and to build something together. Personally, as a chairman of a session devoted to the theme of heritage (a session full of action of cultural commitment on the high productivity of the world's heritage), I saw alive the theme of the most recent book written by James Clifford, *Returns. Becoming Indigenous in the Twenty-first Century* (2013). J. Clifford is a well known American anthropologist with important studies of museums and heritage. In Italy this theme can be defined as follows: after having marginalised the skills and social forms of the past, the Italian society, as largely post-industrial, now 'returns' to the local heritage, interpreting the skills and the cultural diversity as a possible resource against the crisis, due to an excess of 'liquid standardization'. Be indigenous in the twenty-first century means in my opinion creating communities through a new sense of differences and of cultural resources, it means playing and valorizing the local tradition as a resource for the future.

3. It is quite impressive that jurists look at the UNESCO international law as a positive fact, a response to the war in which culture and heritage are factors of resistance to destruction, are a response to what is divided and aims to the unity, are the activation of new rights from below.

They criticize the 2003 UNESCO Convention because of its potential in recognizing new rights of participation to the people; and the creation of community-recognition is still not applicable. The international norms on historical, artistic, architectural and anthropological heritage are often seen as forms of power aimed at imposing taxes and conditioning world processes. Undoubtedly, the UNESCO policies emerge through the State parties' policies, and these policies are often not aimed at promoting and realizing the public interest. But it is also true that this happens at every level of the political and institutional life. So, if the criticism is not coming from a total anarchy, maybe this suspicion (or hostility) hides a popular disappointment because a 'community' can finally decide by itself, and so can escape from the power of technicians. It is quite common to hear that the community does not understand anything without the experts, that they reflect the system and the consumerism. Leninists and Trotskyists seem to confront new forms of heritage. Facing the debates about heritage and about rights, the imagination related to the experiences of radical democracy dating back to 1900, from the Paris Commune to the factory councils, re-appears. In that time, anthropologists and art historians, also architects and planners, were Jacobins and firmly believed that 'the party' born from above would be able to guide the masses. In similar way, today the UNESCO deceives communities that for their own well being could instead rely on intellectuals. As social and political philosophers, we can say that there is an ICH UNESCO à la Foucault which is an agency of the intangible force that shapes the people, or à la De Certeau that instead recognizes in ICH UNESCO a way where communities can redefine management tactics of social space to their own advantage, through a motto like: "the immaterial is ours and we can manage it". This motto seems well attested in the work made by the Lombardia Region on the inventories, of which there was some echo in Venice.

4. Between the 2003 UNESCO Convention and the Faro Convention, there are interesting adjustments, small disputes, declarations of affection. The Venetian jurists love the Faro Convention more than the 2003 UNESCO Convention. Perhaps it seems but is not really like this, maybe the jurists look for an integrate use of the two Conventions. Both are soft laws if compared to national laws, and may not be applied, but are expected to be applied once the States have ratified them. Italy waited many years to sign the two Conventions, but once done, Italy was expected to use them more than it does. What is the problem? If I understand well, it is quite clear that the 2003 UNESCO Convention 'provides awards' based on a universal value of CH to the community/individuals, that are rich of knowledge, arts, skills, etc. Faro instead recognizes subjects as 'agency of civil society'. The ICH community can also be a singing group, traditional, as long as active. While the Faro Convention recognizes as a heritage community a

group of people which is characterized by an activity called 'heritage' by themselves: a group of people claiming public recognition from various places and through various sources, also virtual. We can say that UNESCO recognizes certain communities based on certain qualities, while Faro indicates only the mode of their formation in the public sphere. It could even be said that UNESCO gives an 'award', while Faro opens to the possibility of a collective activity. So Faro is closer to a political culture that can raise from the local civil society, or be raised by civil society in general. I could say that a HC could act as a superintendence that is not appointed from above and is not made up by experts, but is made up by people who wish to value practices, and to protect these worthy practices through the ways offered by the Convention. So Faro is closer to the utopia that the citizens decide about their heritage and protect it, and it is a sort of Paris Commune of CH. Or perhaps, in a more utopian way, a sort of institutional Minister of Cultural Assets, set up by the Council of Representatives of the HCs. In a meeting where the windows overlook the Grand Canal, like in a painting by Canaletto, obviously it is possible to dream.

## **De l'exercice du droit au patrimoine culturel**

Prosper Wanner  
(Coopérative Hôtel du Nord, Marseille, France)

**Summary** 1 Une convention européenne sur la valeur du patrimoine pour la société. – 2 L'expérience préalable de Marseille: 1995. – 3 Le patrimoine n'est pas une marchandise: 2000. – 4 La Convention de Faro 2005. – 5 Le processus des forums locaux à l'initiative du Conseil de l'Europe commence en 2013 à l'occasion de Marseille-Provence capitale européenne de la culture. – 6 Une mise en commun des récits bloquée. – 7 Des patrimoines comme biens communs vécus. – 8 Une défiance réciproque entre élus, institutions et société civile. – 9 Les perspectives 2016-2017. – 10 La plateforme coopérative «Les oiseaux de passage».

### **1 Une convention européenne sur la valeur du patrimoine pour la société**

Face à une crise de la représentativité politique, à un modèle économique de moins en moins soutenable et à des tensions socioculturelles croissantes, le Conseil de l'Europe a décidé de promouvoir le patrimoine culturel comme facteur d'amélioration du cadre de vie, de dialogue interculturel renforcé et de démocratie participative.<sup>1</sup>

Ce rôle attribué au patrimoine culturel en Europe est le fruit de 50 années de travaux sur « la valeur du patrimoine culturel pour la société » qui se sont traduits en 2005 par l'adoption d'une convention-cadre innovante à l'occasion du cinquantième anniversaire de la Convention culturelle européenne : la Convention-cadre sur la valeur du patrimoine pour la société, dite Convention de Faro, actualise le cadre de référence du patrimoine culturel au regard des enjeux européens. Elle fait de la démocratie, des droits de l'Homme et de l'Etat de droit, fruit des conflits passés en Europe, le patrimoine commun des européens.

Elle donne aux citoyens, seul ou en communauté, une place renforcée dans la gouvernance et la gestion des patrimoines culturels. Pour cela, elle leur reconnaît un droit au patrimoine culturel dans la lignée des

**1** Le Conseil de l'Europe a publié en 2013 une édition actualisée de la Convention de Faro articulée autour de trois axes prioritaires qui offrent une explication cohérente de la contribution de cette Convention par rapport aux objectifs politiques du Conseil de l'Europe: Renforcer la cohésion sociale par la gestion de la diversité; l'amélioration du cadre et de la qualité de vie; Le développement de la participation démocratique.

Droits de l'Homme. De fait, elle recommande de respecter les différentes interprétations du patrimoine culturel – la destruction du pont de Mostar a été un élément déclencheur de cette convention (Dolff-Bonekamper 2008) – en s'appuyant sur ce patrimoine commun de l'Europe.

Elle inscrit le patrimoine culturel comme une ressource pour notre avenir commun, énonce ses contributions possibles aux enjeux européens et invite les États membres à s'engager dans cette voie: dialogue, participation démocratique, amélioration de la qualité de vie, nouvelles technologies, développement durable, création contemporaine, etc. (chapitre II et III de la Convention).

Par ces choix, le Conseil de l'Europe, première institution européenne créée après la seconde guerre mondiale, assume pleinement sa responsabilité historique qui fait de la régulation des conflits en Europe, latents ou déclarés, l'un des motifs majeurs de la construction européenne. Cette convention a été adoptée par quasiment la moitié des États membres du Conseil de l'Europe. Elle est entrée en vigueur en 2011 et a retenu l'attention de la Commission Européenne comme du Parlement européen. Elle ne crée pas de nouveaux droits mais donne un cadre de références dans lequel les États sont invités à progresser.

En 2013 le Conseil de l'Europe met en place des 'plans d'action Faro' biannuels pour assurer le suivi de l'application de la Convention. Il fait le choix d'une approche de type 'recherche-action' qui s'appuie sur deux idées principales portées par la Convention de Faro et répercutées de manière emblématique dans la méthodologie de travail: privilégier les habitants par rapport aux monuments et aller à la rencontre des communautés patrimoniales. Les cas d'étude sont choisis en fonction des initiatives citoyennes d'application des principes de Faro qui sont mises en œuvre. La réflexion associe les différents protagonistes impliqués et s'appuie sur les résultats de leurs expériences singulières pour nourrir l'élaboration de références commune à l'ensemble des États Membres de l'Organisation.

L'objet de cet article est de raconter les grandes étapes d'un processus coopératif atypique qui s'est noué autour de cette Convention européenne entre une institution européenne, le Conseil de l'Europe, et des initiatives citoyennes.

## **2 L'expérience préalable de Marseille: 1995**

Les habitants de l'arrière port marseillais sont parmi les premiers citoyens en Europe à se saisir de ces principes européens. En 1994, les quartiers arrière portuaire de Marseille se retrouvent au cœur d'une vaste opération de rénovation urbaine : le Grand projet urbain (GPU). L'arrière port marseillais, dépassant largement les limites administratives des arrondissements nord de Marseille, est riche de récits liés aux flux et



reflux migratoires, à l'évolution du port, à son développement industriel, aux anciennes bastides de la bourgeoisie marseillaise, à l'histoire coloniale française... Ses habitants sont porteurs de ces récits tout comme les érudits locaux et les scientifiques qui s'y intéressent.

Pour autant, la somme de ces récits ne fait pas récit collectif et d'autres récits, de fiction, touristique, de marketing territorial ou médiatique, dominant. Pour les décideurs qui ont en charge l'avenir de ces quartiers, cette imperceptibilité des récits propres à ceux qui vivent là, tout comme la rareté des patrimoines protégés, participent à les rendre « invisibles ». Pour les habitants, cette situation renforce le sentiment d'abandon et d'exclusion. Cet abandon se traduit dans la dégradation de la co existence entre nouveaux arrivants, habitants des cités, noyaux villageois et nouvelles entreprises et contribue à la défiance vis à vis du politique et de l'institution.

Face à cette situation, Christine Breton, conservatrice du patrimoine tire l'alarme dès 1995 sur la rapidité avec laquelle les projets de reconversion urbaine détruisent un patrimoine présent non considéré par l'action publique. Elle compare, dans un manifeste, Marseille à Beyrouth tellement les chantiers y semblent faire fi de ce qui existe dans ces arrondissements situés au nord de la ville - le 15ème et 16ème -le long de l'arrière port industriel avec plus de 90.000 habitants et un patrimoine culturel et naturel encore bien vivant (Jolé 2003). En réponse au manifeste, la Ville de Marseille, le Conseil de l'Europe et l'Université créé une mission européenne de patrimoine intégré. Son poste de conservateur du patrimoine est mis à disposition par la ville, une sorte de 'service public patrimonial' au profit des habitants. Cette mission va permettre durant une quinzaine d'années d'expérimenter l'application des recommandations du Conseil de l'Europe sur le terrain.<sup>2</sup> La défense du cadre de vie devient prétexte à débiter des récits collectifs. Là où il y a des tensions déclarées ou latentes liées au cadre de vie - destruction d'un habitat social, reconversion d'une ancienne fabrique, abandon d'un site archéologique, privatisation d'une vue, busage d'un ruisseau - se constituent des groupes d'habitants: amicales de locataires, associations de quartier, regroupements d'entreprises, collectifs d'habitants, élus locaux, artistes... La narration des récits liés à ces tensions et conflits permet de commencer celle du récit collectif.

Avec l'appui de ce poste de conservateur, des associations, des habitants et des entreprises, réunis en communautés patrimoniales,<sup>3</sup> engagé

2 La Convention de Faro encourage chacun à participer au processus d'identification, d'étude, d'interprétation, de protection, de conservation et de présentation du patrimoine culturel et à la réflexion et au débat publics sur les chances et les enjeux que le patrimoine culturel représente. Art. 12 - Accès au patrimoine culturel et participation démocratique.

3 Au sens de la Convention de Faro, « une communauté patrimoniale se compose de personnes qui attachent de la valeur à des aspects spécifiques du patrimoine culturel qu'elles

un important travail de collecte, d'identification, d'interprétation et de présentation du patrimoine présent. Des intervenants externes viennent les appuyer: artistes, architectes, universitaires, auteurs, etc. Ce travail « souterrain » donne lieu à des publications, des classements, des créations artistiques et à de nouveaux usages du patrimoine « dans le cadre de l'action publique » (Breton, Taurines, Wanner 2007). Des femmes vont s'engager en 1997 dans les ateliers des « Filles de Saint-André » pour écrire ensemble le récit du village du même nom. Elles collectent inlassablement souvenirs, témoignages, photographies, cartes et autres documents graphiques et oeuvrent ainsi à la constitution d'un fonds d'archives nécessaire à la transmission d'une identité locale aussi bien qu'à la compréhension des mutations et des enjeux contemporains. Elles publient trois ouvrages vendus principalement dans les commerces de proximité sur l'histoire de l'école des filles, sur les commerces et sur le travail à Saint-André. Les femmes de la cité Saint-Louis, première « cité jardin » à Marseille, vont collaborer avec Christine Breton lorsque l'organisme d'habitat social qui gère la cité va mettre en vente les 218 maisons. Elles vont obtenir en 2007 sa labellisation au patrimoine du 20<sup>e</sup> siècle.

Les Journées européennes du patrimoine deviennent dès 2005 le rendez vous annuel de ces communautés patrimoniales avec le public, invité à découvrir le résultat de leurs travaux sous forme de « balades patrimoniales ». Plusieurs milliers de visiteurs y participent chaque année.

Cette co construction des récits collectifs dans le cadre de l'action publique, confronte les récits, les interroge et les agence: elle permet une compréhension de l'environnement dans lequel vivent les personnes. Les représentations, les positionnements et les modes d'action évoluent en même temps que se construisent les récits collectifs. Elle permet le passage du mode de la dénonciation singulière à l'action collective.

Christine Breton publiera à partir de 2013 avec des co-auteurs, habitants et artistes, la collection des « récits d'hospitalité d'Hôtel du Nord » qui compte aujourd'hui neuf ouvrages qui rendent compte de ces travaux et permettent de découvrir Marseille par son nord.

### **3 Le patrimoine n'est pas une marchandise: 2000**

En 2000, les enseignements de cette mission européenne nourrissent largement le texte de la déclaration publique adoptée par la section Provence-Alpes-Côte d'Azur de l'association générale des conservateurs

souhaitent, dans le cadre de l'action publique, maintenir et transmettre aux générations futures ». Convention de Faro, art. 2(b).

des collections publiques de France (AGCCPF PACA) « le patrimoine n'est pas une marchandise ».

Cette déclaration est une réaction aux négociations sur l'Accord Général sur le Commerce des Services (A.G.C.S.) qui font craindre aux conservateurs un usage touristique et exotique de toutes les formes du patrimoine, particulièrement en méditerranée. Ils dénoncent toute appropriation idéologique du patrimoine et proposent d'affirmer 'le patrimoine de tous': histoires individuelles partagées et destin historique commun sans discrimination. La Convention revendique que « la plus value symbolique de ces biens communs impose d'autant plus leur gestion dans une économie alternative, solidaire et durable ». L'association engage un dialogue sur l'économie sociale et solidaire avec la coopérative Place spécialisée dans l'accompagnement de ces initiatives. Ce dialogue entre 'économie et patrimoine', toujours actif aujourd'hui, donne lieu au sein de musées à des stages de création d'entreprises sociales, à une analyse de pratiques innovantes dans lesquelles sont engagés des conservateurs, à une critique des indicateurs d'évaluation des politiques publiques patrimoniales et à la publication de plusieurs ouvrages.

La coopérative Place est associée à la mission européenne de patrimoine intégré pour rechercher des modalités de valorisation économique du patrimoine en économie sociale et solidaire. L'objectif est de générer de l'économie dans des quartiers nord fortement touchés par le chômage (plus de 25% de taux de chômage) et que cette économie permette de partager les patrimoines présents en dehors des seules journées européennes du patrimoine.

Les principes coopératifs, historiquement vivants dans ces quartiers concernés par un siècle et demi d'histoire ouvrière, sont croisés avec les principes européens de patrimoine intégré pour savoir s'ils pourraient devenir un cadre possible de valorisation économique des patrimoines culturels et naturels.

#### **4 La Convention de Faro 2005**

Ce processus continu de mise en commun des récits et des usages contribue à mettre en lumière les sources des tensions: savoir populaire contre savoir scientifique, usage économique contre cadre de vie, récit national contre récits minoritaires, etc.

La Convention de Faro devient le cadre politique de régulation possible de ces tensions. A l'initiative de la mission européenne de patrimoine intégré, la maire de secteur, Samia Ghali, crée en 2009 une 'commission patrimoine', espace de concertation sur les politiques patrimoniales, et adhère symboliquement aux principes de la Convention de Faro à l'occasion des Journées européennes du Patrimoine. Quatre autres maires feront de

même par la suite : Lisette Narducci, Maire du 2<sup>e</sup> secteur de Marseille en 2011, Garo Hovsépian, maire du 7<sup>e</sup> secteur de Marseille en 2012 et Loïc Gachon, Maire de Vitrolles en 2012.<sup>4</sup>

La commission patrimoine se mobilise sur l'édition d'un programme commun pour les journées européennes du patrimoine, pour la valorisation du ruisseau des Ayalades menacé d'être définitivement busé et accélère les demandes de protection d'édifices comme celle la Gare de l'Estaque qui aboutira en 2013. Les enjeux et conflits liés au patrimoine culturel et naturel (usage, représentativité, détérioration, etc.) y sont appréhendés collectivement. Les communautés patrimoniales s'y réunissent régulièrement à l'invitation de Pascale Reynier, élue à la culture, pour affronter ces questions relatives aux patrimoines de leurs quartiers. Ils invitent les services publics concernés à y participer : urbanisme, patrimoine, économie, culture, etc.

La Convention de Faro devient dans ces quartiers le cadre commun qui permet une ré appropriation des patrimoines comme 'biens communs' et l'émergence d'imaginaires collectifs qui leurs sont liés.

Les communautés patrimoniales attachent de l'importance à des patrimoines culturels « par-delà le régime de propriété des biens » (art. 2(a)) et en font des ressources de développement durable, de qualité de la vie et de coexistence à travers des usages économiques, sociaux, artistiques, d'aménagement urbain ou encore éducatif. Cette notion de 'bien commun'<sup>5</sup> se retrouve dans les statuts des patrimoines culturels pris en compte par les communautés patrimoniales que ce soit des près communaux, un espace public, un bien domanial tout comme dans leur mode de gouvernance que ce soit sous statut coopératif, associatif ou d'une démocratie informelle. Les récits devenus commun acquièrent une dimension patrimoniale qui les rend légitimes et partagés, préalable indispensable à l'action politique.<sup>6</sup> Du cas particulier, l'enjeu devient de société. Les communautés patrimoniales deviennent des interlocuteurs visibles et légitimes dotées de ressources symboliques et d'une identité collective qui rendent leur action possible. La Convention de Faro re-politise le patrimoine en en faisant une responsabilité partagée basée sur une citoyenneté active.

L'hospitalité offerte à des communautés patrimoniales vénitiennes en

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4 La Convention de Faro reconnaît une responsabilité individuelle et collective envers le patrimoine culturel et développe des pratiques innovantes de coopération des autorités publiques avec d'autres intervenants. Arts. 10-11 - Organisation des responsabilités publiques.

5 La notion de « bien commun vécu » fait l'objet d'un chapitre dans la deuxième partie de ce texte.

6 La Convention de Faro promeut « la connaissance du patrimoine culturel comme une ressource facilitant la coexistence pacifique en promouvant la confiance et la compréhension mutuelle dans une perspective de résolution et de prévention des conflits ». Art. 7(a) - Patrimoine culturel et dialogue.

2009 lors des journées européennes du patrimoine permet à la commission patrimoine d'imaginer Hôtel du Nord, une offre d'hospitalité pour l'année 2013, Marseille-Provence capitale européenne de la culture. Le but est de créer une offre d'hospitalité de 50 chambres d'hôtes, 50 itinéraires patrimoniaux et 50 hôtes. Pour découvrir Marseille par son nord.

L'objet d'Hôtel du Nord est de valoriser économiquement le patrimoine présent dans les 15<sup>ème</sup> et 16<sup>ème</sup> arrondissements de Marseille pour le conserver 'en vie' et améliorer la vie de ceux qui y vivent et travaillent. Découvrir. Le pari est ambitieux. Les quartiers nord, malgré leur importance (quasi la moitié de la ville de Marseille), n'existent pas sur les cartes touristiques de la ville et les médias ne s'y intéressent que lorsqu'ils sont le théâtre de règlements de compte meurtriers. A cela s'ajoute un réseau de transports publics déficient et une faible présence de patrimoine protégé, souvent en état d'abandon (12% des sites protégés de la ville).

L'association Marseille-Provence 2013 Capitale Européenne de la culture coproduit en 2010 un séjour pilote 'eaux et jardins' porté par la coopérative Place qui rencontrera un succès médiatique et touristique. A l'initiative de la commission patrimoine, la coopérative d'habitants Hôtel du Nord est fondée en janvier 2011 par les membres de 7 communautés patrimoniales. Les principes coopératifs sont croisés avec ceux de la Convention de Faro pour écrire les statuts de la première coopérative d'habitants dans le champ patrimonial. Des collectivités locales et des Fondations s'associent à la phase de structuration de la coopérative en 2011 et 2012. La coopérative développe une offre d'hospitalité et de découverte des patrimoines produite par et pour les habitants (ils sont statutairement majoritaires dans la coopérative). Les habitants 'hôtes' proposent l'hospitalité et la découverte des patrimoines des quartiers de l'arrière port de Marseille sous forme de chambres d'hôte, de balades urbaines et la vente d'ouvrages et de productions locales. Il s'agit de permettre une économie qui maintienne 'en vie' des patrimoines culturels et se fasse dans l'intérêt de ceux qui vivent, travaillent et séjournent dans ces quartiers.<sup>7</sup>

Hôtel du Nord se développe sur les quartiers des quatre mairies qui depuis 2009 se sont engagés à appliquer les principes de cette convention au côté de la société civile. Ils représentent un bassin de 350 mil habitants. Elle identifie des cadres juridiques adaptés à ses nouveaux usages du patrimoine, elle développe une activité de formation et qualification des futurs hôtes à ces usages dans une logique d'échange de savoirs via une école des hôtes et elle promeut et commercialise ces offres d'hospitalité et de découverte des patrimoines via sa marque *Hôtel du Nord* et sa plate

7 Voir les chambres d'Hôtel du Nord : <http://hoteldunord.coop/accueilli/chambres/>;  
Les balades d'Hôtel du Nord : <http://hoteldunord.coop/balades/>.

forme internet hoteldunord.coop. Ce sont les principes coopératifs, historiquement vivants dans les quartiers concernés par un siècle et demi d'histoire ouvrière, qui permettent de traduire statutairement des principes de Faro. Ces principes coopératifs sont l'adhésion libre, volontaire et ouverte, le pouvoir démocratique exercé par les sociétaires (un membre, une voix), le contrôle par les habitants (ils sont statutairement majoritaires et élisent un conseil de surveillance), l'échange de savoirs (école des hôtes), la propriété commune de moyens (site internet, marque), la non-lucrativité, ainsi que l'autonomie et l'indépendance.

La coopérative Hôtel du Nord, de par son statut, est une propriété collective dont une partie des réserves financières est non partageable. En cas de dissolution, cette réserve sera attribuée à une autre coopérative ou à des œuvres d'intérêt général. En ce sens, Hôtel du Nord est un patrimoine commun.

Son horizon géographique est 'glocal' : son horizon historique est les 15<sup>ème</sup> et 16<sup>ème</sup> arrondissements de Marseille qui sont sa base et son origine. Hôtel du Nord y a son siège social. Son horizon économique est l'aire métropolitaine marseillaise, espace de mutualisation de moyens indispensables à son équilibre économique. Son horizon politique est l'euro méditerranée, l'espace de la réciprocité et de mise en réseau avec d'autres mouvements partageant des finalités communes. Pour l'année 2013 Marseille-Provence Capitale Européenne de la Culture, Hôtel du Nord, fort d'une quarantaine de sociétaires et d'un réseau d'une cinquantaine d'hôtes - associations, artistes, habitants, entreprises, auteurs - propose l'hospitalité dans une quarantaine de chambres chez l'habitant (Jolé 2012), programme une centaine de balades patrimoniales dont 2/3 intègrent la programmation 2013, vend des ouvrages et produits locaux, coopère avec de grandes institutions culturelles comme Marseille-Provence 2013, la Friche Belle de Mai et le musée d'art contemporain MAC.<sup>8</sup> La coopérative a identifié des cadres législatifs pour faciliter l'application des principes européens (chambres d'hôtes, statut de conférencier, creative commons, etc). Elle a ouvert des chantiers avec ses partenaires pour faire évaluer certains cadres législatifs au regard des enjeux de la Convention de Faro comme le fait d'autoriser l'activité de chambre d'hôte en habitat social (proposition d'expérimentation législative), la reconnaissance du caractère professionnel de la formation des habitants aux activités d'hospitalité et la prise en compte des sociétés de personnes - les coopératives - dans le secteur touristique pour leur éviter de dépendre des agences de voyage pour commercialiser leurs offres.

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<sup>8</sup> Projet de l'artiste Stéphanie Nava en 2013 dans le cadre de l'exposition Le Pont - [mac] /Marseille 2013 en collaboration avec Hôtel du Nord : <http://bel-vedere-stephania-nava.tumblr.com/>.



Neuf critères sur la valeur sociale du patrimoine pour la société seront adoptés par le Conseil de l'Europe à la suite du Forum de Marseille afin d'apprécier d'autres contextes. Le Plan d'action Faro 2013-2014 va privilégier une approche centrée sur les habitants dans leur rapport au patrimoine et basée sur la rencontre des communautés patrimoniales. Cette approche et ces critères sont éprouvés dans les villes s'inspirant de l'expérience de Marseille (Venise en Italie, Pilsen en République Tchèque) ou dont l'expérience semble converger sans que Faro soit identifié comme cadre de référence (Viscri en Roumanie).<sup>10</sup> Ce processus d'appréciation permet d'intégrer une large diversité de situations et d'acteurs. Les territoires de référence sont les banlieues de la métropole marseillaise en pleine reconversion post industrielle, la requalification urbaine de l'Arsenal de Venise, la programmation culturelle de la capitale européenne de la culture 2015 Pilsen et la réhabilitation par la communauté rom du village saxon de Viscri. L'implication de la puissance publique dans les processus appréciés est tout aussi multiple: les élus de terrain marseillais s'impliquent fortement alors que la Mairie centrale est en retrait ; la ville de Venise a créé un bureau ad hoc dédié à l'Arsenal; la ville de Pilsen délègue la gestion événementielle à l'association Pilsen 2015; In fine, à Viscri, la Fondation pilote du projet coopère avec les autorités locales. Les enjeux sont complexes: à Marseille, l'enjeu est de permettre à des sans voix et des invisibles de s'inscrire dans le débat public; à Venise, un collectif d'associations locales très investi dans la réappropriation de l'Arsenal par la Ville souhaite rester un interlocuteur dans le cadre du processus de requalification; A Pilsen, l'un des objectifs européens fortement porté par l'équipe de la Capitale européenne de la culture est la participation des habitants à la programmation culturel et dans l'après 2015; A Viscri, la communauté rom est au cœur du processus de réhabilitation du village.

Ces Appréciations de Faro ont permis au Conseil de l'Europe de confirmer les principes et critères de Faro sur la valeur sociale du patrimoine issus du Forum de Marseille. Trois grandes problématiques communes à ces sites ont émergé et ont été confirmés lors de forums locaux organisés fin 2015 par le Conseil de l'Europe dans chacun des sites.

## 6 Une mise en commun des récits bloquée

La première porte sur la difficulté à faire émerger des récits collectifs contemporains dans lesquels se reconnaissent les communautés patrimoniales confrontées aux défis de la diversité, des migrations et des

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<sup>10</sup> Présentation de la Communauté de Faro par le Conseil de l'Europe : <http://www.coe.int/fr/web/culture-and-heritage/faro-community>.



crises diverses. Leurs récits peinent à exister face à des récits dominants.

Viscri, avec son Eglise saxonne fortifiée classée patrimoine mondiale par l'UNESCO, se raconte comme patrimoine saxon, ignorant par là sa forte dimension rom passée et actuelle. Le récit de l'Arsenal de la Sérénissimedomine sur ceux de l'Arsenal industriel dont témoignent la majorité des bâtiments et de l'Arsenal contemporain fort d'importantes activités de recherche scientifique et artistique et de production navale. La Marseille industrielle et coloniale ouverte sur le monde est cachée par le mythe fondateur de la ville grecque. A Pilsen, la ville veut se présenter à l'Europe comme un 'petit paradis', loin de la 'ville cachée', titre du processus participatif témoin d'une histoire tumultueuse lors de la seconde guerre mondiale et de la période communiste.

La première hypothèse du Forum de Marseille avait porté sur 'l'imaginaire comme ciment social' et sur la 'patrimonialisation' comme un processus participatif favorisant l'émergence de ces imaginaires sociaux indispensables selon le philosophe Cornelius Castoriadis pour instituer et faire tenir ensemble les différentes composantes d'une société. Pour Dardot et Laval, auteur d'un ouvrage de référence sur le 'commun' paru en 2014 (Dardot, Laval 2014), une 'communauté' existe justement à travers cette activité de mise en commun des idées, des pensées et des actions. L'activité de mise en commun décide de l'appartenance effective à la communauté tout comme la communauté existe via cette activité soutenue, délibérative et continue de mise en commun. La Convention de Faro devient le cadre possible pour tenter de dépasser cette 'panne de récits'. L'adhésion aux principes de la Convention de Faro, par les élus locaux et les communautés patrimoniales, établit un cadre de délibération où peut s'exercer la capacité à mettre en commun les récits. Elle engage les Pouvoirs Publics à « respecter la diversité des interprétations et à établir des processus de conciliation pour gérer de façon équitable les situations où des valeurs contradictoires sont attribuées au même patrimoine par diverses communautés » (art. 7). Le respect des droits de l'homme, de la démocratie et de l'Etat de droit, Patrimoine commun de l'Europe issu de l'expérience des progrès et des conflits passés, est le cadre qui rend cela possible.

## 7 Des patrimoines comme biens communs vécus

Si l'activité commune de mise en récit et leur mise en commun dans le cadre de l'action publique fondent et légitiment la communauté patrimoniale, dans les cas appréciés, la communauté patrimoniale reste indissociable du patrimoine culturel qu'elle fait vivre et réciproquement. Ces patrimoines sont abordés par les communautés patrimoniales comme des « biens communs vécus » tel que définis par le philosophe et anthropo-

logue, François Flahaut (2008). Au double critère de non-rivalité et de non-exclusion propre aux « biens communs », <sup>11</sup> il ajoute qu'il faut être plusieurs à en jouir pour que de tels biens se produisent et que, étant vécus, ils se traduisent par un affect, un sentiment. La co-existence, premier de ces biens communs vécus est au fondement de la plupart des processus patrimoniaux appréciés: la co-existence entre les roms et les saxons à Viscri, entre la diversité d'habitants à Marseille, entre les touristes et les résidents à Venise, entre les jeunes et les anciens à Pilsen.

Hors si il n'y a pas d'appropriation possible des récits comme imaginaires sociaux, le risque est réel de privatisation ou de centralisation de la propriété du patrimoine culturel, de sa narration et de ses usages qui restreint l'activité des communautés patrimoniales et de fait leur co-existence. Ces appropriations - l'Etat qui classe, le privé qui met en tourisme, la collectivité qui réhabilite - peuvent s'accompagner de conflits: savoir populaire contre savoir scientifique, usage économique contre cadre de vie, récit national contre récits minoritaires, etc. En ce sens, l'action des communautés patrimoniales ne se limite pas au domaine du symbolique. Elle concerne leur capacité à agir sur les patrimoines culturels au delà de leur mise en récit: l'évolution de leurs usages, de leur propriété, de leur cadre législatif ou de leur mise en valeur dans le cadre par exemple de politiques de développement économique, d'urbanisme ou d'action culturelle.

Très concrètement, cela se traduit par la volonté de participation des communautés patrimoniales à Marseille à la réhabilitation du ruisseau des Aygalades, à Pilsen à la réappropriation collective d'un jardin d'ex détenus, à Venise à l'accès et l'usage aux bassins de l'Arsenal et à Viscri à la régulation de l'accès des habitants aux prés communaux pour y faire paître leurs animaux.

## **8 Une défiance réciproque entre élus, institutions et société civile**

Le dernier enjeu concerne le processus de participation des communautés patrimoniales aux politiques publiques. Dans les quatre cas d'étude, la participation a été instituée localement dans le cadre de politique publique (programme de régénération urbaine à Marseille), de réglementation publique (règlement et bureau participation à Venise), d'incitations européennes (condition pour être capitale européenne de la culture à Pilsen) ou de directives européennes (insertion de la communauté Rom à Viscri). Pour autant la relation de confiance entre les habitants et leurs institutions

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11 Définition des Biens Communs par Elinor Ostrom, prix Nobel d'économie 2009.



Figure 2. Coopérative Hôtel du Nord ©. Projet artistique *Bel Vedere*, Stéphanie Nava

et élus est restée très faible, voir conflictuelle comme souvent en Europe. Les motifs locaux sont multiples comme le projet immobilier du maire de Viscri qui menace les prés communaux, le scandale du projet Moise à Venise qui a abouti à l'arrestation du maire en 2014, le sentiment d'abandon des quartiers nord de Marseille qui a été au cœur des dernières élections municipales de 2013 ou encore la mobilisation citoyenne inhabituelle à Pilsen des résidents contre l'autorisation donnée par la municipalité à un nouveau supermarché. Dans tous ces cas, la société civile remet en doute la capacité des institutions et de ses élus à défendre l'intérêt général. Ces processus participatifs sont souvent adoptés sous la pression citoyenne (promesse électorale) ou européenne sans qu'ils soient pleinement partagés localement. D'un côté l'administration publique n'a pas confiance dans les capacités de la société civile à être ressource dans les processus dont elle a la charge et elle cherche essentiellement à mieux faire comprendre et accepter des choix qu'elle a déjà pris. La société civile quant à elle ne reconnaît plus l'administration publique et ses élus comme des interlocuteurs fiables. Le processus participatif institué s'impose alors de manière unilatérale et il est dans les contextes abordés refusé (Marseille), inappliqué (Venise), ignoré (Pilsen) ou incompris (Roumanie).

Dans ces contextes très divers, l'application des principes de la

Convention de Faro de concert par l'institution publique et la société civile proposent de nouvelles modalités de coopération des communautés patrimoniales aux affaires d'une collectivité locale. Elle redessine et actualise la nature des relations entre le pouvoir politique, l'institution publique et les communautés patrimoniales. Chacun est (re)légitimé précisément (scientifique, élu, habitant, usager...) par rapport à un patrimoine culturel déterminé. Les responsabilités, fonctions et savoirs ne s'équivalent pas et ne s'opposent pas (savoir scientifique contre savoir populaire, amateur, profane...) à partir du moment où ils sont nommés et reconnus (la communauté patrimoniale a une appartenance à un patrimoine, le conservateur une responsabilité publique, l'élu un mandat politique, etc.). Dans un contexte de défiance vis à vis des élus et des institutions publiques, de manière générale en Europe et particulière dans les terrains d'appréciation, les processus Faro affirment paradoxalement leur attachement et leur désir de démocratie et repolitise le patrimoine.

## **9 Les perspectives 2016-2017**

Le Plan d'action Faro 2016-2017 du Conseil de l'Europe a comme priorité l'expansion des initiatives de Faro dans les Etats membres. Il poursuit le renforcement du cadre de référence et des applications de la Convention de Faro à travers la réflexion portant sur les enjeux qui ont été identifiés et qui restent à analyser, et d'autre part, par la mise en place de mécanismes permettant d'apporter aux communautés patrimoniales un soutien politique ou stratégique, voire de les confirmer dans leur action. Les enseignements de ce premier Plan d'Action Faro illustrent que la Convention de Faro ne propose pas d'ajouter une nouvelle catégorie de patrimoine, de recommander une meilleure prise en compte des publics ou de contribuer à une meilleure protection du patrimoine immatériel.

La Convention de Faro s'intéresse au patrimoine en tant que processus pour 'faire société'. Elle considère que chaque citoyen détient seul ou en commun une part du récit collectif qui mérite d'être pris en compte pour mieux vivre ensemble. L'écriture des récits collectifs - faire société - se fait au niveau des citoyens, « dans le cadre de l'action publique », garante des modalités d'écriture de ce récit. La Convention de Faro propose en soit un récit actualisé du 'principe espérance' porté par le Conseil de l'Europe.

## **10 La plateforme coopérative « Les oiseaux de passage »**

En 2015, l'Hôtel du Nord a fondé une coopérative internationale avec d'autres partenaires pour développer une 'boîte à outils web' commune dans le but de promouvoir et commercialiser des offres d'hospitalité qui

facilitent davantage la rencontre, la mise en lien, l'échange, la transmission, la découverte de l'autre et des territoires.

Issus du syndicalisme, de l'éducation populaire, du tourisme social, de l'open source, de la culture, de l'artisanat, du monde coopératif, la coopérative d'intérêt collectif « Les oiseaux de passage » fédère plus de 200 acteurs économiques répartis sur une centaine de villes et villages en France pour créer et gérer un outil commun de promotion et de commercialisation d'offres d'hospitalité. Dans le contexte actuel de recul des droits de l'homme, de l'état de droit et de la démocratie, cette coopérative réaffirme la nécessité de ces droits universels, en particulier la libre circulation des personnes, le droit de participer à la vie culturelle, à une rémunération équitable, à une protection sociale et aux vacances.

Cette stratégie est renforcée par l'adoption en 2015 par l'Assemblée Nationale Française de la loi NOTRe portant sur la nouvelle organisation territoriale de la République qui veut dans son article 103 que sur chaque territoire, les droits culturels des citoyens soient garantis par l'exercice conjoint de la compétence en matière de culture par l'État et les collectivités territoriales.

La 'garantie' que les droits culturels des personnes seront partout, à tout moment, respectés, est maintenant une responsabilité commune - élus, institutions et société civile - et l'Etat français devrait, de ce fait, ratifier dès que possible la Convention de Faro.

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# **Cultural Heritage in the Frame of European Funding Programmes: Challenges and Opportunities**

Silvia Zabeo, Dario Pellizzon  
(Università Ca' Foscari Venezia, Italia)

**Summary** 1 Context and Institutional Framework. – 2 A Rich but Fragmented Funding Landscape.  
– 3 In the Spotlight: the Future of CH.

## **1 Context and Institutional Framework**

Tangible and intangible CH is constituted by a multifaceted set of expressions, encompassing not only acknowledged creative forms such as works of art and monuments, but also other cultural manifestations such as folk songs, narratives of the oral tradition or manmade landscapes.

CH plays a crucial role at the European level, representing an invaluable asset for all its citizens, and at the same time being a potential source on which to invest both from a social and economic perspective.

The commitment towards its creative and cultural richness is grounded in the constitutional basis of Europe, the Treaty of Lisbon, stating that “[the Union] shall ensure that Europe’s cultural heritage is safeguarded and enhanced” and

the Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. [...] In order to contribute to the achievement of the objectives referred to in this Article the European Parliament and the Council [...] shall adopt incentive measures.<sup>1</sup>

These principles are enforced also in the frame of UNESCO Conventions,

**1** Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/01, art.3 and 167.

to which the EU is a party. The 2005 UNESCO Convention<sup>2</sup> underlines the dual nature of cultural activities, goods and services, stating their economic and cultural nature, as they convey identities, values and meanings. It aims to strengthen international cooperation and solidarity in order to favour the cultural expression of all countries and individuals.

The 2003 UNESCO Convention<sup>3</sup> highlights the needs of safeguarding the ICH, ensuring respect for the ICH of the communities, groups and individuals, raising awareness at the local, national and international levels of its importance and providing for international cooperation and assistance.<sup>4</sup>

Despite the international stress on its paramount importance and potential, culture and humanities as well are progressively suffering from a shortage of financial support from local, regional and national institutions and, often, are under-represented in the frame of sectors where they could play a crucial role.<sup>5</sup>

The most relevant challenges to tackle, as listed in the 2013 regulations<sup>6</sup> establishing the 2014-2020 EU funding programmes can be summarised as follows:

- 1.1 the diversification of European cultural and creative sectors, often linked to their territories, that may raise obstacles to the circulation of cultural and creative works and professionals, lead to geographical imbalances within European territories and a limited choice for end users;
- 1.2 the massive impact of the digitalisation (digital shift) on how culture is perceived, accessed, created, communicated and disseminated;
- 1.3 difficulties in accessing the funds needed to support cultural activities, to maintain and increase competitiveness and internationalise activities. This is significantly more difficult in

2 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005.

3 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

4 Other recent policies of primary importance are the Resolution of the Council on a European Agenda for Culture (2007), OJ C 287/1, and the Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a Work Plan for Culture [2014] (2015-2018), OJ C 463/4.

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Towards an integrated approach to cultural heritage for Europe" - COM(2014) 477.

6 Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the *Creative Europe Programme* (2014 to 2020) and repealing Decisions No 1718/2006/EC, N. 1855/2006/EC and No 1041/2009/EC, OJ L 347/221 and Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing *Horizon 2020 - the Framework Programme for Research and Innovation* (2014-2020) and repealing Decision No 1982/2006/EC, OJ L 347/104.



- some cultural sectors due to the intangible nature of many of their assets or risks to be faced in order to grow or to innovate;
- 1.4 some cultural fields work on information and data that are difficult to gather and store, and scarcely comparable. This raises the need to design and share effective policies both at the national and European level;
  - 1.5 the relationship between research, innovation, science, education and culture, that must be progressively deepened.

In order to meet these needs, the EU established specific funding programmes<sup>7</sup> that have been developed and refined through the years. In the following paragraphs, we will outline the overall European funding landscape on these themes, and the latest debate and related initiatives.

## 2 A Rich but Fragmented Funding Landscape

The funding initiatives aimed to tackle the above-mentioned challenges are many. Here is a short presentation of the most relevant ones.

- *EU structural funds 2014-2020*: CH management is one of the investment priorities for the EU structural and investment funds. In the 2014-2020 period, CH investments are possible under the specific regulations of the cohesion policy, with an overall budget of €325 billion. The relevant funds are the European Regional Development Fund (ERDF), the European Social Fund (ESF), the European Agricultural Fund for Rural Development (EAFRD), and the European Maritime and Fisheries Fund (EMFF). These can cover a wide spectrum of actors and activities in the public and non-profit sectors as well as in the private sector (in particular SMEs).
- *Creative Europe (2014-2020)*: it provides funding for artists and cultural professionals to develop their skills and to work across borders and for transnational cultural activities within and outside of the EU; it support schemes tailored to the specific needs of the audiovisual and the cultural sectors in the EU; it offers easier access to private funding through a financial guarantee facility and increased banking expertise in the cultural and creative sectors; it helps develop Europe's competitiveness in culture and film while safeguarding cultural and linguistic diversity. Its budget corresponds to €1.46 billion and its aims include providing funding to 2,500 artists and cultural

<sup>7</sup> *Mapping of Cultural Heritage actions in European Union policies, programmes and activities, 2017.*

professionals, 2,000 cinemas, 800 films, 4,500 book translations. A financial guarantee facility of up to €750 million for small businesses active in the sector was also established in 2016.

- *Joint Programming Initiative in Cultural Heritage and Global Change (JPI-CH)*: through this JPI, the EC encourages Member States to “develop a common strategic research agenda [...] in the area of preservation and use of cultural heritage in the context of global change”.<sup>8</sup> The main objective of JPI CH is to promote the safeguarding of CH in its broader meaning, including tangible, intangible and digital assets. Member States and Associated Countries are expected to coordinate national research activities, as well as the use of resources in order to face major societal challenges.
- *Horizon 2020 (2014-2020)*: the EU Framework Programme for Research and Innovation encompasses many activities and opportunities linked with CH. Since 1986, the EU has been funding research thanks to its research framework programmes: just to provide an overview, it invested about €100 million in projects related to CH under FP7, the Seventh Framework Programme for Research and Technological Development. Horizon 2020, the current Framework Programme for Research and Innovation, foresees an investment of €80 billion for 2014 to 2020, and support for culture and heritage-related research is available under its three ‘pillars’, Excellent Science, Industrial Leadership, and Societal Challenges (in this pillar, we highlight the dedicated Challenge 6 “Europe in a changing world: Inclusive, Innovative and Reflective Societies”).
- *ERASMUS+ (2014-2020)*: it aims to boost skills and employability through education, training, youth, and sport. The programme provides opportunities for over 4 million Europeans to study, train, gain work experience, and volunteer abroad. It supports many different types of activities of varying scales. These include the European Voluntary Service, mobility for Adult Education staff, Strategic Partnerships, Sector Skills Alliances, Knowledge Alliances, Youth Capacity Building, and Transnational Youth Initiatives. Its total budget corresponds to €14.7 billion.
- *Europe for Citizens (2014-2020)*: it aims at contributing to citizens’ understanding of the EU, its history and diversity, fostering European Citizenship and improving conditions for civic and democratic participation at European level. The CH and history of Europe, as well as town-twinning projects, encompass themes related to CH. The Programme has an overall budget of €185,468,000.

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8 European Commission Recommendation (2010/238/EU) of 26 April 2010.

- *COST Actions*: COST fosters trans-national cooperation among researchers across Europe. It is a unique means to jointly develop ideas and new initiatives across all fields, through pan-European networking of nationally funded research activities. COST Actions are bottom-up science and technology networks, open to researchers and stakeholders, with a duration of four years. They are active through a range of networking tools, such as workshops, conferences, training schools, short-term scientific missions and dissemination activities.
- *HERA, Humanities in the European Research Area*: the European Commission provided an ERA-NET Cofund grant to the HERA joint research programmes. The HERA partnership consists of 24 European research funding organisations from 23 countries, committed to the continued growth and development of collaborative and transnational research on Humanities across Europe.

Other relevant initiatives, just to mention some of them, are: the *Public-Private Partnership (PPP) on Energy-efficient Buildings (EeB)*; the *Joint Research Centre (JRC)*, that is currently carrying out research on the importance of the *Cultural and Creative Industries (CCIs)* as a driver of economic growth; the *COSME Programme (2014-2020)* and its dedicated strand on sustainable and cultural tourism; the *Common Agricultural Policy (CAP)*, supporting studies and investments associated with the maintenance, restoration and upgrading of the cultural and natural heritage of villages, rural landscapes and high nature value sites, including related socio-economic aspects, as well as environmental awareness actions. Funding opportunities may be found also in the frame of *Life Programme*, or can be issued directly by EU Directorate-Generals: for instance, opportunities are provided by Directorate-General for Maritime Affairs and Fisheries (DG MARE), Directorate-General for Development and Cooperation (DG DEVCO); EuropeAid; Directorate-General for Enlargement (DG ELARG).

Variety and differentiation constitute, of course, an element of richness and give evidence of the increasing attention on these themes. Yet, providing a clear state-of-the-art analysis on CH (and Humanities in general) is still a hard task to achieve. An extensive study on funded projects gathering different funding programmes and providing facts and figures at the European level has never been carried out. This is mainly due to the plurality of Directorate-Generals within the EU that are dedicated to these specific field of expertise, and therefore to the different funding opportunities. Just to mention the main key-players, DG for Research and Innovation, DG for Education and Culture, DG for Communications Networks, Content and Technology, DG for Migration and Home Affairs and DG European Civil Protection and Humanitarian Aid Operations.

Information available is based on the annual or multiannual reports of each funding programme. On the one hand, they reveal a good investment

of funds, the implementation of high-level actions and an effective circulation of professionals, ideas and good practices.<sup>9</sup> On the other hand, the overall picture shows that, although there are important opportunities to take, the landscape is still very fragmented. The big picture is therefore very difficult to define. Each funding programme has its own specifics: objectives and priorities reflect in the funded projects, in their management procedures and, consequently, in the ways of collecting and analysing related data, both *in itinere* and *ex-post*.

Furthermore, some funding programmes are connected to thematic support networks that work independently from each other, in relation to the particularities of each programme itself. The most relevant instance of these thematic networks is Net4Society,<sup>10</sup> linked to Horizon 2020. Net4Society is constituted by the National Contact Points in almost 50 countries for Horizon 2020 - Societal Challenge 6 *Europe in a changing world: inclusive, innovative and reflective societies*. It is especially relevant for researchers from the socio-economic sciences and humanities: its main activities are providing them with up-to-date information on funding schemes and opportunities for their research project ideas, offering support for partner-search activities, communication and visibility opportunities. Last but not least, it fosters successful SSH integration in research projects of every discipline funded under Horizon 2020.

### 3 In the Spotlight: the Future of CH

In this last section, we will highlight two crucial initiatives for the future of CH at the European level, driving the attention, on the one hand, on the importance of an integrated approach to projects on CH and, on the other hand, on the significance of the involvement of society at large.

The first one is the project *Cultural Heritage Counts for Europe*,<sup>11</sup> funded under Culture Programme 2007-13, that has become a reference point for EU bodies planning future policies on CH. Its final report clearly demonstrates heritage's full potential, providing straightforward evidence of the value of CH and its impact on Europe's economy, culture, society and the environment.

9 See, for instance *Integration of Social Sciences and Humanities in Horizon 2020: Participants, budget and disciplines. Monitoring report on SSH-flagged projects funded in 2015; Integration of Social Sciences and Humanities in Horizon 2020: Participants, budget and disciplines. 2nd Monitoring report on SSH-flagged projects funded in 2015 Evaluation of Creative Europe, Culture, Media and Media Mundus Programmes; Evaluation of Creative Europe, Culture, Media and Media Mundus Programmes*.

10 <http://www.net4society.eu/>.

11 <http://blogs.enactc.org/culturalheritagecountsforeurope/outcomes/>.

At present, about 300,000 people work directly in the CH sector in the EU and about 7.8 million jobs are created indirectly by the sector. After its extensive analysis, the report also gives strategic recommendations, calling for the elaboration of specific *heritage indicators* to facilitate and improve the collection of cultural statistics, which are key to support policy makers in evidence-based policy making. It also promotes a holistic impact assessment to be conducted as a requirement in all EU-funded projects on CH, to measure impact and monitor trends over a longer period of time.

European Institutions and Member States at all levels of governance are thus invited to integrate the care, protection and proper use of heritage in all related policies, programmes and actions and to include all stakeholders and civil society in developing strategies and policies for CH. Last but not least, the report calls for the recognition of CH's positive contribution to regional and local sustainable development in the context of the mid-term review of the present funding programmes and the preparation for the next generation of funding opportunities beyond 2020.

The second initiative is the decision establishing the first *European Year of Cultural Heritage* in 2018, which will celebrate the diversity and richness of our European culture. This initiative, aimed to raise awareness of European history, will surely draw attention to the opportunities offered by our CH, but also to the challenges it faces.

Tibor Navracsics, EU Commissioner for Education, Culture, Youth and Sport, once again stated that:

CH is not only a means to understand our past, but also an asset that can help us build the Europe of the future. The Year will help bring the richness of our European CH to the fore, highlighting its many social and economic benefits.<sup>12</sup>

The allocated funding corresponds to €8 million, spread among a dedicated strand in the frame of Creative Europe programme and 10 flagship initiatives, and will cover events and activities all around Europe to be implemented at international, national, regional and local level.

The *Year of Cultural Heritage* will be an invaluable opportunity to implement the recent audience development policies of the EU. This will mean to involve society at large, and above all the youngest citizens of Europe, in order to make their access to European culture easier, therefore enhancing their sense of belonging to a European family and its heritage, in order to take care of it in the future.

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<sup>12</sup> European Commission - Press release, "Commission welcomes European Parliament's backing for European Year of Cultural Heritage", Brussels, 27 April 2017.



# Cultural Heritage. Scenarios 2015-2017

edited by Simona Pinton and Lauso Zagato

## FollowGondola

Clara Peranetti

(Ex funzionaria Regione Veneto, Venezia, Italia)

**Summary** 1 FollowGondola. – 2 Some Considerations.

### 1 FollowGondola

The website *FollowGondola*<sup>1</sup> represents one of the tasks realized by Regione Veneto through the *AdriaMuse Project*, supported by EU funds of the IPA Adriatic Operative Programme, programmed period 2007-13. The final goal of the project was to boost the common CH of the Adriatic coast.

The website *FollowGondola* in brief starts from an interactive map of Venice and allows discovering the major places of interest related with the *gondola*. It is accessible from any browser and it is available in eight languages; an app can also be downloaded for free on smartphones with geo-localisation system, both on Android and IOS.

Detailed multimedia content can be accessed from the menu, namely:

- a description of the project;
- some charts drawn by a Venetian artist and historian showing the evolution of the *gondola*, the bow iron, the *forcola*, and the *vela al terzo* throughout the centuries; some charts illustrating the steps of the *gondola* and *sanpiero* (*sandolo sanpiero*) construction process. Since one of the partners participating to the project - with which the region realized some coordinated activities - is the city of Scutari in Albania, there are also some images of Scutari boats. Such rare images are included in an unpublished book *Sailing and fishing in Scutari waters* by Zamir Tafilica. These are traditional boats, similar to the Venetian ones, which are found especially on Scutari lake and are realized by people from Scutari for fishing activities, but also for sailing;
- 8 videos specifically focusing on the fluvial tradition developed between Euganei mountains and Venice, and the crafts related to the

<sup>1</sup> <http://www.followgondola.it>.

*gondola*. Such videos show Venetian artisans in their *botteghe* while exercising the art of *squerarioli*, *remèr*, *battiloro* and *fondidór*.<sup>2</sup>

*Followgondola* guides through an itinerary in the city to discover places that are alive and continue these traditions, nourishing this CH. In particular, attention is paid to the gondolayard (the *squeri*) and the artisanal laboratories where some elements of the *gondola* are made, such as the *forcola*, the iron and the gold decorations. In addition, the interactive map shows also the places where it is possible to take a *gondola*, even only for going from one bank to another of the Canal Grande. The idea is to arouse people's curiosity through such videos, but also to invite them to go to such places in order to see and understand them by themselves.

Finally, on the interactive map of Venice there are some points of interest showing the strong connection existing between Venice and Albany during the Middle Age, consisting of several commercial and cultural exchanges. Nowadays, such connections survive in the Venetian toponomastics. Several 'Albanian roads' (*Calli dei Albanesi*) recall Albanian people's principal occupation in the textile sector, such as washing and carding (mostly wool, but cotton and silk also). Other points of interest focus on the historical Albanian or Turkish-Albanian presence in the city, whose record is kept nowadays only in the archive documents.

## 2 Some Considerations

The creation of *Followgondola* is the result of a relevant activity consisting of analysis, research and classification of demo-ethno-anthropological tangible and intangible goods belonging to the *marineria*, supported by experts and the active cooperation of the artisans, which allowed to insert 360 sheets (177 for intangible goods and 193 for tangible goods) in the database of the CH of the Region.<sup>3</sup> Cataloguing represents the first step for preserving memory and protecting goods. With respect to CH, it is a particularly complex activity and therefore it is essential to achieve it within specific timeframes. In fact, as indicated by cataloguer Beniamina Viola in her report

An extremely relevant heritage, not only for Veneto region, resulted from the research activity. Also, it resulted very clearly that such an heritage risks, in absence of adequate safeguard and development actions, to inevitably lose its last representatives and be forgotten.

2 See for example <https://youtu.be/muAdcA4mr3g>.

3 <http://catalogo.regione.veneto.it/beniculturali/> and <http://beniculturali.regione.veneto.it/xway-front/application/crv/engine/crv.jsp>.



And still

In the artisan's craft and related products can be found, in a perfect synthesis, all those elements creating the identity of a land.

And finally

This vast heritage, which people generally perceive like a world confined in the tight borders of a remote past, rather than like a starting point towards future, still has much to give and say.

From this standpoint, patrimonial communities can be adequate subjects for promotion and re-use of the CH.



# **Cultural and Touristic Strategies for Preservation and Enhancement of Venice and its Lagoon**

Francesco Calzolaio

(Associazione Venti di Cultura, Venezia, Italia)

**Summary** 1 Introduction. – 2 Crisis of Identity. – 3 Crisis of Access. – 4 Crisis of Tourism Offer. – 5 Heritage-based Development Models. – 6 Towards a More Authentic Relationship? – 7 Cultural Cabotages.

## **1 Introduction**

This paper focuses on the complex relationship between the waters of the Venice lagoon and the community of people who share its amphibious space, residents and visitors. Starting from a systemic analysis of the current situation of this World Heritage site, it proposes a structured response to three main issues, all of which stem from the delicate and fragile interface between land and water, from the gross imbalance between residents and visitors, and from the uncertain relationship between the community and its CH, at the level of the lagoon as a whole.

## **2 Crisis of Identity**

The first issue is a crisis of community identity. The lagoon community has identified itself intimately with the water since the time of the Serenissima Republic. Today, however, the lagoon has lost much of its functionality as an interconnected urban archipelago. It has also lost its unified management through the oldest public administration of the modern world: the water board (*Magistrato delle Acque*) founded in the sixteenth century and closed in 2014, because it had long ago ceased to play its role in actively managing the lagoon waters. In modern times its role had been mainly concentrated on implementing works of hydraulic engineering: the famous mobile barriers at the inlets to protect the lagoon from the exceptional high tides (*acque alte*). Territorial management of the lagoon has been split into many administrative bodies.

The polycentric network of communities that face the lagoon has become disintegrated, because the lagoon cities and villages look to their

*vis-à-vis* on the mainland, easily accessible by car, rather than to their neighbours across the lagoon. The lagoon has become a barrier, where historically it united all the settlements.

We must work to restore the lagoon's role as a mediator, a concentrator of social relationships. To this end, two bodies - the Committee for the Ecomuseum of the Lagoon, and the Steering Committee for the UNESCO World Heritage Site Venice and its Lagoon - are striving to strengthen the links among institutions, associations and citizens around the lagoon. The association Venti di Cultura, together with these two committees, is contributing to forging these stronger ties by organising a festival across the lagoon, one of the network of major festivals along urban waterfronts supported by the European Commission through the River of Opportunities programme, by the River/Cities European platform.

### **3 Crisis of Access**

It is the inadequate network of mooring points allowing effective interchange along the shores of the lagoon. The territorial and urban system around the lagoon has grown since the WWII with infrastructures oriented to the rationalisation of land transport, to the detriment of the overall water transport and distribution network. The processes have continued to the point where many communities have only partial access to the network of the lagoon canals; in particular, they are handicapped by the lack of quays, landing stages and mooring places in the lagoon network. It is essential to consolidate the places of land/water interchange, distributed around the perimeter of the lagoon, such as a sequence of interpretive centres of the local cultural resources. This is the objective of the UNESCO office for Venice and its Lagoon, based in the city of Venice, which is harmonising the municipal urban plans, and has drawn up an outline plan for enhancement of the lagoon's landscape and culture. For the UNESCO Venice office, the author is coordinating a team of professionals, including representatives of all the municipalities that are committed to opening or reopening their doors to the lagoon waterway network.

### **4 Crisis of Tourism Offer**

The tourism offer of the lagoon is excessively concentrated in the central area of Venice. The outstanding CH concentrated here is visited by an impressive global audience, but is threatened by the loss of identification by the local community, as mentioned above. This antinomy could be envisioned as an opportunity for the 'heritage community' to become an interpreter of its material and immaterial heritage. Fernand Braudel (1987) reminds us:

the foreigner has been fascinated, monopolised by the city, and he too easily disdains the inland sea which belongs to it as a plant belongs to its flower.

Consequently, a sense of deprivation makes the tourists less motivated to return to Venice today. As stated in the National Geographic's study on the most important UNESCO World Heritage Sites, Venice is overwhelmed by tourists' monoculture, and visitors feel guilty of "complicity in the degradation of the city".<sup>1</sup>

Observing this saturation of the main routes in the city, one cannot help but regret the absence of any offer of cultural tourism based on a stay of several days in the lagoon, hence the *Lagunalonga* itineraries presented below.

## 5 Heritage-based Development Models

The approach presented in this paper is inspired by the pioneering work on the interplay between cultural landscapes and communities. The processes of participation in CH are inspired by the Faro Convention. The importance of participation is also underlined by the deterioration of the Italian landscape since WWII. The landscape has practically lost its fundamental role as the direct expression of the resident communities. The notion of *participation* applied to the landscape suggests enhancement of the HC, formed by "people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations" (art. 2). The Faro Convention also promotes the reinforcement of social cohesion "by fostering a sense of shared responsibility towards the places in which people live" (art. 8).

Participation in CH has seen radical changes in recent years. On one hand, inclusive processes have been put in place, giving citizens the chance to participate in transformation of their territory, to share choices that are consciously proposed by public authorities and/or by professionals. A precursor in Italy (and Europe) was architect and town planner Giancarlo de Carlo, who as early as the late 1960s started teaching and implementing models of active and responsible participation of users in the design process.

On the other hand, participation in museums is designed to provoke a dynamic interaction between the visitor and the objects, no longer just static and (possibly) ecstatic, but involving a participatory experience of the user, searching for the meaning of the exposed material. It is no coincidence

1 "Best, Worst World Heritage Sites Ranked". *National Geographic Traveller Magazine*. November/December 2005.

that local museums in the USA are called interpretive centres. The key is no longer an 'academic' description of the values of an aseptic area, but a multi-sensory experience offered to the visitor so that each person can form his or her own interpretation. Similarly, science museums have for several decades been seeking to enrich the visitor's experience by going beyond the tactile, so-called "hands on" (Wagensberg 1998), experience, to engage the visitor emotionally ("heart on") and intellectually ("mind on"). This means in a sense redefining the scientific narrative in the context of the visitor's experience and the wider 'landscape' to which the heritage refers. The network of science museums in Catalonia was a pioneer in this respect, the visitor experience being rooted in the sense of identity of the region. Facing the complexity and unpredictability of globalisation

economic and social institutions have changed their dynamics and organisational methods [...], to face these challenges there has been a tendency to promote new, much more flexible organisations that can adapt to the new situations and which tend towards joining together and sharing authority, rather than transferring it to a higher level (Casanelles Rahola, Matamala 2009, 175).

The Venice lagoon is clearly on the border of these two paradigms of participation, where interactive exhibits and displays in numerous museums tell the story of transformations of the Venice lagoon over the centuries. It is essential today to take inspiration from the long 'cultural path' represented by the ecomuseum of the Venice lagoon, effectively distilling the countless traditions, artifacts, archeology and activities as the 'DNA' of a homogeneous territorial system.

Venice and its lagoon, beyond their stereotypical image - as if immortal - have been debating their contradictions for several decades. The contradictions are typical of modern society, contradictions between the local and the global, between environment and industry, between citizens and tourists, and of course between the centre and the periphery. Depending on how these contradictions are managed, Venice and its lagoon may attain a new equilibrium, a structured sustainability in the future; if not, the risk is asphyxiation, and the unsustainable lightness of an empty shell. Culture in general, involving the active participation of the *heritage communities*, has a crucial role in restoring the balance, so that the citizens continue to feel a sense of identity with their material and immaterial heritage, through museums and through environmental and productive resources.

One of the main issues is to reorient the flow of tourists towards the lagoon and its polycentric community. The HC is increasing day by day and might be the lever for an authentic (re-)interpretation of the heritage of Venice and its lagoon, where land and sea, nature and man, have become inextricably linked through centuries of constant reciprocal adaptation.

The Serenissima Republic successfully managed this precious and fragile equilibrium, just as the Italian Government and the Municipality are trying to do today. But where the public effort is currently focused on purely hydraulic parameters, we need to devote as much attention to the community living around the complex border between land and sea.

For most visitors and many citizens, the lagoon is only a space to cross as quickly as possible; it is no longer perceived as the cradle of the polycentric history of Venice, nor as an environmental protected area of European importance, nor as a literal 'melting pot' of local products. Alongside the current institutional patchwork, there is clearly a need for a sustainable cultural development agency to foster these cultural resources. They are already partially available to citizens and tourists, but need to be consolidated by 'opening the doors' to countless and diverse features: natural 'oases' in the dunes, rivers and fish farms, museums of material culture, environment and production, interpretive centres of eno-gastronomic activities, handcrafts. These can be brought together as the *ecomuseum of lagoon*, as we shall see. But first we need to deal with the potential demand, represented by the tourist, introduced above as a threat, but who clearly also represents a potential.

As already stated, the core objective is to strengthen the sense of identity of the citizen with the territory. This is under threat, and we cannot overlook the huge impact that millions of visitors have on the landscape and on the daily lives of citizens. Tourists are asphyxiating the city, but are more and more discerning, and open to 'conscious' and responsible tourism. The *Survey on the attitudes of Europeans towards tourism*, as Flash Eurobarometer by the European Commission,<sup>2</sup> indicates growth in the percentage of those who are looking for destinations qualified as "alternative" or "emerging", allowing them to explore different cultures, traditions and local ways of life. The major motivations for the main holidays of European citizens are rest (54% ticked "rest, recreation, sun and beach"), and discovery (23% ticked "city, culture, nature and religion"). The favourite destinations are "traditional" and "well-known" (58%) but more than half of these (28%) aspire instead to go "off the beaten track" to explore "less obvious places". Those who visit new destinations are relying increasingly on internet and reports of acquaintances. In choosing a destination most Europeans are attracted to its environmental attraction (32%) and cultural value (27%).

There is also a clear trend in European tourism demand towards appreciation of combinations of nature and culture, gastronomy and local products, tangible and intangible heritage.

Despite being underused, the Italian inland waters indeed offer a unique

2 European Commission, Directorate General Enterprise and Industry, Flash Eurobarometer 328. The Gallup Organization (2011). *Survey on the attitudes of Europeans towards tourism*, 22

insight into an incomparable cultural and environmental heritage, including UNESCO sites, parks and historical cities. In an attempt to meet this demand, the association Venti di Cultura started in 2009 an experimental annual rally or *cabotage* through the entire Venice lagoon.<sup>3</sup> The annual event was born from writing a guide on the diffuse museum network: *Rooms of the ecomuseum of the lagoon of Venice*, published by the Province of Venice. The thread that weaves the cultural lagoon was first experienced in open boats by a small group of specialists and citizens. Then *Lagunalonga* was presented in national and international contexts, such as *European Tourism Day 2011*, and the *Icomos 2013 conference* on “Protecting deltas: heritage helps” in Amsterdam, and at the *World Canal Conferences* in Toulouse in 2013 and Milan in 2014.

At each step in development of the project, the *Lagunalonga* promoters have been resolutely seeking practicality and sustainability. The event and the underlying concept are now recognised as a driving force for the community of those who live around the lagoon, a factor of identification. This is confirmed by the Committee for the Ecomuseum, which promoted the sequence of visits and events mentioned above, and contributed to the production in 2014 of a documentary on the cultural resources, in collaboration with the local institutions and associations.

At the same time, the *Lagunalonga* promoters have been working on the design and implementation of tourist packages that use historical and innovative boats, minimising the impact on the fragile ecosystem.

## 6 Towards a More Authentic Relationship?

Discovering the precious and fragile heritage of the lagoon could be combined with the most advanced experiences of HCs, where citizens express and communicate to visitors their sense of identity and their own experience of vibrant and authentic places. These nodes of the lagoon network are today the pieces of a puzzle, that give only a hint of the overall picture. The whole picture has to be assembled, revealed and made accessible to a much wider audience through new models of interpretation and promotion.

This is one of the objectives of the UNESCO World Heritage Site Management Plan for Venice and its Lagoon, coordinated by the City (Basili, De Vettor 2014), supported by the activity of the Committee for the Ecomuseum of the Venice lagoon. The target of these processes is twofold: on one hand, the citizens of the municipalities inside the lagoon and the surrounding areas, and on the other hand the tourists that ‘animate’ the coastline and the cities of the Veneto, the main Italian tourist region.

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3 <http://www.lagunalonga.com>



The Venetian UNESCO site now is in a very delicate passage, because the UNESCO board is evaluating a local request, done by local cultural associations, of placing it in on the 'in danger' sites, because of the difficult governance of the impact of the mass tourism with the fragile material and immaterial heritage. This contradiction is exemplified by the 'grandi navi' issue: they are gigantic ships hosting up to 5,000 passengers and 2,000 workers, sailing in the basin of San Marco and arriving in the maritime station, in central Venice. In a high season Saturday dozens of them might stay contemporary, releasing a great concentration of thin powders in the air, and of tourist in the Venetian narrow streets.

Furthermore Europa Nostra recently classified Venice as "the most endangered site", emphasizing the unfair pressure on the little resilient local community of the outstanding number of visitors. Also indicating the key difficulty Venice is facing, is the intricate interaction between the many bodies interested or responsible for the destiny of this unique world patrimony. The phase is delicate and in transition, and we all share the necessity to reduce the impact of the mass tourism in the central Venice, building an inclusive governance framework.

In this direction the Committee for the Ecomuseum of the Lagoon was established in 2013, in application of a new regional law, but blocked by the delay of its financial and procedural implementation. This impeachment resumes the governance difficulties, but the content and participated process remain the proper and sustainable strategy. The Committee is made up of all the associations that offer links between the cultural resources of the lagoon, the citizens that live around it and tourists. Inspired by the UNESCO Site Management Committee, the ecomuseum group is enhancing the existing network of places and people connected by the inland waters of the lagoon, as a palimpsest full of extraordinary cultural resources, both tangible and intangible. This is a participatory process. The ecomuseum's mission is to promote an integrated territorial cultural system, bringing together existing environmental, productive and cultural resources, material and immaterial, through the identification of their main points of interest, connected by 'slow' paths, by water and bicycle. The ecomuseum is therefore not just another museum; it is a network of citizens, institutions and activities that are striving to enhance the cultural resources in which the resident community recognizes itself and its history. These resources form the web, convey its *genius loci*, the most authentic figure of the plural and polycentric territory.

More recently, the UNESCO Site Venice and its Lagoon Management office promoted a design competition, about a *Master-plan for the enhancement of the culture and landscape of the lagoon*, won by the author. Last year we completed a participatory bottom-up process, producing eleven

design projects.<sup>4</sup> The anchor points of the slow tourism network are promoted by the nine municipalities facing the lagoon (Venezia, Chioggia, Campagna Lupia, Codevigo, Mira, Quarto d'Altino, Musile di Piave, Jesolo, Cavallino-Treporti, Venezia), and shared with the specific stakeholders: the central Superintendency, the Regione Veneto, two provinces (Padova and Venice) and many local cultural association and entrepreneurs. The lagoon during the last century lost its physical permeability and the project wants to give back its foundational role of media, reconnecting again the disjoint communities through the water. The spread sequence of docks with services (bar, shop, interpretive center, bike renting and parking) give to the visitors an easy entrance to every territory. It is a network that exalts the lagoon *unity of space/time* recognized by Fernand Braudel, and the different cultural, productive and touristic resources of each territory. Now the projects face the institutional difficult task to harmonize central and local governance, public and private founding, and to be realized.

Restoring and consolidating an authentic relationship between citizens and the lagoon, reviving historic and compatible activities, promoting responsible tourism off the beaten track, enhancing the broad museum network: these objectives make up a hugely ambitious programme, with many challenges to be faced. Success can only be achieved through the combined efforts of the citizens – as users and witnesses – and the institutions, both local and international, and certainly not in a single gesture, decided by a single committee or a single plan. The development will be the result of a long multicultural process, that must of essence be both inclusive and participatory.

## 7 Cultural Cabotages

“Culture is Italy’s oil” says recently the Italian Minister of Culture. This phrase has become a mantra, almost as if only saying it would bring us closer to its realization. However, all too often we continue to write excellent books about cultural sustainability, but without learning to dig wells. We have read and written books about the Venice lagoon’s extraordinary cultural resources, and have invoked its development, which has always been inadequate considering the abuse wrought by mass tourism on the city, and the lack of respect for its fragile lagoon ecosystem. We also studied how tourists spent their time on the rivers and canals of central and northern Europe, with increasing attention to the culture of the landscape. The famous ‘boaters’ discover the region ‘on tiptoe’, with the water’s an-

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4 [http://www.veniceandlagoon.net/web/en/ongoing\\_projects/management\\_plan\\_projects/rehabilitation-and-enhancement-of-the-lagoon-landscape-and-culture](http://www.veniceandlagoon.net/web/en/ongoing_projects/management_plan_projects/rehabilitation-and-enhancement-of-the-lagoon-landscape-and-culture).

cient value as a means of communication restored. It is the setting for a unique experience that is both touristic and cultural. But, although Venice is the most extraordinary city on water in the world, its lagoon is mainly traversed by big cruise ships, and managed by huge infrastructural works. The possibility of being accompanied on day or weekly cruises aboard little sustainable slow boats, by those who can offer an authentic experience of living for and in the lagoon, is rare and quite unexploited. All the above considerations have led to definition of the strategy now pursued by the Venti di Cultura partners: the *Lagunalonga* cultural tourism packages. The *Lagunalonga cabotage* means spending a week in the Venice lagoon and along its tributaries, on a boat that proceeds slowly along the channels, so as better to appreciate the delicate balance between nature and culture, as layered over the centuries, through the countless and often extraordinary interactions between the lagoon and the people who inhabit it. *Lagunalonga* offers unique access to the treasures of the lagoon, the priceless archeological heritage, the pristine nature reserves, the rare artisans' products, and of course food and wine. *Lagunalonga* will accommodate a small group of tourists in standards of luxury for a week, enabling them to discover the *genius loci* of the lagoon. Passing by or through charming oases of calm and nature that are among the most valuable in Europe, the route winds through those countless features that are the hallmark of Venetian civilisation: sandbanks, museums, islands, monasteries, oases, basilicas, dunes, vineyards and walled archeological sites.

*Lagunalonga* plans to offer four different typologies of itineraries to interpret in different ways the large number of cultural and tourist resources spread throughout the lagoon, as well as inviting the visitors to make their individual discovery and appropriation, according to their aspirations.

The *Cultural Itinerary* is dedicated to the museums around the lagoon, and the heritage of classical and industrial archeology. The cultural programme includes various museums - the Archeological Museum of Altino, the Torcello Museum, the Burano Lace Museum, the Murano Glass Museum, the Museum of the Lagoon in Pellestrina and the Fishing Museum in Chioggia. The itinerary also opens the doors to the extraordinary industrial and military heritage: the Arsenale in Venice, Porto Marghera, Forte Vecchio in Treporti and the network of Octagons in the south lagoon, Forte Marghera and Forte S.Andrea.

The *Enogastronomy Itinerary* is dedicated to local food products, fishing and crafts. A route for a gourmet to discover and taste the most typical products. It winds its way from the walled vineyards to the *moeche* (soft-shell crabs), and will introduce tourists to the typical violet artichoke of S. Erasmo, the white beans, the *broeto ciosoto* (broth from Chioggia), and many other typical dishes of the lagoon. Different experiences with the various fishing techniques that are typical of the lagoon, from fish farms to touristic fishing, from the lagoon to scuba-diving. At the end this route

propose traditional handmade crafts, Murano glass and the original fishermen pipes of Chioggia, crafts of seamen, smiths and local artisans.

The *Nature Itinerary* is dedicated to environmental resources of the lagoon, immersed in the silence of contemplation of the extraordinary natural and spiritual areas. Original and pristine natural resources of the lagoon, from coastal dunes to salt marshes, mud flats, the WWF oasis, river parks. Spiritual resources, such as the convent islands, sites of meditation, churches. It is a transversal route to focus on the landscape and on ourselves.

The *Beauty Itinerary* provides a cross experience through the three topics: nature, enogastronomy and culture.

These itineraries are more than a cruise on the lagoon: they are a door that opens to places that are magic, authentic and little-known, combining adventure or relaxation, culture or sporting events, natural or gourmet cuisine, reconnecting citizens with visitors, Venice with the 'amniotic fluid' of her lagoon.

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# **The Ancient *Scuole* of Venice**

## Identities that Condense Values, Traditions, Creative Knowledge, Care

Maria Laura Picchio Forlati  
(già Università degli Studi di Padova, Italia)

**Summary** 1 Preface. – 2 Identities. – 2.2 Institutional Connotation. – 2.3 Structure. – 2.4 Artistic and Social Identity. – 3 Values and Traditions. – 4 The Recipe: Collective Knowledge Supported by Constant Care. – 5 Risks and Challenges.

### **1 Preface**

A survey aimed at catching trends and issues open on Venice cultural heritage in 2017 is bound to coming across a very distinctive feature given to the city's tangible and intangible cultural landscape by the surviving *Scuole* (brotherhoods). At least five of them command attention, while one or two deserve inclusion in the picture, in spite of their peculiarities.

### **2 Identities**

#### 2.1 Institutional Connotation

Now-a-days the few ancient *Scuole* surviving in Venice embody a variety of institutional profiles. Once private institutions vested with significant roles of public interest, they are to-day private corporations under either Italian civil law – this being the case for the *Scuole grandi* of San Rocco and San Giovanni Evangelista – or Canon Italian Church and Church law. The latter is the case for both the *Scuole Grandi* of Carmini and San Teodoro, and the *Scuola* of Santi Giorgio e Trifone: a 'national' *Scuola* gathering Dalmatians, or people of Dalmatian or Istrian origin, resident in Venice. Also the Arciconfraternita della Misericordia set up in 1824 in Venice is a corporation under Canon and Church law (and in such a capacity a member, since 1899, of the *Misericordie d'Italia*).

The access of this sixth member to the *Scuole* coordination network inspite of its being *younger* than the others, and the only one that can-

not trace its roots back to the legal system of the Republic of Venice, is basically due to the roles it performs in town: namely, free health care for disadvantaged people and care for the memory of the dead brothers and their families in the light of the Catholic religious tradition.

The fact remains that, in recent times, two other entities exist in town under names that still echo of ancient *Scuole*: Misericordia S.p.a. and the *Scuola* of San Marco. Misericordia S.p.a. is a recently set-up limited liability corporation under Italian civil law that, since 2009 and until 2048, will be the lessee of the former *Scuola Grande della Misericordia* premises still dominating the Sestier de Canaregio. Between the 13th and the 18th centuries those premises had been the identity card of the ancient *Scuola* bearing that very name. As a magnificent gothic building, now-a-days they perform a two-fold task: namely, to ensure profit to the investor (currently in office as the Mayor of Venice) and to allow the memory of past glories to survive through beauty for the joy of both visiting and resident passers-by. To these ends Misericordia S.p.a. carries out not only cultural but also commercial activities, provided the latter are consistent with the monumental character and the historic value of those premises.

The last and, in a sense, more intriguing institution to be mentioned among, or in connection with, the ancient *Scuole* of Venice is the already-quoted *Scuola Grande di San Marco*. This entity was brought back to life at the start of the New Millennium as the monumental, cultural dimension of the historical Hospital of Venice. It thus fills a unique place among the institutions surveyed so far, in that it belongs to a public entity, namely the City Health Authority (also various island and mainland boroughs falling within the latter's reach). In combination with contiguous buildings such as the hospital of St. Lazar of the Beggars and the cloisters of the former Dominican convent dating back to the 16th century, the *Scuola* premises continue to host through the centuries, in their pure renaissance style, crucial collective services. So much so once, by the end of the 19th century, they became Venice main public hospital.

As the heart of the Venetian health system, at a closer look the *Scuola* shows the signs of different historical periods and political and legal systems, namely: the independent Republic of Venice until its fall in 1797, Austrian rule until the take-over of the city by that French Kingdom, set up in 1806 soon to be replaced (1815) by the Austro-Hungarian Empire; nominal French rule again in 1866, but only in view of the immediate handing over of Venice and the Venetian region to the newly-born Kingdom of Italy.

This survival, whatever the political and institutional earthquakes Venice went through, proves well how, around and within the premises of the *Scuola di San Marco*, through new equipment and inventive organisational patterns health authorities tried to meet, as they still do, the health needs of Venetian generations and their environment, herds of visitors included. The fact remains that only in 2000, with the opening of both its Health

Museum and its Library, the *Scuola di San Marco* has been officially set up again, in its ancient glorious location, giving its name and brand to what is now an autonomous and very active cultural branch of the Health Authority.

Some of the other *Scuole* object to these developments, labelling the financial safety-net thus insured to the revived sister institution as unfair competition. Yet, against a background in which the institutional profile of to-day *Scuole* in Venice comes out as (to say the least!) extremely diverse, the *Scuola* of San Marco simply adds a further typology – that of an Italian public entity – to this diversity. In turn, by so doing, it ensures the revival of a segment of Venetian history and cultural heritage too precious to be lost. Eventually, it is most telling that the Italian National Health System – far from objecting to the care and money absorbed by the Venice Unit for the maintenance, enhancement and cultural revitalization of the archives and of the unique collection of medical instruments and documents inherited from the past – rather encourages this trend. It actually provides, by so doing, powerful means of intellectual inspiration to Venetian citizens and visitors that become acquainted with such treasures.

More generally, the town's human and social environment has undergone in recent years a dramatic change. The heterogeneous institutional profiles sketched above are thus but a reflection of the multidimensional economic, social and legal environment brought about, in Venice even more markedly than elsewhere, by globalization and the European integration process.

## 2.2 Structure

Apart from the peculiarities seen above as to their legal status, the six traditional *Scuole* in Venice share a basically similar institutional structure. All of them are non-profit organizations run by elective bodies. They basically share an ancient tradition of self-government, the *Scuola* of San Rocco being a good example of it. Under the rule of its *Mariegola* (Statute), this *Scuola* dates back to 1478 BC. The *Guardian Grando* enjoys a wide range of powers, including powers of initiative and agency, and presides over the *Convocato* (namely, the plenary body consisting of an average 350 between Chapter brothers and sisters). The Chancery is its executive organ, both bodies being chaired by the *Guardian Grando*.

The Chancery is structured in two concentric circles: a *Bank* of four members, and a Board (*Zonta*) of further 11 members. All activities and projects, in the first place those pertaining to the protection and promotion of the cultural heritage, are thus shared at these various levels. The same pattern of allocation applies to co-optation powers that are usually exercised with a view to ensuring to the *Scuola* as members not only the

bearers of that kind of know-how, craftsmanship and professional knowledge that can benefit the *Scuola* and society at large, but also young people ready to share them. This strategy meets the very role the *Scuole grandi* have been called upon to perform for centuries: namely, to offer a high-profile promotional environment where the city middle-class, primarily merchants and craftsmen but also artists, could express their genius and moral strength by supporting the less privileged. The first, but not the only ones, entitled to such a support have been and are less privileged Brothers, special attention having been paid - in the past - to the daughters of deceased Brothers in need of means allowing them to get married or to enter a religious order (basically, through the granting of money as dowery).

### 2.3 Artistic and Social Identity

Over the centuries, collective self-representation has been crucial for the *Scuole*, bound as they were, on behalf of the social class expressing them, to compete by near with the city's aristocracy that monopolised political power. This confrontation partly explains the amazing display of art treasures and economic power pursued by the *Scuole* at the height of Venice splendour.<sup>1</sup> Those treasures and that power were for the most part seized by new political rulers after the fall, in 1797, of the Venetian Republic. With exceptions, however: the paintings by Carpaccio at the *Scuola* of SS. Giorgio e Trifone went and go on pouring grace and serenity on their viewers, while the airy frescoes by Giovan Battista Tiepolo are still in place at the *Scuola* of Carmini. In turn 64, most of them extra-size, Tintoretto paintings gloriously survive - at the service of the *Scuola* of San Rocco mission - at the very place they were originally thought and made for. From that place they go on spelling herds of visitors with their incomparable mixture of majesty and true, even intimate, life: a heritage that has deserved to the *Scuola* of San Rocco the title of Venice *Cappella Sistina* and has ensured through centuries a powerful tool to heal unhappiness through beauty.

The social priority, for the *Scuole*, had been to ensure a minimum welfare to the less privileged, namely: poor and ill people, girls in need of dowry as a condition for possibly getting married, detainees and their families. It is also true that these priorities were dramatically affected by the confiscation of the *Scuole* immovable properties under French rule in 1806. The fact remains that, by entrusting through the centuries collective

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<sup>1</sup> This competition was made possible by the economic strength ensured to every involved layer of society under the umbrella of a political system put completely at the service of trade. It could thus happen that, at the dawn of the third millennium BC, *Time* magazine spotted Venice at the beginning of the 16th century as the peak - in terms of economic, artistic, social and cultural achievements - of the previous one.



self-representation to art and beauty, the *Scuole* have been helped in somehow meeting solidarity as their basic mission in different forms. Actually, the need for beauty was even then perceived as inseparable from the quest for health, safety, social and physical promotion. The very houses of the *Scuole* were thus *per se* a first answer to basic needs. In turn no restraint was felt in expressly envisaging in the Articles of the *Scuole* a fee to be exacted from visitors for access to their premises. Even to-day its amount has to allow for both the appropriate maintenance of the *Scuole* treasures and the pursuance of solidarity as their basic mission.

In conclusion, for the *Scuole*, the outstanding quality of their premises was evidence of their collective commitment to both gather and celebrate, but also share wealth with the less privileged. It is not by mere chance that the entrance hall at the ground floor of the *Scuole*, namely the place where bread and first-need commodities were distributed daily, are as beautiful as the Chapter halls at the first floor. In turn, in the Chancery Room, for example, at the main floor of the San Rocco's *Scuola*, Tintoretto put his most telling representations of Christ's mercy and self-sacrifice in front of the desk where the Chancery still now sits and where it used to hear persons asking for support (the latter being expected to stand at the monumental Renaissance door of the *Sala dell'Albergo* without trespassing it). Those representations were actually meant to be a permanent lesson the decision-makers had to keep in mind so as to faithfully serve the very people whose needs the *Scuola* was called upon to meet.

### 3 Values and Traditions

This background explains the special contribution the *Scuole* give to the cultural heritage of Venice today: especially, if we choose to pursue the less familiar perspective of the intangible rather than the tangible heritage. Worth mentioning is the fact that these institutions have actually kept and still keep alive – through care, tradition and faith – social customs and feasts and rites, that helped and help their members and surrounding communities in identifying themselves and their *raison d'être* in to-day's life. The *Scuole* continue to do so by reinterpreting themselves and their own role in a changed social and political environment. A very emotional experience is thus, for example, to share access to the ancient Venetian language recorded in the *Mariegole* and in the *Scuole*'s archives as a means to experience it in its continuity with the language still spoken in Venice as an alternative to Italian.

Above all, the challenge for the *Scuole* is to live both their religious inspiration and local traditions in light of underlying universal values: namely, solidarity and fairness to one another, hospitality, care for individual and collective reputation, and, more generally, responsibility towards

the Venetian community, and society at large. In this connection, they find themselves also bound to pursuing and exploring nature, treasuring to this end the potential set offered by the lagoon environment to art display and festive celebrations, religious ones among them.

At the core of the *Scuole's* feasts are, for instance: the Procession of the Cross at San Giovanni Evangelista on 14 September, the Carmini July Feast, the San Rocco Feast on 16 August, with its installation for twenty days of the monumental *Tendon del Dose* leading from the main premises of the *Scuola* to the *Scoletta* and to the entrance door of the San Rocco Church. By the way, it is on its marble steps that the blessing of pets has been renewed in the last decades of the last century. This is actually a tradition that some Venetians look forward to seeing revived, inspired as it was by a painting placed at the left of the Church altar where the young Tintoretto vividly displayed a procession of animals, faithful and ill people, children, but also a lion and an unicorn included. They are all sill queuing there to reach San Rocco in the wood where he is believed to have been confined while attacked by the plague.

What is more important, the *Scuole* are very faithful to their statutory commitment of ensuring appropriate funerals to dead brothers and sisters and to remember them on special occasions and on request of their relatives. Combined with free medical assistance offered, through a small medical centre at Rialto, to anybody in need, irregular immigrants included, this is, as seen above, the main task of the *Confraternita della Misericordia*: a commitment that, as already seen, well qualifies it among the *Scuole*, in spite of its not having anything to do to-day, except denomination, with those monumental premises of the ancient *Scuola della Misericordia* that are now at the service of more self-oriented interests.

Very present in the current activities of all the *Scuole* (the last mentioned brotherhood included) is music: especially at San Rocco, with its outstanding musical tradition, dating back to the lesson given from its premises by Monteverdi and Gabrieli but renewed for instance - in recent times - by Stockhausen and Britten, within the framework of the Biennale International Festival of contemporary music in the sixties of the last century. As the peak of musical events in recent times at the *Scuola* L. Pancino - on her role see text below - remembers that performance for the very first time of *Threni id est lamentationes Jeremiae Prophet* by Strawinsky conducted by the author in the Chapter Hall on September 23, 1958 within the framework of the XXVI Festival of Contemporary Music (an event of possibly parallel quality having been offered, in the twenty-first century, by the *Passion according to Mathew* performed on the Choir stalls of the *Scuola* Church on March 23, 2016 by the Teatro Armonico choir and orchestra conducted by Isolde Kittel-Zerer).

Since then, precisely in 2013, the ancient Rococo's choir stalls meant to serve as an *ad hoc* installation for the San Rocco's Feast were restored

and placed again – for the moment, not on a temporary basis – inside the Church against its counter-façade. It hosts at its various levels from the ground, and especially at Sunday’s Mass, groups of up to 40 singers often from abroad. Initiatives in this field find a most competent support in a Sister of the *Scuola* and member of the Chancery: Ms. Livia Pancino. As free gift to the *Scuola* in recent years she has provided transcripts of ancient musical texts present in its Archives and helped its Members and the public at large to become acquainted with the heritage left to it by its Chapel Masters. From Gabrieli through Schütz this tradition brought beyond the Alps to the achievements of Handel and Bach and comes back to-day by the recurring presence of English, Austrian and German musical groups on the restored choir stalls.

Curiously enough, as seen, these stalls had been erected in 1794 as a mobile wooden structure – a sort of gigantic musical instrument – to be installed to solemnly underline San Rocco’s Feast. Today this is instead the date on which the *Scuola* offers a concert to the city – its inhabitants and visitors – not inside the Church but in the small square where the *Tendon del Dose* is displayed to connect *Schola*, *Scoletta* and Church: actually, in a space unit recurrently celebrated in Venetian art (as, for all, in Canaletto’s large painting owned by the London National Gallery).

#### **4 The Recipe: Collective Knowledge Supported by Constant Care**

The fact remains that the *Scuole* concentrate the largest part of their financial resources on the maintenance not only of their buildings, but of their riches in the paintings, marbles and stones, iron works, textiles. Silver and jewels among them. This tangible heritage could not survive without the network of free, or almost free, support they get from artisans and experts: namely, from the persons whose continuous care and rare knowledge the *Scuole* try to ensure also through co-optation, the granting of prizes or by designating them as honorary brothers and sisters. Only in rare cases the State steps in (less rarely the Regione Veneto), as occurred in conjunction with the rediscovery and restoration of the already mentioned choir stalls of the San Rocco’s Church that, for four years at the beginning of this century, offered to the wood ancient-style furniture district of Cerea (Verona) means of survival and to the Verona Academy of Fine Arts a rare opportunity to put to test its third-year students (Erasmus students included).

The fact remains that, at the core of the *Scuole*’s commitment, what actually survives is the personal dedication of their members to common objectives, whether falling or not within the scope of public policies. This dedication is rather the tribute to common feelings and to an enriching

sense of belonging, where gratuity is pursued so as to overcome the juxtaposition between us (residents, for instance) and the others (possibly tourists and visitors, or even incoming students) for the sake of a common culture and of the art of living together.

The network coordinating common activities among the *Scuole* in Venice has thus envisaged two multi-year projects: 1) *San Rocco's Itineraries as ante literam European transnational networks*; 2) *The protection of Venice intangible cultural heritage*. The first topic naturally develops from contacts the San Rocco's *Scuola* entertains with San Rocco associations spread all over the world but, more deeply, with the other *Scuole* present in Venice. The project in question thus aims at detecting how the quest for health – be it physical, spiritual or moral – emerges in to-day world, and how deeply it affects those pilgrims of our time that are called tourists. Under this angle a connection with the *Scuola di San Marco* would seem overdue.

As for the second topic, this has developed into new acquaintances and the establishment of solidarity links between the *Scuole* and academic circles, distinctive craftsmanship and professional environments (El Felze, Perla storica veneziana, Bevilacqua, Rubelli), institutions and entities like the Venice Port Authority, with its Open Port Programme, as well as international intergovernmental organizations present in Venice, like the European Union (through the clever channel of communication offered by Eurosportello Veneto) and the Council of Europe (see its launch from Forte Marghera of the *Venice Charter on the Value of Cultural Heritage* on 7-10 May 2014). This involvement in the field of the intangible cultural heritage has raised an attention for performative arts like vertical dance and the *commedia dell'arte*. In this connection it has been mainly for the *Scuola* of San Rocco to try and intercept young people, by applying to the EU with a project – *Climb the Past* – centred around the link between vertical dance and architecture, and by sharing a project, *Cultainer*, meant on one side to measure in four stages, through different European Countries, the cultural cross-fertilization ensured even to-day by trade relations following the Baltic-Adriatic route and addressed, on the other side, to involve young people present in Venice: be they residents, students, tourists, workers.

Last but not least, the *Scuole* have been working since 2013 on the promotion of both regional legislation for the protection and enhancement of the intangible cultural heritage in the Venetian Region, and a draft national statute on the subject that is expected to be laid, it is hoped soon, before the Italian Parliament.

## 5 Risks and Challenges

As the present purview shows, the *Scuole* condense values and traditions, knowledge and passions in a commitment to care at the various levels. What they risk, however, is fossilization: they risk, for instance, to transform feasts, rites and traditions into formalities where no memory survives of the values that had originally inspired them. At this point traditions risk to betray the community needs, individual and collective commitments, the city at large.

For the *Scuole* a first challenge against such a risk is the style and attitude with which visitors are hosted in their premises. The utmost care should actually be devoted to trying and having them understand the meaning of the heritage they are confronted with, most frequently for the first time. Here lies the true, sound competition with museums and other outstanding art hubs in town, rather than in the entity of the fees suggested for admission or in the number of daily visitors. And the meaning of that heritage will emerge all the more clearly and persuasively if the presentation is technically correct but above all inspired by care and love not only for the objects but also for the objectives they have been destined to over the centuries.

A second challenge to be met by the rulers of the various *Scuole* is the tenacious research of that expertise, still available in town and in the surrounding area, that is needed to ensure that the riches of their houses are appropriately looked after. Actually, the bearers of such expertise are to be put in the position to share it with young people. Something of this kind may possibly be achieved at transnational level by resorting to workshops, apprenticeship periods for guides and artisans, teaching at university and post-university level, etc.: ways among others to show actual attention to the social problems of the city and of the weaker levels of society present therein.

The unselfish *raison-d'être* of the *Scuole* in Venice, as brotherhoods of believers that in the Catholic Church pursue their role of lay people responsible to the city and the world, is to try and reduce inequality and destitution, and most especially to do so by widening access to beauty. To this end, the only condition they put on the necessary cooperation with public and Church bodies, as well as with international and supranational institutions and private entities, is – in compliance with both the subsidiarity principle and a distinctly Venetian approach to religion – respect for their self-government.



# **I. Cultural Heritage Blazes**





# **International Law and Intentional Destruction of Cultural Heritage**

Gabriella Venturini  
(Università degli Studi di Milano, Italia)

**Abstract** The international legal protection of CH in armed conflict is based on a variety of treaties complementing and mutually supporting each other. Its fundamental principles are firmly anchored in customary international law, promote harmonization of the domestic legal systems and are judicially enforceable. Intangible Cultural Heritage, however, is not included in the comprehensive system of protection of movable and immovable cultural property. In order to see the system in its whole and to make it effectively applied and enforced it is necessary to strengthen the relationship between the protection of cultural property and the protection of civilians in the law of armed conflict.

**Summary** 1 Cultural Property and Cultural Heritage in International Law. – 2 Protection Afforded by International Law in Armed Conflict. – 3 Patterns of Destruction of Cultural Property and CH in Recent Conflicts. – 4 Judicial Enforcement of Protection. – 5 Strengths and Weaknesses of the International Protection.

**Keywords** Destruction. Cultural. Heritage.

## **1 Cultural Property and Cultural Heritage in International Law**

While the concepts of cultural property and CH are strictly connected, their relationship in international law is far from being settled (Blake 2000, 62-65). Indeed the 1954 Hague Convention at art. 1 defines cultural property as “*movable or immovable property of great importance to the CH of every people*” (emphasis added). This includes monuments of architecture, art or history; archaeological sites; groups of buildings of historical or artistic interest; works of art, manuscripts, books; buildings dedicated to preserve or exhibit the movable cultural property as well as centres containing monuments. The 1970 UNESCO Convention at art. 2 in turn recognizes that “the illicit import, export and transfer of ownership of *cultural property* is one of the main causes of the *impoverishment of the cultural heritage* of the countries of origin of such property” (emphasis added). Accordingly, the category of CH is broader than, and contains that of cultural property (Frigo 2004, 369). Both the above mentioned conventions define cultural property to a greater or lesser degree in their

respective field of application; neither of the two, however, gives a definition of CH.

The category of CH has acquired autonomy through the 1972 UNESCO Convention focusing on the 'outstanding universal value' of monuments, buildings or sites from the historical, artistic or anthropological point of view (art. 1). Thereby CH is characterized by universality and exceptional importance in terms of history. This aspect, however, has been recently redefined in the light of the significance of heritage for the contemporary generation, as "an evolutionary notion, possessing a multifaceted construct" (Loulanski 2006, 208). Eventually, the 2003 UNESCO Convention has clarified that CH embraces immaterial elements such as "the practices, representations, expressions, knowledge, skills - as well as the instruments, objects, artefacts and cultural spaces associated therewith" of communities, groups and, in some cases, individuals, thereby distinguishing the concept from the mere tangible property (art. 2(1)). According to this Convention CH does not need to be of 'outstanding universal value'; instead it 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" (art. 2(1)). The 2003 UNESCO Convention gives consideration solely to such intangible CH as is compatible with existing international human rights law, as well as with mutual respect among communities, groups and individuals, and sustainable development. Therefore "the issue of preserving CH is linked to cultural rights as a form of human rights" (Logan 2007, 38) insofar as "cultural property may be seen as an essential dimension of human rights, when it reflects the spiritual, religious and cultural specificity of minorities and groups" (Francioni 2011, 10).

An in-depth analysis of the concepts of cultural property and CH in international law would go beyond the scope of the present contribution, which aims to focus on the protection provided by international law against the intentional destruction of CH in armed conflict. For this purpose, the notion of CH essentially refers (although is not limited) to movable and immovable cultural property of greater importance, which is protected by a number of treaties as well as by customary international law.

## 2 Protection Afforded by International Law in Armed Conflict

Some type of cultural property has been protected from the evils of war since the end of the nineteenth century. Art. 27 of the 1907 Hague Regulations, which are applicable in international armed conflict, provides that "[i]n sieges and bombardments *all necessary steps* must be taken to spare, *as far as possible*, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick

and wounded are collected, provided they are not being used at the time for military purposes” (emphasis added).<sup>1</sup> This provision complements art. 23(g) prohibiting destruction of enemy’s property unless “imperatively demanded by the necessities of war”. It constitutes an obligation of means (“*all necessary steps*”) making the protection of cultural property dependent on whether such property is used for military purposes and subjecting it to military operational requirements (“*as far as possible*”). Art. 56 of the above Regulations further protects “institutions dedicated to religion, charity and education, the arts and sciences” as well as “historic monuments, works of art and science” by forbidding their destruction or wilful damage in occupied territories. It is undisputed that the 1907 Hague Regulations have acquired the status of customary international law (Dinstein 2010, 15).

The 1954 Hague Convention provides for a twofold obligation *to safeguard* and *to respect* cultural property (art. 2). *Safeguarding* entails measures to be made by states parties in time of peace for the protection of cultural property situated within their own territory against the foreseeable effects of an armed conflict (art. 3). *Respecting* in turn involves a two-pronged obligation (art. 4(1)) *i.e.* “refraining from any use of the property [...] for purposes which are likely to expose it to destruction or damage in the event or armed conflict” and “refraining from any act of hostility, directed against such property”. This applies to cultural property situated within a State’s own territory as well as within the territory of other States parties to the Convention, without requiring reciprocity. It includes the prohibition of theft, pillage or misappropriation of cultural property. Requisitions of movable cultural property and reprisals against cultural property are also prohibited (art. 4(3)(4)).<sup>2</sup>

While the 1954 Hague Convention as a whole applies in international armed conflict and occupation of territory, its provisions relating to respect of cultural property also apply in non-international armed conflict binding on all parties to the conflict, *i.e.* on non-state actors as well (art. 19). Even if legally speaking such an extension marked a significant improvement in the protection of cultural property by international law, subsequent practice was not very encouraging. Moreover, a waiver of the obligation to respect is granted by art. 4(2) when “military necessity *imperatively* requires such a waiver” (emphasis added). Although this exemption appears substantially more restrictive than the “as far as possible” condition of the 1907 Hague Regulations, it still allows belligerents a wide margin

1 Art. 5 of the Convention (IX) Concerning Bombardment by Naval Forces in time of War of 18 October 1907 contains similar language.

2 In order to facilitate its recognition cultural property may bear a distinctive emblem (1954 Hague Convention arts. 6, 16(1) and 17(1)).

of discretion and for this reason it has been widely criticized by legal commentators (Venturini 2010, 55 and literature cited in note 38). A further flaw of the 1954 Hague Convention is the assumption that the traditional (but rarely used) system of the Protecting Powers would be adequate to ensure its implementation in armed conflict (art. 21).

The 1954 Hague Convention (arts. 8 and 9) also establishes a system for ensuring immunity from acts of hostility and from military uses to refuges sheltering movable cultural property and to centres containing “monuments and other immovable cultural property of very great importance”. But even there a derogation is provided for in “exceptional cases of unavoidable military necessity” and for such time as that necessity continues (art. 11(2)). As a result, military necessity constitutes a significant limiting factor on the effectiveness of the protection of cultural property in armed conflict (Toman 1996, 77-81, 144-148; O’Keefe 2006, 126-131, 158-161; Zagato 2007, 73-83; Forrest 2010, 76-78 and 114-115).

Besides the Hague Convention the more recent and relevant treaties dealing with protection of cultural property and CH in armed conflict are the two 1977 Additional Protocols to the 1949 Geneva Conventions and the 1999 Hague Protocol. AP I is applicable to international armed conflict (art. 1(3)); AP II applies to non-international armed conflict (art. 1(1)), while the 1999 Hague Protocol applies to both international and non-international armed conflict (arts. 3(1) and 22(1)).

The 1977 Additional Protocols prohibit any acts of hostility directed against the historic monuments, works of art or places of worship constituting the cultural or spiritual heritage of peoples and to use such objects in support of the military effort; AP I also prohibits reprisals against such objects (art. 53 AP I; art. 16 AP II). Interestingly a new criterion of ‘spirituality’ is introduced which would normally apply to places of worship, however it does not appear to create a new category of cultural objects (Sandoz, Swinarski, Zimmermann 1987, 646 and 1469-1479; O’Keefe 2006, 209-217).

The 1977 Additional Protocols do not expressly state which are the consequences of using cultural property in support of the military effort. Although the prevailing view considers that any use of a civilian object for military purposes would have the effect of turning it into a military objective, there are situations where the special importance of cultural or spiritual heritage recommends respect notwithstanding their use for military purposes. For example, Dinstein recalls that in 2002 the Israeli armed forces refrained from storming the Church of the Nativity in Bethlehem that had been taken over by a group of Palestinian combatants (2010, 183-184). Neither do the relevant provisions of the 1977 Additional Protocols make reference to military necessity. They are nevertheless without prejudice to the provisions of the 1954 Hague Convention; therefore, one can infer that the justification of imperative military necessity is actually still

valid (O’Keefe 2006, 251-252; Forrest 2010, 108-110). This is confirmed by the fact that the 1999 Hague Protocol retains the waiver, although subject by art. 6 to further restrictive conditions: *imperative* military necessity may only be invoked to direct an act of hostility against cultural property when and for as long as it has, by its function, been made into a military objective and there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective; a waiver may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage; the decision to invoke imperative military necessity shall only be taken by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise; in case of an attack an effective advance warning shall be given whenever circumstances permit (Gioia 2001, 35-36; O’Keefe 2006, 251-254; Toman 2009, 112-120; Chamberlain 2010, 45-49).

The updating of the 1954 Hague Convention by the 1999 Hague Protocol also led to the stipulation of rules on precautions in attack and precautions against the effects of hostilities (arts. 7 and 8) corresponding to those that are found in AP I. Further developments reflected in the 1999 Hague Protocol include a new regime of enhanced protection of cultural property of the greatest importance for humanity (arts. 10-12), the prosecution of serious violations entailing individual criminal responsibility (arts. 15-19) as well as an institutional machinery (arts. 24-28). Monitoring procedures (arts. 34 to 36), however, were not adequately reinforced.

Beyond treaty law, customary international law also plays a role in the protection of cultural property and CH in armed conflict. Probably the most credible attempt to codify the core provisions on protection of cultural property applicable in international and non-international armed conflict has been made by the ICRC in its *Customary international humanitarian law* (Henckaerts, Doswald-Beck 2005). According to Rules 38 to 40 of the study two different categories of cultural property are subject to different kinds of protection. Buildings dedicated to religion, art, science, education or charitable purposes and historic monuments deserve special care in order to avoid damage, unless they are military objectives; seizure, destruction or wilful damage is prohibited. Property of great importance to the CH of every people must not be attacked unless imperatively required by military necessity and must not be used in such a way to expose it to destruction or damage unless imperatively required by military necessity; theft, pillage or misappropriation is prohibited.<sup>3</sup> This blending of the 1907

3 [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule38](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule38) (2017-12-15).

Hague Regulations and the 1954 Hague Convention clearly acknowledges the needs of military operations and the role of military necessity as limitative elements restricting the protection of cultural property in armed conflict; in that regard, however, it has been argued that the distinction between the two categories of cultural property finds no support in the existing law (O'Keefe 2006, 212).

### **3 Patterns of Destruction of Cultural Property and CH in Recent Conflicts**

In spite of the elaborate legal structure that has been developed by international treaties and customary international law regarding protection of cultural property and CH, intentional destruction has been increasingly frequent in contemporary armed conflicts, depending on either use of cultural property for military purposes, or collateral damage resulting from attack against military objectives, direct targeting (often aimed at 'cultural cleansing') or looting, theft and pilferage for the purposes of illegal trade in cultural objects. Last, but not least, destruction of cultural property and CH not only affects material aspects; it also takes place by depriving individuals and communities of the possibility of maintaining their cultural identity. Today millions of people are internally or internationally displaced by armed conflict worldwide and for most of them displacement involves the loss of their CH.

Museums are especially vulnerable. Looting, theft and pilferage during armed conflict are attributable not only to vandals, but also (and often mainly) to professional thieves in the pay of antique dealers whereas the local government or the occupying power fail to ensure adequate protection. To give but a few examples, before the Nigerian civil war the National Museum Oron, an institution belonging to the Nigerian federal government, hosted the largest single collection of Ekpu ancestral figures. During the conflict between 1967 and 1970 these wooden carvings suffered looting, theft and pilferage, mutilations and destruction notwithstanding Nigeria being party to the 1954 Hague Convention since 1961. At the end of the conflict only a little more than a hundred of the previously over 800 Ekpu statuettes displayed in the museum were recovered (Kasai Kingi 2010, 12-13). In Afghanistan during military operations conducted by the Pakistan Armed Forces against the Taliban since 2007, a number of suicide attacks and bombings badly damaged the Swat Museum in the Swat Valley housing artefacts and other relics representing the CH of the millennial age-old Gandhara civilization (Khan 2010, 16-17). While Afghanistan is not a party to 1954 Hague Convention, Pakistan ratified it as early as March 1959. In April 2003, the National Archaeological Museum and the National

Library in Baghdad were seriously damaged and looted when the 'Coalition of the Willing' captured and occupied the city (O'Keefe 2006, 330; Paul, Nahory 2007, 14-15; Forrest 2010, 61-63; Toman 2009, 460-461). At that time neither the USA nor the UK were parties to the 1954 Hague Convention, while Iraq had ratified it as early as 1967 (the United States subsequently became a party in 2009). In February 2015, the fighters of the so-called Islamic State destroyed ancient statues and artefacts of the Mosul Museum causing an outcry among the international community.<sup>4</sup> Syria, where destruction occurred, has been a party to the 1954 Hague Convention since 1958.

Further categories of cultural establishments that suffered gravely in recent conflicts are religious and educational institutions as well as monuments and historical architectures. From 1991 until 1995 the conflict in the Former Yugoslavia<sup>5</sup> caused widespread destruction of and damage to mosques, catholic churches, synagogues and educational institutions that were systematically destroyed because of their religious significance to the ethnicities targeted. Historic buildings and monuments also paid a heavy price, the most infamous of cases being the bombardment of the Old Town of Dubrovnik in 1991 and the destruction of the sixteenth century stone bridge in Mostar in 1993 (M'Baye 1994, 4-8; O'Keefe 2006, 183-184; Forrest 2010, 57-58). In 2003 military operations of the 'Coalition of the Willing' in Iraq have seriously damaged historic sites, mosques, landmark buildings and old city neighbourhoods (Paul, Nahory 2007, 16). In such cases the destruction of CH may either be referred to as collateral damage resulting from an attack against military objectives, or the consequence of direct targeting. In the first hypothesis there is no unlawful destruction if the required precautions in attack were taken, while in the second case attack is permitted only if cultural property is used for military purposes. For example, during April and May 1999 a number of historic buildings in the centre of Belgrade hosting the General Staff of the Armed Forces and the Ministry of Defence were bombed as legitimate targets or damaged by the collapse of adjacent buildings, detonations and shock waves (Radin 2010, 1).

Occasionally the balance between protection of CH and military necessity is in favour of the former: during the 1990-1991 Persian Gulf War, the

4 <http://whc.unesco.org/en/news/1239/> (2017-12-15).

5 The 1954 Hague Convention had been binding on the Socialist Federal Republic of Yugoslavia as a state party since 1956, and continued to apply to Croatia and Bosnia and Herzegovina after their independence following their deposit of declarations of succession (cf. ICTY Case No.IT-95-14/2-T, Prosecutor v. Kordić and Čerkez, Trial Judgement of 26 February 2001, para. 359). On 22 May 1992, an Agreement on the Application of IHL between the Parties to the Conflict in Bosnia and Herzegovina was concluded providing that hostilities would be conducted in accordance with art. 53 of AP I (para. 2(5)): [https://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule38](https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule38) (2017-12-15). Needless to say, the Agreement was massively violated along the entire conflict.

Coalition air forces did not attack two Iraqi fighter aircraft placed out of action adjacent to the temple of Ur because of the limited value of their destruction when weighed against the risk of damage to the temple (Department of Defense, U.S. Military 1992, 615). In other cases, the recklessness of the armed forces led to the irreparable loss of priceless relics of the past. From 2003 to 2005 US and Polish troops camped on a military base built within the site of ancient Babylon. The construction of trenches and military fortification severely damaged the archaeological material from the site, including shards, bones, and ancient bricks (Paul, Nahory 2007, 17-18; Forrest 2010, 82). Not long after, in late 2007 history repeated itself in Colombia where a company of a national army battalion fighting to recover territory from irregular forces camped within the grounds of the Ciudad Perdida Park (Sierra Nevada) for more than two years. The reckless use of the area generated soil displacement, erosion and movement of the structural elements of the fragile archaeological remains representative of the ancient Tairona culture (Bateman Vargas 2010, 6-7). Colombia has been a party of the 1954 Hague Convention since 1998; it has subsequently ratified the 1999 Hague Protocol in 2010.

More recently the world has been very deeply shocked by the destruction of Syria's CH. During the ongoing conflict the 2,000-year-old fortified city of Hatra, the archaeological site of Nimrud and major CH landmarks in Palmyra have been systematically targeted by the Islamic State in furtherance of a plan of 'cultural cleansing' but also with the practical purpose of supporting its recruitment efforts and strengthening its operational capability by the illicit traffic of cultural items.<sup>6</sup>

These appalling events, among many others, demonstrate that intentional destruction of CH in armed conflict occurs irrespective of the nature of the conflict, be it an international armed conflict or a non-international one. On the one hand, the legal instruments to which the parties to a conflict are bound are often and widely neglected by both state armed forces and non-state armed groups. On the other hand, because of its vagueness, customary international law does not seem adequate to mitigate, let alone to prevent, the gravest consequences of armed conflict on cultural property and CH.

## **4 Judicial Enforcement of Protection**

The unlawful destruction of cultural property and CH in recent conflicts has raised the issue of responsibility and liability for damage. The 2003 UNESCO Declaration at art. VI echoed customary international law by

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<sup>6</sup> <http://www.un.org/press/en/2015/sc11804.doc.htm> (2017-12-15).



saying that “A State that intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization, bears the responsibility for such destruction, to the extent provided for by international law”.<sup>7</sup> An example of international responsibility for destruction of CH is shown by the case of the Stela of Matara (a monument of great historical and cultural significance for the Eritrean people) that was wrecked by an explosion on 30 May 2000 during the war between Eritrea and Ethiopia, in an area controlled by Ethiopian armed forces which had established a camp close to the obelisk. In 2004 the Eritrea-Ethiopia Claims Commission concluded that “Ethiopia as the Occupying power in the Matara area [...] is responsible for the damage even though there is no evidence that the decision to explode the Stela was anything other than a decision by one or several soldiers”.<sup>8</sup> The case-law on State responsibility is, however, limited.

Destruction of CH in armed conflict may also entail individual criminal responsibility. Art. 147 of the 1949 GC IV recognizes “seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science” as grave breaches of the Convention, and as such they have been incorporated into the ICTY Statute (art. 3(d)). According to the Rome Statute of the ICC “Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes and historic monuments [...] provided they are not military objectives” is a crime in both international and non-international armed conflict (arts. 8(2)(b)(ix) and 8(2)(e)(iv)). In an effort to remain in strict compliance with customary international law neither statute explicitly refers to cultural property or CH. In this respect, it has been argued that this “dilutes the concept of cultural property as a distinct and autonomous type of civilian property” (Carcano 2013, 87). The 1999 Hague Protocol instead plainly sets out the principle *aut dedere aut judicare* persons alleged to have committed serious violations of the rules protecting cultural property (arts. 15-17). Lastly, under art. 7 of the law establishing the ECCC, the Chambers have jurisdiction to try those responsible for the destruction of cultural property during the period from 17 April 1975 to 6 January 1979.<sup>9</sup>

7 <http://unesdoc.unesco.org/images/0013/001331/133171e.pdf#page=68> (2017-12-15).

8 EECC Partial Award, Central Front - Eritrea’s Claims 2, 4, 6, 7, 8 & 22, 28 April 2004, para. 112.

9 Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006).

The jurisprudence of the ICTY has addressed and interpreted the fundamental tenets of individual criminal responsibility for the destruction of cultural property in several important cases (Abtahi 2001, 9-28; Carcano 2013, 81-86 and 91-94; Lenzerini 2013, 43-49).

In its judgment in the Blaškić case in 2000 (dealing mainly with destruction of institutions dedicated to religion) the ICTY TC held that “[t]he damage or destruction must have been committed intentionally to institutions which may clearly be identified as dedicated to religion or education and which were not being used for military purposes at the time of the acts”. In addition, the TC considered “the institutions must not have been in the immediate vicinity of military objectives”.<sup>10</sup> This latter requirement was rejected, and rightly, by later judgments such as Naletilić and Martinović holding that the mere fact that an institution is in the “immediate vicinity of military objective” cannot justify its destruction.<sup>11</sup>

In its 2004 judgment on the Kordić and Čerkez case the ICTY AC interpreted the category of “immovable objects of great importance to the CH of peoples” in the light of the ICRC Commentary on art. 53 AP I (Sandoz, Swinarski, Zimmermann 1987, 646 and 1469-1479) referring to the term “cultural or spiritual heritage” as covering objects “whose value transcends geographical boundaries, and which are unique in character and are intimately associated with the history and culture of a people”.<sup>12</sup> In the Brđanin case the Tribunal found that the deliberate destruction by the Bosnian Serbs of churches, mosques, and minarets had been carried out not because they contained any military threat but because of their religious significance to the Bosnian Croat and Bosnian Muslim ethnicities.<sup>13</sup> Some judgments also found that discriminatory destruction of religious sites and cultural monuments may constitute persecution as a crime against humanity<sup>14</sup> and may even be considered as evidence of an intent to commit genocide.<sup>15</sup>

The naval bombardment and shelling of Dubrovnik were considered in the Jokić and in the Strugar cases. Both accused, officers in the Yugoslav

URL [https://www.eccc.gov.kh/sites/default/files/legal-documents/KR\\_Law\\_as\\_amended\\_27\\_Oct\\_2004\\_Eng.pdf](https://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf) (2017-12-15).

10 Blaškić Trial Judgment no. IT-95-14-T, 3 March 2000, para. 85.

11 Naletilić and Martinović Trial Judgment no. IT-98-34-T, 31 March 2003, paras. 303-304.

12 Kordić and Čerkez Appeal Judgment no. IT-95-14/2-A, 17 December 2004, para. 90.

13 Brđanin Trial Judgment no. IT-99-36-T, 1 September 2004, paras. 596-599 and Appeal Judgment no. IT-99-36-A, 3 April 2007 paras. 340-341.

14 Blaškić Trial Judgment no. IT-95-14-T, 3 March 2000, para. 227; Kordić and Čerkez Trial Judgment no. IT-95-14/2-T, 26 February 2001, paras. 206-207; Milutinović Trial Judgment no. IT-05-87-T, 26 February 2009, para. 205; Stanišić & Župljanin Trial Judgment no. IT-08-91-T, 27 March 2016, para. 88.

15 Krstić Trial Judgment no. IT-98-33-T, 2 August 2001, para. 580.

armed forces, were found guilty and sentenced for the wanton destruction and damage done to the historic buildings of the Old Town, a UNESCO World Cultural Heritage site pursuant to the 1972 UNESCO Convention.<sup>16</sup>

The first case in which war crimes against buildings dedicated to religion and historic monuments were the main accusation was recently decided by a TC of the ICC. Ahmad Al Mahdi Al Faqi, one of the leaders of the Islamic forces that had taken control of Timbuktu during the non-international armed conflict of 2012 in Mali, has been convicted of the war crime of attacking protected objects as a co-perpetrator under arts. 8(2)(e) (iv) and 25(3)(a) of the ICC Statute and sentenced to nine years of imprisonment.<sup>17</sup> The Islamist leader had ordered and carried out the destruction of several buildings of a religious and historical character, known as the mausoleums of saints of Timbuktu. The Trial Chamber found that these structures were places of prayer and pilgrimage for the local inhabitants and as such they constituted a common heritage for the community; most of them were also included in the UNESCO WHL.<sup>18</sup>

Since the charges met squarely the requirements of art. 8(2)(e)(iv), the TC did not further elaborate on the character of this type of crime. Interestingly enough, while during the conflict the accused had justified the attacks as ways of eradicating superstition, heresy and practices leading to idolatry,<sup>19</sup> after having been surrendered to the Court by the authorities of Niger on 26 September 2015 he made an admission of guilt before the TC, which considered the admission of guilt “to be genuine, led by the real desire to take responsibility for the acts he committed and showing honest repentance” and expressing “deep regret and great pain” for his acts.<sup>20</sup>

Clearly the prosecution of crimes related to cultural property and CH is not the exclusive competence of the international criminal tribunals. According to art. VII of the 2003 UNESCO Declaration “States should take all appropriate measures, in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against, those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not

<sup>16</sup> Jokić Sentencing Judgment no. IT-01-42/1-S, 18 March 2004, paras. 42, 46-53; Strugar Appeal Judgment no. IT-01-42-A, 17 July 2008, para. 393.

<sup>17</sup> The Prosecutor v. Ahmad Al Faqi Al Mahdi, no. ICC-01/12-01/15, TC VIII, Judgment and Sentence, 27 September 2016.

<sup>18</sup> The Prosecutor v. Ahmad Al Faqi Al Mahdi, no. ICC-01/12-01/15, TC VIII, Judgment and Sentence, 27 September 2016, para. 34.

<sup>19</sup> The Prosecutor v. Ahmad Al Faqi Al Mahdi, no. ICC-01/12-01/15, TC VIII, Judgment and Sentence, 27 September 2016, para. 38(viii).

<sup>20</sup> The Prosecutor v. Ahmad Al Faqi Al Mahdi, no. ICC-01/12-01/15, TC VIII, Judgment and Sentence, 27 September 2016, paras. 100 and 103.

it is inscribed on a list maintained by UNESCO or another international organization". Interestingly, in 2006 the Military Garrison Court of Ituri in the Democratic Republic of Congo directly (albeit in a perfunctory manner) applied art. 8(2)(b)(ix) of the Rome Statute pursuant to the Congo constitution which gives primacy of international treaties over domestic law (Trapani 2011, 51-55). In 2007 the Iraqi High Tribunal discussed more in depth the elements of the crime of intentionally directing attacks against religious or educational buildings, holding that their destruction or confiscation must be considered as premeditated if it was possible to clearly recognize their nature and provided that they were not used for military purposes or located in the vicinity of military targets (a revival of the restrictive interpretation of the ICTY Blaškić Trial judgment).<sup>21</sup> Also in 2007 the Constitutional Court of Colombia held that the rules aimed at protecting cultural property are *lex specialis* in relation to the principles of distinction and precaution protecting the general category of civilian property.<sup>22</sup>

It has to be noted that the *ad hoc* international criminal tribunals are set to complete their cases in the years ahead and the judicial enforcement of the international protection of cultural property and CH may not remain exclusively with the ICC. For this reason, the role of domestic jurisdictions is vital and it is likely to increase with time.

## 5 Strengths and Weaknesses of the International Protection

The international legal protection of cultural property and CH in armed conflict has a number of positive aspects. Firstly, it is based on a variety of treaties complementing and mutually supporting each other and its fundamental principles are firmly anchored in customary international law, binding on all States in the international community. Secondly, the relevant treaties commit States parties to implementing several provisions in time of peace in order to prepare for the eventuality of a conflict, thus increasing awareness of the need for protection and promoting harmonization of the domestic legal systems. Thirdly, the rules on protection are judicially enforceable and the decisions of international courts and tribunals as well as those of the domestic jurisdictions are playing and will continue to play

21 Iraqi High Tribunal, Special Verdict pertaining to case No 1/C Second/2006, Al Anfal, 8, 20, 35. URL [http://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Iraq/Anfal\\_verdict.pdf](http://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Iraq/Anfal_verdict.pdf) (2017-12-15).

22 Colombia, Constitutional Court, Constitutional Case -291/07, Judgment of 25 April 2007, 121: cf. ICRC Customary International Law, Practice Relating to Rule 38. Attacks against Cultural Property, para. 5. National Case-law [https://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule38](https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule38) (2017-12-15).

an important role, substantially contributing to their interpretation and application.

Unfortunately, these strengths are balanced by some critical weaknesses. States' participation in the various treaties on the protection of cultural property and CH is far from universal and, even worse, the holdout States are the ones most often involved in armed conflicts. Customary international law is binding on all States but it is much less detailed than treaties and it notably does not include implementing rules or procedures. To a greater or smaller extent, both treaties and customary international law allow derogations in cases of military necessity, which hinders a full implementation of the protecting rules. Non-state armed groups are not parties to the treaties protecting cultural property and CH during armed conflict and they hardly share the values that have prompted the development of the international legal system of protection. As a consequence, it is difficult to maintain that the legal obligations concerning the protection of cultural property and CH in non-international armed conflict are equally binding on the parties to the conflict. And although the punishment of those responsible for the intentional destruction of protected assets satisfies the requirements of justice, criminal prosecution is in no way a substitute for substantive protection.

Last but not least, it should be noted that both existing treaties and customary international law on the protection of cultural property and CH during armed conflict focus on tangible goods. Therefore, intangible CH is not included in the comprehensive system that has been established for the protection of movable and immovable cultural property. However, international law on the protection of cultural property and CH in armed conflict must not be seen in isolation from the main body of international humanitarian law, which contains the fundamental rules on the protection of civilians - the ultimate owners of CH. These include, *inter alia*, the prohibition of forcible displacements and of unlawful deportations, contributing to preserve the link between individuals and groups and their CH. Strengthening the relationship between the protection of cultural property and the protection of civilians in IHL is thus the necessary prerequisite to see the system in its whole and to make it effectively applied and enforced.

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# **The Agreements between the Italian Ministry of Culture and American Museums on the Return of Removed Cultural Properties**

Tullio Scovazzi

(Università degli Studi di Milano-Bicocca, Italia)

**Abstract** In the last decade the MIBACT concluded a number of agreements with foreign museums that were holding illicitly excavated and exported cultural properties (for example the 2006 Agreement with the Metropolitan Museum of Art of New York). The agreements allow the State of origin to achieve the return of the cultural properties and avoid the uncertain outcome of a litigation on their ownership before a foreign court. They also allow the foreign museums to preserve their reputation as truthful cultural institutions that do not encourage the pillage of the heritage of foreign countries. Both parties agree on the strengthening of their relationship through future cooperative activities, including loans granted by Italy of archaeological properties of equivalent value. The agreements go in the direction of settling through negotiations disputes on the return of cultural properties in order to reach an equitable solution taking into account all the relevant circumstances.

**Summary** 1 Introduction. – 2 The Agreement with the Metropolitan Museum of Art. – 3 The *Euphronios Krater*. – 4 Other Returned or Non-returned Archaeological Properties. – 5 Conclusive Remarks.

**Keywords** Cultural properties. Return. Agreement.

## **1 Introduction**

Particularly notable to address the question of the restitution of removed cultural properties are the agreements signed by the Ministry of Cultural Properties and Activities on the one side, and foreign cultural institutions on the other (Fiorilli 2010, 161; Scovazzi 2014, 3). Agreements of this kind<sup>1</sup> have been concluded by the Ministry with a number of American museums, such as the Metropolitan Museum of Art of New York, the Museum of Fine

<sup>1</sup> The instruments in question, usually called ‘agreements’, cannot be considered as international treaties, but belong to the category of contracts between States and foreign nationals. These types of legal instruments, which have an important background in the field of exploitation of natural resources (for example, concessions to foreign companies for oil exploration or exploitation) are used here to pursue a rather different purpose.

Arts of Boston, the Princeton University Art Museum, the John Paul Getty Museum of Los Angeles, the Cleveland Museum of Art and the Dallas Museum of Art. Other agreements also exist.<sup>2</sup>

The agreements allow the State of origin to overcome the obstacles posed by the uncertain outcome of a litigation before a foreign court on the ownership of the claimed properties. They also allow the foreign museums to preserve their reputation as truthful cultural institutions that do not encourage the pillage of the heritage in foreign countries and do participate in the fight against the destruction of cultural contexts and the illegal traffic resulting therefrom. Far from being confined to the return of given properties, the agreements also aim at the strengthening of the relationship between the parties through future cooperative activities, including loans granted by the State of origin of archaeological properties of equivalent value.

## **2 The Agreement with the Metropolitan Museum of Art**

While the text of most agreements is confidential, an exception is the agreement signed on 21 February 2006 by the Ministry and the Commission for Cultural Properties of the Region of Sicily,<sup>3</sup> on the one hand, and the Metropolitan Museum of Art of New York,<sup>4</sup> on the other.

In the premise of the agreement, the Ministry states that the Italian archaeological heritage “is the source of the national collective memory and a resource for historical and scientific research”. It also recalls some basic aspects of the Italian legislation on cultural properties, in particular that

the archaeological heritage includes the structures, constructions, architectural complex, archaeological sites, movable objects and monuments of other types as well as their contexts, whether they are located underground, on the surface or under water (preamble, recital B);

to preserve the archaeological heritage and guarantee the scientific character of archaeological research and exploration operations, Italian

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2 In 2012 an agreement was concluded with a Japanese institution, the Tokyo Fuji Art Museum. It provides for the return, under certain conditions, of the *Tavola Doria*, an anonymous painting of the sixteenth century. It reproduces a portion of *The Battle of Anghiari*, a lost fresco painted by Leonardo da Vinci on a wall of Palazzo Vecchio in Florence. According to press releases, in July 2016 an agreement was reached by the Ministry and the Ny Carlsberg Glyptotek of Copenhagen. It provides, *inter alia*, for the return of the Etruscan objects illegally excavated from a princely tomb in Sabina.

3 Under the Italian constitutional system, Sicily is the only region entitled to exercise an exclusive competence as regards the cultural properties existing in the region.

4 Hereinafter: the Museum.

law sets forth procedures for the authorization and control of excavations and archaeological activities to prevent all illegal excavations or theft of items of the archaeological heritage and to ensure that all archaeological excavations and explorations are undertaken in a scientific manner by qualified and specially trained personnel, with the provision that non-destructive exploration methods will be used whenever possible (preamble, recital C).

In fact, under Italian Legislative Decree 22 January 2004, no. 42 (called Code of Cultural Properties and Landscape), all cultural properties found by anyone in any way in the subsoil or on the seabed belong to the State demesne, if immovable, or to the inalienable patrimony of the State, if movable (art. 91, para. 1). The finder is entitled to a reward which cannot exceed one-fourth of the value of the properties found. A reward is also granted to the owner of the immovable property where the find has been made and to the holder of a concession for research.<sup>5</sup> The reward may be paid either in money or through the cession of part of the properties found (art. 92, para. 4).<sup>6</sup> A special procedure, as specified in art. 93, applies in order to determine the amount of the reward. Legislation based on similar principles has been in force in Italy since 1909 (Law 20 June 1909, no. 364; Law 1 June 1939, no. 1089; Legislative Decree 29 October 1999, no. 490).

The agreement also states in the premise that the Museum:

believes that the artistic achievements of all civilizations should be preserved and represented in art museums, which, uniquely, offer the public the opportunity to encounter works of art directly, in the context of their own and other cultures, and where these works may educate, inspire and be enjoyed by all. The interests of the public are served by art museums around the world working to preserve and interpret our shared cultural heritage (preamble, recital F);

[...] deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites, the destruction or defacing of ancient monuments, and the theft of works of art from individuals, museums, or other repositories (preamble, recital G);

[...] is committed to the responsible acquisition of archaeological materials and ancient art according to the principle that all collecting be done with the highest criteria of ethical and professional practice (preamble, recital H).

5 No reward is due to the finder if he has entered into an immovable property without the consent of the owner (art. 92(3)).

6 A tax credit of value corresponding to the reward can be granted on request to those who are entitled to the reward.

The first objective of the agreement is the return of a number of archaeological items that the Ministry had requested on the basis of the assumption that they “were illegally excavated in Italian territory and sold clandestinely in and outside the Italian territory” (preamble, recital E). The Museum, “rejecting any accusation that it had knowledge of the alleged illegal provenance in Italian territory of the assets claimed by Italy, has resolved to transfer the requested items in the context of this Agreement” (preamble, recital I). The transfer does not constitute an acknowledgment on the part of the Museum of any type of civil, administrative or criminal liability for the original acquisition or holding of the requested items. The Ministry and the Region of Sicily waive any legal action in relation to the returned items.

The items in question magnificently document the spreading of ancient Greek civilization in Southern Italy. They are the *Euphronios krater*, four vases (namely, a Laconian *kylix*, a red-figured Apulian *dinos* attributed to the Darius painter, a red-figured *psykter* decorated with horsemen and a red-figured Attic amphora by the Berlin painter), a set of fifteen Hellenistic silver items<sup>7</sup> and a *pyxis*.<sup>8</sup>

The second, but not secondary, objective of the agreement is to promote cultural co-operation between the parties. In exchange for the *Euphronios krater*, “to make possible the continued presence in the galleries of the Museum of cultural assets of equal beauty and historical and cultural significance”, the Ministry agrees to make four-year loans to the Museum of archaeological objects of equivalent beauty and historical and artistic significance selected from a list of twelve artefacts specified in the agreement (art. 4(1)). In exchange for the transfer of the four above mentioned vases, the Ministry agrees to “loan a first-quality Laconian artefact to the Museum for a period of four years and renewable thereafter” (art. 3(2)). In exchange for the Hellenistic silvers, the Ministry agrees to make to the Museum loans of cultural properties “of equal beauty and historical and artistic significance [...] on an agreed, continuing and rotating sequential basis” (art. 5(3)).<sup>9</sup>

7 The fifteen refined items of gilded silver, called *Morgantina Silvers*, are the most important set of jeweller’s art coming from Hellenistic Sicily. They were illegally excavated after 1978 from the archaeological site of Morgantina, an ancient city destroyed by the Romans in 211 b.C. They were bought by the Museum for \$3,000,000. They are now exhibited at the Museo Archeologico Regionale of Aidone.

8 The items were displayed at an exhibition held from December 2007 to March 2008 at the Quirinale Palace in Rome (the residence of the President of the Republic), together with other objects recovered from abroad. See the catalogue of the exhibition: *Nostoi - Capolavori ritrovati*, 2007. *Nostoi* means ‘returns’ in Greek.

9 “The Museum shall arrange and bear the costs of packing, insurance and shipment of the requested and loaned items for transit to and from Italy” (art. 6, para. 4).

Throughout the forty-year duration of the agreement (art. 8(1)), the mutual co-operation established under the agreement includes excavations, loans and restorations of cultural objects (art. 7).<sup>10</sup> Disputes on the interpretation or application of the agreement are to be settled amicably or, if the parties are unable to reach a mutually satisfactory resolution, “in private by arbitration on the basis of the Rules of Arbitration and Conciliation of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules” (art. 9(2)).

### 3 The *Euphronios Krater*

The story of the *Euphronios krater* (a bowl used to mix wine and water) well documents the gravity of the looting of archaeological sites and the consequent international trafficking of cultural properties that affected Italy in the last decades (Watson, Todeschini 2006; Felch, Frammolino 2011).

After having been manufactured by Euxitheos, the vase known today as the *Euphronios krater* was painted and signed by the Athenian artist Euphronios (active between 520 and 470 b.C.), one of the three great masters of red-figure vases. It is one of the best Attic vases, the only complete among the twenty-seven known as painted by Euphronios. The obverse side represents the god Hermes who supervises the transport by *Hypnos* (Sleep) and *Thanatos* (Death) of the corpse of the Trojan hero Sarpedon, killed in battle. The reverse side represents warriors arming themselves for the battle. At the time of Euphronios, the most valuable Greek vases were manufactured and painted in Athens and then exported to Central Italy where the Etruscans used to buy them for high prices.

In 1972 the *Euphronios krater* was exhibited for the first time in the collections of the Metropolitan Museum. It was bought in exchange for \$1,000,000 and a collection of ancient Greek coins. In an interview given on 12 November 1972, the director of the Museum, Mr. Thomas Hoving, provided quite vague information about the provenance of the property:

We got it from a dealer who was the agent for a person who has had this in the family collection since about the First World War and we don't talk about the name of these people because they have other things that we might want to buy in the future. [...] we bought it from somebody

<sup>10</sup> According to Briggs (2006-2007), “this unprecedented resolution to a decades-old international property dispute has the potential to foster a new spirit of cooperation between museums and source nations, spawn stricter museum acquisition and loan policies, reduce the demand for illicit cultural property, and permanently alter the balance of power in the international cultural property debate”.

who happened to be in the country of Switzerland, who was acting as the agent for somebody who was even in another country whose family had it since around the First World War and that goes back a nice long time. (Meyer 1973)

The story became even less credible when Mr. Dietrich von Bothmer, the curator of Greek and Roman art at the Museum, disclosed that the previous owners of the property were the members of an Armenian family who, because of unfortunate events, were forced to leave their home in Lebanon and emigrate to Australia.<sup>11</sup>

After some time, the truth was unveiled following an unexpected event. An Italian antique dealer died in a car accident. In his pocket the police found a piece of paper with the names of several people involved in the trafficking of illicitly excavated archaeological properties. The Italian authorities concentrated their interest on Mr. Giacomo Medici, another Italian antiquarian. In cooperation with the Swiss police, they inspected a three-roomed warehouse held by Mr. Medici at the free-port of the Geneva airport. What they found was astonishing. In the warehouse were kept about 3,000 artefacts, often of very high quality, most of them illegally excavated in Italy,<sup>12</sup> together with a detailed archive that shed light on a chain of people involved at different levels in the illegal trafficking, export and sale of archaeological properties: diggers (so-called *tombaroli*, in Italian), middlemen, traders, restorers, experts, European and American museum curators and collectors. Pictures were also found that provided useful evidence about the relevant facts. In the case of the *Euphronios krater*, the pictures documented the vase when found in a clandestine excavation,<sup>13</sup> the vase during the restoration and the vase exhibited at the Museum, with Mr. Medici and Mr. Robert Hecht (the American antiquarian who bought the vase from Mr. Medici and sold it to the Museum) smiling next to it. Besides recovering the items deposited in the warehouse, the Italian police and prosecutors were able to reconstruct the whereabouts of many archaeological properties that had been sold to museums and collectors.<sup>14</sup>

11 "Why not an Eskimo moving to Florida?" (Meyer 1973, 93).

12 Including frescos detached in the area of Pompei from a villa clandestinely excavated and irreparably damaged by the looters.

13 The looters used the *polaroid* technique, also to avoid the risk of entrusting a photographer with the printing of the pictures. The *polaroid* technique, which was developed in the United States after WWII and introduced in Europe some years later, provides sure evidence that the excavations were made after the enactment (1909) of the Italian legislation that prohibited unauthorized archaeological excavations.

14 Unfortunately it was not possible to locate a rare Etruscan *Sarcophagus with Spouses* which appears in one of the pictures seized. Was it sold to a private collector who keeps it hidden somewhere?

It was finally proved that the *Euphronios krater* was clandestinely excavated in 1971 at Cerveteri, in the core of the area inhabited by the Etruscans (Rizzo 1995, 15). It was illegally (according to Italian law) exported from Italy to Switzerland and, after a number of transfers, sold to the Museum by Mr. Hecht, who imported it into the United States legally (according to American law).<sup>15</sup> It seems that the customs officer at the airport in New York made a quite pertinent comment when the box was opened and Mr. Hecht showed him the vase: "I don't know anything about Greek art, but you've really got something beautiful here" (Meyer 1973, 91).

After its return to Italy as a consequence of the 2006 agreement between the Ministry and the Museum, the vase is being exhibited at the Museo Nazionale Etrusco of Villa Giulia in Rome.

However, the question may be asked whether the agreement would ever have been concluded, if a car accident had not occurred.

#### 4 Other Returned or Non-returned Archaeological Properties

Under the agreement concluded in 2006 with the Museum of Fine Arts of Boston, the Ministry got the return of thirteen items, including the marble statue of *Vibia Sabina*, wife of the Roman emperor Hadrian (Povoledo 2007),<sup>16</sup> and several vases.

Under the agreement concluded in 2007 with the John Paul Getty Museum of Los Angeles, the Ministry got the return of the *Venus of Morgantina* (a statue of 2.20 m, with head and limbs in marble and body in limestone, illegally excavated in Morgantina and exported after having been cut in three pieces, paid by the Museum \$18,000,000), the *Trapezophoros* (a support for ritual table that represents two griffons attacking a hind, illegally excavated nearby Ascoli Satriano, paid by the Museum \$5,500,000),<sup>17</sup> as well as several vases.

<sup>15</sup> Today such an import would be illegal also according to American law, because of the Agreement between Italy and the United States concerning the imposition of import restrictions on categories of archaeological material representing the pre-classical, classical and imperial Roman periods of Italy (Washington, 19 January 2001; renewed in 2006 and 2011).

<sup>16</sup> According to a joint press communiqué of 28 September 2008, "the agreement includes the creation of a partnership in which the Italian government will loan significant works from Italy to the MFA's displays and special exhibitions programme, and establishes a process by which the MFA and Italy will exchange information with respect to the Museum's future acquisitions of Italian antiquities. The partnership also envisages collaboration in the areas of scholarship, conservation, archaeological investigation and exhibition planning". The statue of *Vibia Sabina* is now exhibited at the archaeological site of Villa Adriana in Tivoli.

<sup>17</sup> The *Venus of Morgantina* is now exhibited at the Museo Regionale Archeologico di Aidone, the *Trapezophoros* at the Museo Civico-Diocesano of Ascoli Satriano. The picture of Mr. Medici next to the *Trapezophoros* at the John Paul Getty Museum was found in the

Under the agreements concluded with the Princeton University Art Museum (2007), the Cleveland Museum of Art (2008) and the Dallas Museum of Art, the Ministry got the return of respectively eight, fourteen and six cultural properties.

Several other cultural properties illegally exported abroad are claimed or might be claimed by Italy. Some of the claims relate to properties that were not included in the above mentioned agreements with American museums, such as the bronze statues of the *Victorious Youth* (or *Athlete*), attributed to Lysippus and held by the John Paul Getty Museum,<sup>18</sup> and the *Cleveland Apollo*, attributed to Praxiteles and held by the Cleveland Museum of Art.

## 5 Conclusive Remarks

The question of restitution of removed cultural properties to which the treaties in force do not apply for chronological or other reasons is far from being settled under customary international law. While it is not possible to elaborate here on the matter (more elaboration can be found in Scovazzi 2011, 341), it seems that an evolutionary trend is developing in present customary international law. This trend is broad enough to cover both interstate claims and claims between States and foreign institutions. According to it, claims relating to the return of cultural properties should be addressed in order to achieve an equitable solution, taking into account all the relevant circumstances, such as, *inter alia*:

- the factors surrounding the removal of the cultural property from the State of origin, in particular the legality of the removal under the law of the State of origin or the substantive injustice of the removal;
- the importance of the cultural property for the State of origin, including its emblematic character;
- the harm to the integrity of the cultural context from which the cultural property was removed;
- the amount of time since the cultural property was removed from the State of origin;
- the appreciation for, and the care used to preserve, the cultural property in the State of destination;
- the State of origin's commitment to care for the preservation of the cultural property if it is returned to it.

warehouse in Geneva (see *supra*, para. 3). In 2012 the museum returned to Italy also several marble fragments that belonged to the same tomb from which the *Trapezophoros* was illegally excavated.

<sup>18</sup> The statue was found on the seabed of the Adriatic Sea. It was clandestinely imported in Italy and then illegally exported abroad. See Scovazzi 2011, 5; Lanciotti 2012, 301.



In this regard, the participants to the International Conference of Experts in the Return of Cultural Property, held in Seoul on 16 and 17 October 2012, recommended, *inter alia*, that

States discuss cases relating to the return of cultural objects not governed by international legal instruments, seeking equitable solutions taking into account all the relevant and specific circumstances, such as integrity of the cultural context, significance of the object for the States concerned, ethical propriety of its removal, treatment of the object by the present possessors, and the State's of origin commitment to security and care of the objects;

[...] States, in attempting to reach equitable solutions, consider means of co-operation with other States, entities and individuals through cultural policy in general, including loans, temporary exhibitions, joint excavation activities, research, and restoration.

*The Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Properties* (Paris, 1970), adopted by consensus on 18 May 2015 by the Meeting of States Parties to the convention (Scovazzi, Ferri 2015, 195), provide as follows:

For items of illegally exported, illegally removed or stolen cultural property imported into another State Party before the entry into force of the Convention for any of the States Parties concerned, States Parties are encouraged to find a mutually acceptable agreement which is in accordance with the spirit and the principles of the Convention, taking into account all the relevant circumstances. (*Operational Guidelines*, 103)

The agreements between the Ministry and the American museums go in the direction of settling disputes on the return of cultural properties in order to reach an equitable solution taking into account all the relevant circumstances. This objective should govern the relationship between the States of origin and the States of destination of cultural properties and should also be shared, if this is the case, by non-State entities involved in the movement of cultural properties. In the near future, resort to non-adversarial means to address disputes<sup>19</sup> and a more active use of the Inter-

<sup>19</sup> "Because the origins of international cultural heritage law lie in the battlegrounds of conflict and the underworld of crime, it is not surprising that the normative framework to protect the cultural heritage has been essentially adversarial. Historically, efforts to develop an effective body of cultural heritage law have emphasized formal remedies to past wrongs. Considerable emphasis has been placed on exclusive rights of ownership and the elaboration of rules for the restitution of stolen property or return of illegally exported

governmental Committee for Promoting the Return of Cultural Property, established with UNESCO in 1978, including the procedure for mediation and conciliation adopted under ICPRCP Recommendation no. 4 of 23 September 2010,<sup>20</sup> could be the most effective ways to co-operate in the field of return of cultural properties.<sup>21</sup>

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property. In resolving related disputes, litigation has been a preferred means despite the voices of experience that have urged a greater recourse to mediation and other informal means of dispute resolution when that is feasible. Unfortunately, however, the stakes are often too high in the commercial art world to rely on mediation and other informal techniques" (Nafziger 2009, xix). See also Cornu, Renold 2010, 1.

**20** See UNESCO doc. CLT-2010/CONF.203/COM.16/1 Rev of July 2010, ICPRCP, *Final Report of the Subcommittee of Experts on the Draft Rules of Procedure on the Mediation and Conciliation*.

**21** See also Resolution no. 4, adopted in 2006 in Toronto by the ILA and formulating Principles for cooperation in the mutual protection and transfer of cultural material (ILA, *Report of the Seventy-second Session*, London, 2006, 32 and 337). The principles are based on "the need for a collaborative approach to requests for transfer of cultural material, in order to establish a more productive relationship between and among parties" and on "the need for a spirit of partnership among private and public actors through international cooperation".

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# **From the Multilevel International Legal Framework Towards a New Principle of International Law to Protect Cultural Heritage in Times of Peace and War by States, IOs and Private Actors**

Cristiana Carletti  
(Università degli Studi Roma Tre, Italia)

**Abstract** Detrimental conditions really affecting CH at risk in conflict and post-conflict situations are the result of new warfare modalities and of the new role of public and private actors in illegal activities damaging it since the beginning of the 21st century. So far, at present, the international legal framework in force is not anymore apt to prevent, preserve and restore all immovable and movable goods in times of war: it demands for a different and renewed legal interpretation to make principles, rules, mechanisms and procedures strongly equipped to cope with newfangled challenges attempting to the value and integrity of CH worldwide.

**Summary** 1 Preliminary Remarks. – 2 Conceptual Thesis and Related Analytical Methodology. – 3 Normative Framework. – 3.1 International Treaties and Conventions (Hard Law) to Preserve and Protect Cultural Heritage/Property/Objects in Times of Peace and War. – 3.2 Soft Law Aiming at Preventing, Preserving and Restoring CH in Times of Peace and War. – 4 Operational Framework: the Contribution from Some IOs for the Elaboration of Soft Laws to Prevent, Preserve and Restore CH in Times of Peace and War. – 4.1 ICOMOS. – 4.2 ICCROM. – 4.3 ICOM. – 5. From International Treaties/Hard Laws to Soft Laws, Towards the Elaboration of a New Customary Principle to Prevent, Preserve and Restore CH at Risk in Times of War from Illicit Trafficking.

**Keywords** International law. Cultural heritage. Contemporary conflicts.

## **1 Preliminary Remarks**

The international legal framework on the protection of CH in times of peace and war is extremely complex: it has an accurate multilevel background whose provisions and recommendations are addressed to all concerned stakeholders (Frigo 1986; Forrest 2010; Vigorito 2013; Blake 2015).

Traditional international actors such as States and IOs, but also private collective and individual players, work to protect CH on the global, regional and national scenario. Their commitment is to prevent, protect and punish any damage intentionally causing a loss of the intrinsic value

of the world CH: this definition encompasses all immovable and movable goods that witness ancient historical, geographical, political, social and cultural roots of populations (Fitz Gibbon 2005; Hoffman 2006).

This commitment could be jointly pursued by the aforementioned stakeholders even if according to different approaches: in line with international binding norms in force and with soft laws by States; in reiterating it with the political support of Member States within and by IOs; involving private entities as legal respondents in relation to a new meaning of the commitment itself based on the attribution of a global common value to CH at large (Prott, O’Keefe 1992; Francioni 2007, 2012, 2013).

Detrimental conditions really affecting CH at risk in conflict and post-conflict situations are the result of new warfare modalities and of the new role of public and private actors in illegal activities damaging it since the beginning of the twenty-first century. So far, at present, the international legal framework in force is not anymore apt to prevent, preserve and restore all immovable and movable goods in times of war: it demands for a different and renewed legal interpretation to make principles, rules, mechanisms and procedures strongly equipped to cope with newfangled challenges attempting to the value and integrity of CH worldwide.

## **2 Conceptual Thesis and Related Analytical Methodology**

The international legal framework in force in matter of prevention, preservation and restoration of the WCH in times of peace and war has been progressively and clearly defined, mainly in the second-post war age. States have contributed by elaborating customary principles, then included in key-conventions and translated into binding provisions (Francioni, Del Vecchio, De Caterini 2000; Ciampi 2014). In compliance with these provisions, States have also promoted the elaboration of soft laws, reiterating the relevance of legal commitments but also extending their legal significance and related implementation, especially with reference to CH at risk in conflicts.

At the same time IOs with technical mandate have cooperated issuing their Member States with new operational mechanisms and instruments. The challenge of actualization of international treaties governing the protection of CH, through their implementation by Contracting Parties, could be considered as a means to promote the elaboration of new customary principles: these address public and private entities, beyond institutional stakeholders, to reinforce the prevention, preservation and restoration of CH at risk.

The multiple nature of actors on the scene as well as the intrinsic tangible and intangible value of CH might support the thesis according to which these new principles are based on the recognition of the global common

domain of cultural resources at large. CH compressed protection could endanger their enjoyment by the members of the international community as a whole, and inappropriate management could not ensure the compliance with international binding norms in force while attempting to their uniqueness.

The analytical intent of the Author is to demonstrate that the legal instruments representing the international CH law and including both hard and soft laws are yet relevant but could be reinforced through the elaboration and adoption of new customary principles: the recognition of CH as a global common is at the core of the investigation concerning several examples of rules to be viewed in a new perspective under a mixed public and private global governance.

### 3 Normative Framework

#### 3.1 International Treaties and Conventions (Hard Law) to Preserve and Protect Cultural Heritage/Property/Objects in Times of Peace and War

The international legal framework in force embraces both general norms and principles as well as some *lex specialis* regimes covering both hard and soft laws: as for hard laws (O’Keefe, Prott 2011), they deserve a targeted analysis aimed at focusing on the root causes which put CH in danger (Litton 2011). In this analysis the compliance of Contracting Parties in terms of prevention, preservation and restoration of CH at risk in times of peace and war (Panzera 1993; Chamberlain 2004; R. O’Keefe 2006; Benvenuti, Sapienza 2007; Gerstenblith 2009; Lambert, Rockwell 2010; Lijnzaad 2012; Viejo-Rose, Stig Sørensen 2015) needs to be investigated to confirm their legal commitment to ensure the full implementation of binding norms at stake. This is a plain precondition for the ongoing global action to protect the uniqueness of the international cultural property (Siehr 2012) represented by tangible, movable and immovable property for every people, irrespective of origin and ownership.

Several treaties and conventions have been elaborated, adopted and implemented mainly in the post-WWII period in some of the most relevant institutional systems (mainly UNESCO but also the ICRC system): in this wide legal framework, several definitions of CH in danger are included and unambiguous obligations must be undertaken by Contracting Parties.

For example in the *1954 Hague Convention and related Optional Protocols* aimed at protecting CH in danger in times of war cultural property entails a double protection according to peace and conflict (of international and non-international character, art. 19) situations (art. 2). The

High Contracting Parties must safeguard it in times of peace foreseeing the effects of a potential armed conflict (art. 3); they also undertake to respect cultural property

by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property. (art. 4(1))

In such situations, they

further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party. (art. 4(3)) (Carducci 2000)

Moreover, to ensure appropriate safeguarding in times of peace

The High Contracting Parties undertake to introduce into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it. (art. 7)

Sometimes specific conditions of conflict should encompass the granting of a special protection of cultural property: in these circumstances, it has to be moved to *ad hoc* refuges or to be placed in *ad hoc* centres; so far it obtains a special immunity status, being marked with a distinctive emblem which covers urgent transfer to secure its integrity (arts. 8-10, 13-14).

As it concerns the violation of the Convention

The Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention. (art. 28)

Furthermore the adoption of two optional Protocols to 1954 UNESCO



Convention has been intended to reinforce this legal background.

The first Protocol envisages a preventive approach to avoid exportation of cultural property from an occupied territory during an armed conflict; it also provides for taking it into custody, for returning it to the Country of origin at the end of hostilities and for giving adequate indemnity to the holders in good faith.

The second Protocol details the preventive approach in times of peace, as shown by relevant measures such as

the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property. (art. 5)

It also introduces the imperative military necessity clause for protecting cultural property against an act of hostility (art. 6) and the precautionary approach for acting when an alarming conflict is supposed (arts. 7-8).

An ordinary and an enhanced protection of cultural property is also granted to avoid

a. any illicit export, other removal or transfer of ownership of cultural property; b. any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property; c. any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence. (arts. 9-10)

Finally, the Protocol deserves special attention to the establishment of criminal offences against cultural property in domestic legislations of Parties in order to exercise jurisdiction, prosecution and extradition measures (arts. 15-18). As it regards investigations, criminal or extradition proceedings the greatest measures of mutual legal assistance should be granted by the Parties (art. 19) and completed by other forms of international cooperation and international assistance from UNESCO, in situation of serious violation of the Protocol or in ordinary circumstances respectively (arts. 31-2).

According to the international legal discipline introduced by 1954 UNESCO Convention, it is apparent the creation of relevant binding norms, in coherence with former customary principles and post-WWII treaties' provisions. They deal with specific circumstances, including all pre-in-post conflict settings, asking High Contracting Parties to adopt proper measures to be in compliance with legal commitments contained therein.

In a very different perspective affecting CH at risk in times of war UNESCO Member States have promoted the drafting and adoption of the

*1970 UNESCO Convention* (Francioni, Lenzerini 2008; Scovazzi 2014). Any dangerous factor touching upon the intrinsic value of the WCH is represented by the “illicit import, export and transfer of ownership of cultural property [as] one of the main causes of the impoverishment of the CH of the countries of origin of such property” (art. 2(1)).

By means of the 1970 UNESCO Convention we tackle a further kind of obligation on behalf of Contracting Parties, which translates the domestic obligation to protect the national CHs as enshrined in many Constitutions of UNESCO’s Member States. The duty to preserve the cultural property is essentially preventive. In other words Contracting Parties are required

to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations. (art. 2(2))

This duty is complemented by other legal commitments undertaken by Contracting Parties such as: the setting-up of national services to counteracting illicit import, export and transfer of ownership of cultural property; the introduction of an appropriate certificate authorizing the exporting State; a constructive dialogue with museums and antique dealers to prevent and prohibit them from acquiring cultural property originating in another State Party which has been illegally exported.

In this legal context, the concept of ‘risk’ damaging CH has a partial direct link with any form of hostilities. Only one reference is made to this assumption:

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit. (art. 11)

In addition to the legal commitments undertaken by States as Contracting Parties of the aforementioned international treaties concerning the protection of CH, also international private law has contributed to reinforce the level of compliance to prevent, preserve and protect cultural goods.

The relevant codification promoted by concerned States and other (private) stakeholders resulted into the *1995 Unidroit Convention*, whose provisions are crucial for implementing individual and joint measures and actions to prevent and contrast their illicit trafficking (Carducci 1997; Prott 1989; Bergé 2015).

Even if the robbery of cultural goods occurs in times of peace the 1995 Unidroit Convention could be also applied in relation to situations where hostilities have put at risk or unfortunately destroyed the beauty and the traditional signs and emblems of ancient cultures. In both cases different situations could be legally faced off attempting to the value and integrity of a cultural object.

Contracting Parties have the duty to act for the restitution of stolen cultural objects pertaining to public collections immediately or in due time (“a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place” (art. 3(2)) also providing a fair and reasonable compensation for the possessor in good faith and having exercised due diligence (art. 4) (Prott 1995; Roehrenbeck 2010).

At the same time Contracting Parties must return to Countries of origin illegally exported cultural objects without any agreed permissions and if

the removal of the object from its territory significantly impairs one or more of the following interests: (a) the physical preservation of the object or of its context; (b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the traditional or ritual use of the object by a tribal or indigenous community, or establishes that the object is of significant cultural importance for the requesting State. (art. 5) (Greenfield 2015; Scovazzi 2015)

So far the 1995 Unidroit Convention envisages situations that could touch upon immovable and movable CH, without drafting new customary or hard law but trying to harmonise the domestic legislations of Contracting Parties to reinforce the prevention, preservation and restoration of the CH in danger.

### 3.2 Soft Law Aiming at Preventing, Preserving and Restoring CH in Times of Peace and War

The legal significance of the above mentioned international treaties and conventions is confirmed by the high number of Contracting Parties and the effective compliance to the provisions addressed to public and private competent authorities and entities.

Their content has been progressively complemented to be expanded and updated according to a more general approach, as occurred in the elaboration of soft laws by UNESCO statutory bodies (Carducci 2006). In this perspective we could affirm that the concept of CH at risk or in danger is in line with the provisions of the 1954 UNESCO, 1970 UNESCO and 1995 UNIDROIT Conventions. At the same time we cannot overlook that the prevention, preservation and restoration of CH in times of (new) wars might encompass a multilevel insight (Francioni, Lenzerini 2003, 2008; Bauer 2015). The proposal for an interpretative reading of the abovementioned treaties in drafting soft laws in the last three years could encourage the elaboration of a new customary principle to adopt

a common standard against CH looting and smuggling in conflict zones, preventing and repressing all forms of illicit trafficking and illegal trade of cultural properties.

Just to make a few examples to this scope, the *UNESCO WHC Bonn Declaration* adopted by Member States on 28 June 2015 committed them to

condemn barbaric assaults, violence and crimes committed in recent times by the so called Islamic State of Iraq and the Levant (ISIL) also known as Daesh against the cultural heritage of Iraq. (para. 17)

and “deplore the exposure of and use of cultural heritage sites in military operations” (para. 18) as occurred for Aleppo and the site of Palmyra (para. 19).

The same approach, more in detail, was adopted by the UNESCO DG in the *Declaration of 16 October 2015* on escalating violence around and against cultural and religious heritage in the Middle East: it calls all UNESCO Member States to ensure that CH, including religious sites, is preserved and accessible to all and to resume dialogue in the spirit of mutual understanding. In particular UNESCO 1954 Convention/Protocols and 1970 UNESCO Convention Contracting Parties are

call[ed] upon to refrain from military use or targeting of cultural and natural heritage sites and monuments that constitute flagrant violation of international law (para. 22)

and are reminded

to safeguard cultural and natural heritage of outstanding universal value at the national and international; they are requested to strengthen their national legislation and practice for the protection of cultural and natural heritage. (para. 25)

They are also requested to introduce “more effective measures to combat illicit trafficking and illegal trade of cultural properties” (para. 27) (Bogdanos, William 2005; Bogdanos 2007; Farchakh Bajjaly 2008) as well as to promote intergovernmental and law-enforcement cooperation on the protection and preservation of CH, under the UNESCO leadership and guide, also involving third parties (paras. 28-30-31). In the Declaration, the UN SC is recommended

to analyze the possibility of introducing a specific dimension of heritage protection in the mandates of peacekeeping missions where appropriate and of delivering complementary training modules to military and civil personnel. (para. 23)

In effect the UN SC has progressively deserved special attention to these situations since the early 2015: the adoption of *Res. 2199* of 12 February 2015, co-sponsored by 35 UN Member States, represents a strong message on the issue of the protection of CH in times of war.

The core of the Res. are points 15, 16, 17: the SC firstly “condemns the destruction of CH in Iraq and Syria (in particular by ISIL and ANF) whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects” (Cunliffe, Muhesen, Lostal 2016) (Warren 2008; Vrdoljak 2010).

Because of the illegal activities carried out by ISIL, ANF and other individual groups (“generating income from engaging directly or indirectly in the looting and smuggling of CH items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks”), the SC firstly introduces a general ban on Iraq antiquities; then it requests from UN Member States appropriate steps for preventing the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011 (including by prohibiting cross-borders trade as well as arms-for-antiquities in such items); thirdly it makes a final reference to the cooperative approach from UNESCO, UNODC, Interpol and other international organisations for a joint effective and preventive action to this scope (Sandholtz 2007; Miles 2008).

The strong wording of Res. 2199 resulted into another relevant soft law instrument: the *Declaration* adopted at the end of the *Conference on Safeguarding Endangered CH*, held in Abu Dhabi on 3 December 2016. All the participants, recalling the main contents of the UNESCO Conventions, have been committed to pursue two goals:

The creation of an international fund for the protection of endangered CH in armed conflict, which would help finance preventive and emergency operations, fight against the illicit trafficking of cultural artefacts, as well as contribute to the restoration of damaged cultural property. The creation of an international network of safe havens to temporarily safeguard cultural property endangered by armed conflicts or terrorism on their own territory, or if they cannot be secured at a national level, in a neighbouring country, or as a last resort, in another country, in accordance with international law at the request of the governments concerned, and taking into account the national and regional characteristics and contexts of cultural property to be protected.

Again we could affirm that the soft commitments undertaken by all public and private entities as signatories of the above mentioned Declaration have

encouraged the drafting process of a customary principle to tackle with the unlawful destruction of CH and the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, in the context of armed conflicts, as reported in the recent *Res. 2347* adopted by the UN SC on 24 March 2017 (para. 1). Assumed that

directing unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments may constitute, under certain circumstances and pursuant to international law a war crime and that perpetrators of such attacks must be brought to justice. (para. 4)

in any case “Member States have the primary responsibility in protecting their CH and that efforts to protect CH in the context of armed conflicts” (para. 5). This commitment has to be put into practice by introducing national legislative and operational measures to prevent and counter trafficking in cultural property and related offences (para. 9) and by adopting preventing measures *i.e.* documentation and consolidation of their cultural property in a network of ‘safe havens’ (para. 16, complemented by details contained in para. 17). Also preventive coordination and judicial cooperation with private entities and IOs countering all forms and aspects of trafficking in cultural property and related offences is recommended by the SC to Member States (paras. 11-12).

#### **4 Operational Framework: the Contribution from Some IOs for the Elaboration of Soft Laws to Prevent, Preserve and Restore CH in Times of Peace and War**

As demonstrated in relation to the role and contribution of States/Contracting Parties of the most significant international treaties and soft laws to protect CH in times of peace and war, the proposal for the elaboration of a customary principle concerning the present global challenge countering CH looting and smuggling in conflict zones and preventing and repressing all forms of illicit trafficking and illegal trade of cultural properties could be supported also by some IOs.

In this perspective their contribution might result from several practical and procedural instruments and tools aimed to prevent, preserve and restore CH through the financial and technical assistance offered by their Member States.

The role of ICOMOS, ICCROM and ICOM in this field has a specific significance. They have elaborated and adopted codes of conducts addressed to professionals working in places where CH is in danger. So far the aim is

to prevent and manage damages and restoration, and to avoid intentional pillage of movable objects pertaining to historical, artistic, archaeological collections in cultural sites or museum to be sold in the international market illegally. To this scope they have carried out plenty of programmes and projects and they have promoted and implemented practical tools and processes to protect immovable and movable CH as part of collections located in public or private museums, institutions and foundations being at risk to be damaged and/or illegally pillaged and to be transferred out of the Country of origin (Atwood 2006; Chappell, Polk 2011; Campbell 2013).

#### 4.1 ICOMOS

All the threats impacting on the preservation of CH in times of natural disasters or conflict situations have been taken into proper account by ICOMOS.

It has supported for example the elaboration of its Heritage@Risk Programme in 1999, involving its National Committees, International Scientific Committees and professional networks. The purpose of this programme is: to collect information over heritage places, monuments and sites at risk; to monitor and yearly reporting about their conditions; to propose and share risk management solutions. In order to suggest standard measures and tools the ICORP was established to enhance the level of preparedness within public and private institutions and professionals in relation to natural or human disasters, and to promote better integration of the protection of heritage structures, sites or areas as far as early, response and recovery activities.

In order to preventively assessing alert circumstances putting the CH at risk, ICOMOS launched the *Heritage Alert process*. It is based on a preliminary assessment of cultural property under alert, followed by its inclusion in an *ad hoc* list, to monitor its conditions and to determine the best actions for its conservation in line with a standard alert template. This process entails a very comprehensive assessment covering the analysis of the history, the fabric, the form, the function, the use and design intent as well as the idea and the philosophy behind a building, structure or landscape and its use.

Finally, in relation to conflict situations endangering CH ICOMOS has provided for the adoption of a sort of cultural distinctive emblem reproducing the Blue Shield introduced in the 1954 UNESCO Convention. Its protection is monitored by the competent ICBS - with the support of National Committees: it is composed of representatives of the main five NGOs, *i.e.* the ICA, the ICOM, the ICOMOS, the International Federation of Library Associations and Institutions, the Co-ordinating Council of Audiovisual Archives Associations. This tool represents a practical reply to the new war challenges attempting to the integrity of cultural property at risk, as recently happened in Libyan and Syrian territories.

## 4.2 ICCROM

The potential natural and armed conflicts' risks impacting on CH management have been put under the attention of ICCROM Member States to draft the 10 year multi-partner programme to counter the global losses of cultural immovable and movable property.

The main goal of this complex action is to build capacities in CH disaster risk management. The programme provides for interdisciplinary training addressed to professionals: to undertake first aid as well as integrated risk assessments; to build integrated systems for disaster risk management incorporating disaster preparedness and urban planning; to formulate international and regional risk management plans to face easy or complex emergencies on damaged CH.

The practical approach adopted by the Organization is fully preventive. It aims at reducing negative impacts of risks, adapting interventions in relation to identified CH at risk, releasing first aid and humanitarian measures in conflict and post-conflict situations. This approach also encompasses actions to counter every form of illicit trafficking of cultural property (theft, illicit excavation and removal, illicit export and import, illegal transfer of ownership, production, trade and use of forged documentation, traffic of fake or forged cultural property).

## 4.3 ICOM

To counter CH illicit trafficking ICOM has elaborated common rules addressed to all public and private institutions and museums to harmonise the procedures for the acquisition and transfer of movable objects pertaining to relevant artistic collections.

Along these rules it promotes fruitful cooperation with its partners to support sharing of information, experiences and good practices; it has launched awareness-raising campaigns to sensitise the public opinion as well as professionals and experts; it has elaborated and released *ad hoc* training modules to professionals and experts; it has further created standard inventories of collections and practical guidelines to strengthen the level of security of CH collections.

To reinforce countering CH illicit trafficking ICOM has established an international observatory: it is an innovative network involving public actors (law enforcement agencies) and private entities (research institutions and centres) for data collection and exchange of information on practical tools to prevent and fight against illegal trade in cultural property as well as on domestic legislation and jurisdictional and prosecution means to punish the offenders committing such crimes, in compliance with international norms in force.



Through this body the Organization has created relevant preventive tools to protect CH at risk, mainly in times of peace: the identification procedure named *Object Identification* to classify cultural objects in danger; the *One Hundred Missing Objects collection* that is a list of stolen cultural objects in some regional areas the most exposed to the illicit trafficking; the *Red Lists* which include specific categories of cultural objects in danger in some Countries.

The same tools are useful also with reference to potential conflict situations. ICOM proposal to launch a *Museums' Emergency Programme* goes in this direction. It is based on the collaboration among museums and similar institutions in countries at risk of crisis. The Programme develops training tools addressed to professionals and experts to give a short and long-term response adapted to local contexts. In other terms the Programme is intended to design preventive strategies to be implemented when a potential disaster is foreseen for a better management of endangered CH located in a museum, as occurred in 2005 in Southeast Asia and in 2006 in the Balkans.

## **5 From International Treaties/Hard Laws to Soft Laws, Towards the Elaboration of a New Customary Principle to Prevent, Preserve and Restore CH at Risk in Times of War from Illicit Trafficking**

According to the main features of the above examined legal and operational frameworks, which are the crucial challenges calling for a comprehensive and effective joint response from all concerned stakeholders committed to the protection of CH at risk in times of war?

Indeed the conceptualisation of the global commons is essential to this scope if we consider how the global governance, in particular the UN system, has contributed to its definition beyond the traditional environmental meaning (Kaul, Grunberg, Stern 1999; Schrijver, Prislán 2009; Schrijver 2016).

In general terms

global commons have been traditionally defined as those parts of the planet that fall outside national jurisdictions and to which all nations have access. International law identifies four global commons, namely the High Seas, the Atmosphere, the Antarctica and the Outer Space.

So far, the traditional set of global commons has been progressively extended comprising science, education, information and peace (Baudot 2001; Hess 2008). Also UNESCO has assumed a role of 'international norm-setting' to guide the governance of global common goods such as

knowledge, education, and tangible and intangible CH (Caruthers 1998; Francioni 2003).

In line with general considerations proposed in this contribution in relation to the legal and the operational frameworks, it is evident that neither hard laws nor soft laws in force have deserved specific attention to the unique value of CH in conflict zones at risk from being endangered by illicit trafficking. Only the UN SC started to reflect on the seriousness of this kind of risk, by referring to CH looting and smuggling in conflict zones and to preventing and repressing measures against all forms of illicit trafficking and illegal trade of cultural properties.

Following the tentative definition of global commons to strengthen the intrinsic value of CH as natural or human-made resource, that is accessible to all people, managed by public and private entities (Baslar 1998; Lenzerini, Vrdoljak 2014), but very often in danger, we are in condition to adapt it to our case (Merryman 1989; Gerstenblith 2000; R. O'Keefe 2004).

The joint use of CH by the components of the international community entails the full compliance with international commitments undertaken by States, IOs and private stakeholders, the latter ones getting into contact with public authorities managing the access to and the enjoyment of CH.

All the aforementioned UNESCO and UNIDROIT Conventions deal with preventing, preserving and restoring immovable and movable cultural objects in times of peace and war addressing multiple public and private interests.

Such legal and operational frameworks must be enough severe to ensure the compliance and to avoid an over-exploitation, and/or a misuse of the CH, as well as the illicit trafficking from the country of origin to a new destination, especially when in the former the conflict situation encourages the violation of international norms to protect it (Symeonides 2005).

This consideration has been recently introduced by the ICC to define a new crime pertaining to the international criminal *lex specialis*: the intentional destruction of CH. With reference to the 2012 al-Mahdi's case, being guilty for the commission of a war crime under the ICC Rome Statute (art. 8) for damaging Sufi mausoleums, shrines and mosques in Timbuktu, several provisions of UNESCO 1954, 1970 and 1972 Conventions have been mentioned. The attacks on CH amounted to an assault to shared cultural identity in contemporary conflicts and cannot be unpunished: they attempt to global security and compress cultural human rights (Carcano 2013; Drazewska 2015).

For similar cases, as we have seen in Iraq and Syria, there must be a strong and coordinated action to fight against impunity and to impose accountability on offenders carrying out deliberate destructions of CH. In our opinion, this could go beyond the international criminal law special regime (Ostrom 2006; Grove, Thomas 2008; Ulph 2010; Frulli 2001; Manacorda, Chappell 2011).

Indeed, moving from the 1954 UNESCO Convention and Protocols as well as the assertion contained in Res. 2347 of the UN SC that condemns

the unlawful destruction of CH, inter alia destruction of religious sites and artifacts, as well as the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, in the context of armed conflicts, notably by terrorist groups,

and that “Member States have the primary responsibility in protecting their CH and that efforts to protect CH in the context of armed conflicts”, a new customary principle to prevent, preserve and restore CH in danger *per se* in contemporary conflicts could be proposed. It might encompass the following components (Francioni 2007):

- CH is at risk/in danger in its integrity, to be pillaged, stolen and illegally transferred abroad;
- individual and collective commitment of States, IOs, and all the concerned public and private stakeholders is called for, aimed at strengthening preventive and countering legal and cooperative measures to cope particularly with the preservation of the cultural movable heritage representing the common historical, artistic, archaeological intrinsic values of peoples.

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## **Yemen. A Humanitarian and Cultural Emergency**

Renzo Ravagnan, Massimo Khairallah, Cristina Muradore  
(Italian-Yemeni Centre for the Conservation of Cultural Heritage, Venezia, Italia)

**Abstract** Since March 2015 Yemeni people is experiencing one of the bloodiest conflicts in the country's history. A conflict that is going beyond the international non-armed conflict borders. A mixture of tribalism, sectarianism, proxy war, geopolitical interests and economic factors are heavily altering the Yemeni social fabric. Furthermore, both fighting parties are attacking cultural and archeological sites adding new losses to the long war casualty list. The paper tries to give voice to this cultural emergency, taking into account both the local context and the international legislation regarding the protection of cultural heritage during armed conflicts.

**Summary** 1 Introduction. – 2 The Role of Diplomacy in Supporting Cultural Emergencies. – 3 The Protection of Cultural Heritage in the International Treaties. – 4 The Post-Conflict Scenario and Reconstruction.

**Keywords** Vernacular architecture. Endangered heritage. Humanitarian law.

### **1 Introduction**

Yemen was created by its inhabitants, who rather than sculpting it, built it by putting one stone atop another in a labour that gradually became for the people as natural as breathing. This wonderful, innate propensity for building is one of the most striking aspects of the Yemeni people that you discover when you become acquainted with this country. (Costa, Vicario 1977, 11)

Paolo Costa opened his 1977 volume, *Yemen Land of Builders*, and through two brief sentences he was able to sum up the overwhelming feelings of a newcomer to the unique landscapes of Yemen. From the very first glance, Yemen appears to be a land where human action is expressed widely: from the mountains top till the valley (*wadi*) plains it is possible to find hydraulic works, settlements, observation towers, bridges and terraces. The uniqueness of the historical and cultural context of Yemen is present in both the rural and urban environment, due to the extraordinary architectural homogeneity of dwellings, urban planning and the traditional building

techniques, at least until the arrival of modern building techniques and materials such as reinforced concrete (Nicoletti 1985, 31).

The cities and the villages were constructed in the most defensible areas and their urban assets reflect the land they are lying on, whether along coastal plains or high mountain slopes. The great variety of these settlements are dependent on the geomorphological characteristics of the specific Yemeni region and, in turn, these become a part of the common sense of cultural belonging. Thus, the unique building and urban planning tradition led the country to develop settlements with distinct historic and architectural traits that were refined through development. Until just a few decades ago, Yemen had not opened up to the new socio-economic practices introduced by industrialisation and globalisation, and therefore its architectural features are well-preserved.

When dealing with the tangible and intangible architectural heritage of Yemen, the country's domestic architecture is inevitably described as an extraordinary example of 'spontaneous' or 'vernacular' architecture, which, according to the definition given by Bernard Rudofsky,<sup>1</sup> are creations of mankind that cannot be related to an individual architect or planner, but are the product of the design skills and tradition of a people. Paolo Costa identified these features in Yemeni architecture.

In Yemen, there are two main housing typologies: the first type is the 'tower-house' or 'multi-story house' predominant in the central highlands and north-eastern lowlands, while the second typology, horizontal dwellings, made of different units enclosed by a wall and united by open yards that integrate the domestic space, is prevalent along the coastal plain.

The architectural features of Yemen are not only identifiable in housing but also appear in the urban layout of ancient cities, which share similar elements with other Arab world's medinas, despite the prolonged Yemeni isolation. These fundamental components of the urban setting are: surrounding walls interrupted by monumental gates; the *suq*, a central market divided into sectors; worship places; the *bustan*; the *ḥammam*; and the *samsara* (or caravanserai), which provided lodgings for merchants and their animals. The Friday mosque and the *suq* are the core of the social life of each settlement and have been the most important elements of Middle Eastern cities since the early years of Islam. These urban centres are the personification of the cultural identity of Yemen and are embodied by domestic buildings, monuments and social practices, from craftsmanship to conviviality. As Lewcock (1986, 135-6) points out in his work *The old walled city of Ṣana'a*,

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<sup>1</sup> Bernard Rudofsky (1905-88) was a Moravian-born American writer, architect, collector, teacher, designer, and social historian. He is quoted here for his 1964 work *Architecture Without Architects. A Short Introduction to Non-pedigreed-architecture*, where he provides a demonstration of the artistic, functional, and cultural richness of vernacular architecture.

the character of an historic urban centre is as much defined by its social, commercial and artisanal practices as it is by its buildings alone.

Starting from the end of the 1950s, a large portion of the Yemeni population travelled to the Gulf States (Saudi Arabia, Qatar, United Arab Emirates, Kuwait, Oman, Bahrain) in search of work, but many returned to Yemen during the oil crisis of the 1990s. Those employed as unskilled workers in the oil-boom yards had difficulty in adapting to the traditional building techniques of their country of origin (Dresch 2000, 152). Thus, in a land 'without architects,' traditional building techniques shaped the living spaces of the entire nation, keeping rural areas authentic and intact, while urban areas bumped up against modern materials such as reinforced concrete.

In this context, it is the duty of local institutions and the international community to retain these building traditions and prevent the loss of an important component of the Yemeni cultural identity. The promotion and the transmission of traditional building techniques has proven vital to the preservation of the authenticity and the charm of Yemen's historic centers. Such actions can generate sustainable microeconomic systems, creating new opportunities in a context affected by poverty, unemployment and years of armed conflict. In recent years, national and international measures have helped to safeguard this ancient heritage by restoring Yemeni monuments and have helped to raise awareness of the issue of cultural heritage, primarily among Yemen's young people, who have been involved in various cultural cooperation projects. Yemeni institutions are not exempt from the lessons learned in fieldwork, particularly the importance of combining the enhancement of tangible and intangible heritage; this should be the cornerstone of future initiatives.

## 2 The Role of Diplomacy in Supporting Cultural Emergencies

Conditions have deteriorated during the past two years because of the humanitarian crisis and the ongoing conflict, which began in March 2015 with the launch of *Decisive Storm*, a military campaign headed by Saudi Arabia. After months of ground fighting and air strikes, the country is on the edge of bankruptcy and famine.<sup>2</sup> The issue of cultural heritage has been marginalised from the political agenda and the few national institutions carrying out safeguarding projects have either shut down or lack

2 <https://www.unocha.org/yemen/high-level-pledging-event> (2017-12-15).

resources.<sup>3</sup> Furthermore, both the Saudi coalition and the Houthi militias have attacked cultural and archeological sites in different locations of the country, adding new losses to the already lengthy list of casualties. Bombing the Old City of Sana'a, a WHL site since 1986, is viewed by many as an attack on the country's pride as there were no military targets there.<sup>4</sup> Of the attacks against heritage sites, targets include symbols of the rich cultural and historical past of Yemen including Marib Dam, Dhamar Museum (which contains ancient South Arabian inscriptions) al-Qahira citadel in Ta'izz, the old city of Sa'da and the archeological excavations of Sirwah and Baraqish. Striking monuments, museums, and places of worship is a crime and moreover a crude attempt to wipe out the traces of an ancient cultural identity that are protected by international treaties.

Recent figures report that Yemen now has more than 18 million people in need of humanitarian aid with over one million children heavily malnourished and more than two million people displaced.<sup>5</sup> Streets, bridges, schools, hospitals and other civilian areas were targeted and have left the majority of the population facing enormous difficulties in getting medical assistance. And not only are the Yemeni people under constant attack, but also the heritage sites, artefacts and historic centres.

In the current conflict there is a mixture of tribalism, sectarianism, proxy war and economic factors significantly altering the social fabric of Yemen. Saudi geopolitical interests are at odds with those of Tehran. The former president Ali Abdallah Saleh is supporting the Houthis to remain in the political arena alongside his son, Ahmad Ali, while AQAP and the ISIL are fighting against the Houthis to gain more support in what is a strategic country. A climate of terror is breaking down a long history of coexistence among the different religious communities as previously absent Sunni-Shiite narrative creeps into how the war is being described (Baron, al-Muslimi 2016). Atiaf al-Wazir was one of the first blogger and activist how openly denounced

3 The SFD is a Yemeni independent institution that supports development opportunities through improving access to basic services, enhancing economic opportunities and reducing the vulnerability of the poor as well as building capacities at national level, including local authorities and community structures. Its funding comes from the WB, the AFESD, the Islamic Development Bank and other agencies. In the last years, the 4.7% of its resources have been addressed to conservation projects but now, its CH Unit remained with only few officers and no means.

4 Many articles were issued soon after the first attack on the Old City of Sana'a. Here we are reporting some examples: <https://committeeforculturalpolicy.org/old-city-of-sanaa-in-yemen-damaged-by-bombing/> (2017-12-15); <https://www.theguardian.com/world/gallery/2015/jun/12/old-town-of-sanaa-after-airstrikes-and-before-in-pictures> (2017-12-15); <http://www.telegraph.co.uk/travel/destinations/middle-east/yemen/articles/Yemen-the-Unesco-heritage-slowly-being-destroyed/> (2017-12-15).

5 Ref. UN OCHA *Yemen: humanitarian needs overview 2017*. [http://reliefweb.int/sites/reliefweb.int/files/resources/YEMEN%202017%20HNO\\_Final.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/YEMEN%202017%20HNO_Final.pdf) (2017-07-4).

this phenomenon even before the war had begun. In her blog *Woman from Yemen* she described in many different ways how Yemeni people is affected by this narrative.<sup>6</sup> As the conflict drags on, mounting civilian casualties and a worsening humanitarian crisis have led human rights activists to call for an investigation into human rights violations committed by all sides. UN agencies and NGOs have unsuccessfully called on both parties to avoid targeting civilian infrastructures and to respect humanitarian truces.

The UN SC has not condemned the Saudi military intervention in Yemen nor advised any of its members to withdraw logistical support for the coalition. In addition, the GCC proves to be too compromised to act as a mediator. The only solution proposed thus far was in 2014, during the National Dialogue Conference in collaboration with the UN Special Envoy Jamal Benomar is the creation of a federal system for the country divided into six regions to ensure a stable balance between the calls for independence and autonomy of the northern regions from the southern and allowing the Houthis to gain a place inside the new government.<sup>7</sup> However, until the parties to the conflict give up their self-interested goals, peace talks are unlikely to produce concrete results and fighting will continue on the ground and the country will collapse.

### 3 The Protection of Cultural Heritage in the International Treaties

The concept of CH, reconsidered during the 1972 UNESCO Convention, facilitated the creation of an international cooperation system for the conservation, protection and valorization of cultural properties and natural sites, the value of which is universally recognized. UNESCO introduced the 2003 Convention in October 2003, which was ratified by 134 States. The adoption of the Convention became a milestone in the evolution of international policies for promoting cultural diversity as the international community recognised, for the first time, the need to support cultural manifestations and expressions through a legal and programmatic framework. While fragile, ICH is an important factor in maintaining cultural diversity in the face of growing globalization. Therefore, it is essential that member states take action to protect ICH, draft inventories, adopt legal measures and promote awareness in cooperation with all national, regional and international actors (art. 19(2)).

6 <http://womanfromyemen.blogspot.it/> (2017-12-15).

7 <http://www.merip.org/two-resolutions-draft-constitution-late-developments> (2017-12-15).

With such conventions, and more specifically the 1954 Hague Convention, the protection of CH became the legal responsibility of the international community. The prologue to this convention specifies that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world”. Art. 1 of the Convention defines the term ‘cultural property’ as “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above”. It broadens the definition by adding that “centers containing monuments” are also cultural property.

Yemen ratified the 1954 Hague Convention when it was first introduced and in 1971 was the turn of Saudi Arabia. Both states are also signatories of the other UNESCO Conventions for the protection/safeguarding of CH and of international treaties for the protection of human rights. Yet, the events occurred in the first half of 2015 demonstrate that both States are seriously negligent of the international obligations they are bound to. If the conflict is legally considered as a non-international armed conflict, then warring parties are obliged to “apply as, a minimum, the provisions which relate to respect for cultural property” (art. 19(1)). This means:

Respecting cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property. (art. 4(1))

Undertaking to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. (art. 3(3))

And again

no high contracting party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3. (art. 4(5))

However, these obligations have never been considered by the warring parties in Yemen, even after appeals launched by UNESCO General Director Irina Bokova, who warned all parties involved in the conflict to refrain from targeting the country's unique cultural heritage and using heritage sites for military purposes.<sup>8</sup>

UNESCO provided both the Saudi coalition and Houthis with a list of heritage sites and their geographical coordinates to prevent new air strikes. In addition, in July 2015, UNESCO called for an expert meeting that brought together national and international professionals to discuss an Action Plan for the safeguarding of cultural heritage in Yemen.<sup>9</sup> Then in April 2016, UNESCO and ten leading global museums came together to raise international awareness of the richness of Yemen's culture and history through the *#Unite4Heritage* Campaign. An example of this awareness-raising initiative is Yemen's participation (for the first time) at the *15th International Architecture Exhibition of Venice*, where a joint Dutch and Italian effort set up the national Yemeni pavilion to celebrate Yemeni building tradition. Despite these efforts, a well-defined legal framework and UNESCO appeals, it appears that the international community does not value humanitarian law when geopolitical interests and partisan rivalries are at stake.<sup>10</sup>

However, in a significant move backing the relevant conventions in 2015, the ICC opened its first war crimes trial against Ahmaq al-Faqi al-Mahdi, a jihadi leader accused of demolishing ancient mausoleums in Timbuktu. The ICC condemned him on the 27 of September 2016 after having considered for the first time in its history, a case that treats the destruction of cultural heritage as a war crime.<sup>11</sup> This can be considered a positive sign for future possible prosecutions relating to current conflicts in the Arab world, including Yemen.

## 4 The Post-Conflict Scenario and Reconstruction

In August 2013, the Yemeni Government adopted Law no. 16, which was created to control conservation of cities, areas and sites of historical interest

8 <http://whc.unesco.org/en/news/1278/> (2017-12-15) and <http://whc.unesco.org/en/news/1450/> (2017-12-15).

9 <http://whc.unesco.org/en/news/1325/> and [http://www.unesco.org/new/en/doha/about-this-office/single-view/news/safeguarding\\_yemens\\_cultural\\_heritage/](http://www.unesco.org/new/en/doha/about-this-office/single-view/news/safeguarding_yemens_cultural_heritage/) (2017-12-15).

10 An example of humanitarian law breaking is the open violation of the principle of proportionality when targeting civilian objects deliberately.

11 All the information regarding Al-Mahdi case can be gathered from the ICC website: <https://www.icc-cpi.int/mali/al-mahdi#> (2017-12-15).

of the entire country. This legislation came about from the growing awareness, among both the ruling class and the citizens, regarding the need to safeguard the cultural, architectural and artistic heritage of the *Arabia Felix*.

The ancient tower houses of Sana'a (or Shibam) and the stone villages of Yemen's mountains continue to fascinate us with their beauty and their complexity. Their architecture has its foundation in the buildings' craftsmanship. The building materials, humble and perishable, are primarily of natural origin; and so these incredible architectures require continuous maintenance. Therefore, it is imperative to implement new tools, including legislative, that allow for fast and effective interventions that are urgently needed. And, once a more lasting peace agreement is reached, it will be necessary to set up a national programme to address the cultural emergencies left by the conflict, following international restoration standards.

Thus, it will be important to:

- reinstate and specify management guidelines for both professionals and institutions, following Law no. 16;
- conserve the traditional building techniques as they are the only tools to preserve and respect the buildings themselves while integrating advances in modern technology;
- promote the local workforce, who is the custodian of a millenary tradition at risk of extinction. (Such a tradition has to be recognised, enhanced and transmitted to the new generations of artisans through specific professional trainings).

To carry out these steps it is imperative that the international community and the Yemeni government provide financing for the conservation of cultural properties as part of an emergency fund, created for first aid interventions of the heritage sites and historic centres. This economic aspect should be combined with an operational model to aid urban recovery, including the creation of an independent body entrusted with the supervision of these works.

The concept of urban heritage is well recognised in the culture of the restoration. Urban heritage is not just individual buildings or monuments, but rather individual buildings and monuments placed in a specific context. Examples of some Italian historical centres abandoned by their inhabitants because of poor planning, problems of mobility and the absence of essential facilities leads us to realise that we must be practical and work on a case by case basis. If we want life in Sana'a, Shibam, Zabid and other historic centres to continue, there is a need for a clear and unified vision to follow, broad-spectrum planning, qualified staff and appropriate legislation to regulate the activities. All this should be combined with the respect for the country's beauty, history, constructive traditions, spirit of the community, morphology, scenery and vision.

A conservation methodology that could be applied in this context is the



'adapted' restoration mentioned by Jaques Feiner in his 1997 work. Feiner has developed an analysis of the architectural styles and types of buildings in Sana'a, where he also advanced proposals for the conservation of the city, which combine the conservation of heritage with the right to use public and private spaces, typical of every city, in accordance with its traditions. He proposed interventions through restoration works that, though keeping their traditional character, would make them comfortably habitable. He also suggested promoting ancient knowledge by involving the local workforce specialised in the use of traditional materials and techniques.

In this way, it would be possible to proceed with the restoration of abandoned buildings or those in ruin, with the revitalisation of the urban fabric in the historic center, by boosting employment and generating income. Bonnanfant noted (1996) that, although the use and maintenance of local materials are more expensive than modern materials such as cement, ancient building systems are the only ones capable of ensuring the functionality of the structures without compromising their stability as they were conceived and developed for the climate and geological conditions of the region. In addition, they are also the only materials capable of conserving beauty, humanity, force, vital energy, and identity.

Finally, the creation of a managing independent body or committee would allow both the planning and the realisation of restoration projects, the qualitative works monitoring and compliance (with current regulations) and full financial transparency. There is no doubt that the future of Yemen is in danger, not only because of the political vacuum it could face but also because of the delicate re-building process it will have to undertake. As the international community has not been able to prevent violence from worsening, it must assist Yemeni institutions economically and logistically through the various UN agencies and NGOs. International aid must be used to sustain not only Yemen's humanitarian needs but also its cultural needs, as Yemeni heritage is a vital world heritage.

Practices, traditions and skills represent the common legacy of a community and a fundamental component of its living culture. (Urbinati 2012, 59)

Hence, concrete actions must be taken for both the conservation and reconstruction needs of Yemen's cultural heritage but also to support the people of Yemen in recovering after the difficulties they have faced, as well as build their resilience.

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## **Animals and/or Humans. Ethnography and Mediation of ‘Glocal’ Conflicts in the Carresi of Southern Molise (Italy)**

Letizia Bindi, Katia Ballacchino  
(Università degli Studi del Molise, Campobasso, Italia)

**Abstract** The paper focuses around a particular legal controversy between a ceremonial system in a South-Central area of Italy, including oxen charts races with horses associated to the ritual competitions and animal rights movements’ issues about suspected violence against animals involved in these ceremonials. Ethnographers have been deeply involved in this dispute resolution as experts on community practices and knowledge as well as other scholars in veterinary and animal genetics. The focus of the quarrel has been the ambivalence between local and ‘global hierarchies of value’.

**Summary** 1 Animal Studies and Multispecies Ethnography. – 2 Towards an Archeology of Research on Ceremonies Involving Bovines. – 3 The Carresi Community of Practice. – 4 The Carresi Legal Case.

**Keywords** Ethnography. Intangible Cultural Heritage. Animal Rights Movements. Legal and Social Anthropology.

### **1 Animal Studies and Multispecies Ethnography**

Many scholars in anthropology have recognized that animals, and the relationship maintained with them by the cultures and groups we study, offer an excellent means of understanding some of the most central aspects of these groups’ cultural dynamics (Pitt-Rivers 1954; Evans-Pritchard 1940, 1953; Leach 2007; Lévi-Strauss 1962a, 1962b; Douglas 1966; Harris 1974, 1979; Bateson 1972, 1979; Ingold 2000), especially when the populations in question are hunters and gatherers or rural pastoral groups (Botta, Padiglione 2005). Many have argued that human/animal relationships also represent a valuable lens for conducting across-the-board explorations of the urban and metropolitan cultures of late modernity (Singer 1975; Regan 1983; Mingley 1983; Noske 1997; Digard 2009). Other authors anticipatory move toward the ‘post-human’ dimension (Haraway 2003, 2008) that

This essay has been written together, however we specify that Letizia Bindi wrote paras. 1 and 4; Katia Ballacchino wrote paras. 2 and 3.

some critical scholars see as more respectful of habitats and biodiversity and more inclusive at a local and 'supra-local scale'.

There is also a highly interesting strand of philosophical reflection triggered by the work of Derrida (Vialardi 2016). On the basis of these insights, several authors have begun to posit "multispecies ethnography" as an emerging element of anthropological debate (Kirksey, Helmreich 2010). This emerging field has given rise to efforts to deconstruct conventional human/animal hierarchies and reflect on the alliances, symbiotic relationships, forms of mixing and creative aspects of these multi-faceted relationships. This body of work stems in large part from an anti-species rethinking of Deleuze and Guattari's *Milles Plateaux* (1987) mediated by a postmodern reinterpretation of Donna Haraway's species turn (2008) and the call to "become with" animals launched by Agamben (1998, 2002) and fruitfully taken up by other thinkers.

This approach is interesting in that it allows us to rethink anthropological research by engaging with its two fundamental dimensions – the physical and the cultural – and to productively re-consider the 'anthropology of life' so that the issues of domestication, anthropocentric hierarchies and the complex relationships between man, nature and other living beings are brought to interrogate research that touches on these kinds of relationships and the controversies that often characterise them in this moment of late modernity. This move clearly transcends the classical anthropological paradigm. Specifically, by proposing a critical analysis of practices such as hunting, domestication and animal husbandry as well as the human management of natural resources more generally, this approach urges us to be cautious in new ways and helps us engage with Gregory Bateson's pioneering suggestion of a "cybernetic framework for understanding human/animal interactions" (Bateson 1972).

New forms of genetic knowledge and theories about the origins and development of various animal species together with anti-specism, radical feminist and anti-racist thought have thus enriched a series of recent studies that succeed in addressing the issue of animal subjectivity in a powerful and effective way; this work proposes a focus on the protection and representation of animals as well as the equally important issue of non-human subjects' emotions and passions, an issue that is at the foundation of all 'discourses' about respecting and ensuring animal welfare.

Living with animals (the "living with" that is so central to Haraway's thinking) therefore takes on a wide variety of forms: it can be understood as "companion species" (Haraway 2003) or "unloved others" (Rose, van Dooren 2011), as a special kind of involvement with certain animals in particular (Riley 2006) or as "interpatience" (Candea 2010). Indeed, there are so many forms that we might join in arguing that "human nature is an interspecies relationship" (Haraway 2008, 19).

In light of the theoretical and legal disputes raised by animal rights

movements, a central element of this critical reconsideration is the issue of representation in what Rabinow (1992) has termed the “bio-social” and Foucault “bio-politics” (Helmreich 2009). There is also the equally radical question of ‘voice’ that Appadurai raises (1988, 17) in terms of “being spoken” and “speaking for”.

Reconsidered and reformulated in light of these contributions, anthropological thought ends up developing a new aim, neatly summarised by Kohn (2007, 5):

The goal in multispecies ethnography should not just be to give voice, agency or subjectivity to the non-human to recognize them as others, visible in their difference – but to force us to radically rethink these categories of our analysis as they pertain to all beings.

This approach calls for a hybrid methodology that involves deconstructing humankind’s constant activity of constructing our own objects in order to facilitate the development of more equal relationship with animals. Indeed, animals should no longer be understood as products of human social practice, but rather as autonomous subjects capable of interacting with human societies. In so doing, we can escape from visions of human-human and human/animal relationships as essentially characterized by an anthropocentric and science-oriented metanarrative, by a paradigm of domination that revolves around hierarchies, control and exploitation and fails to consider intersubjective exchanges or forms of cooperation (Balcombe 2009).

Drawing on extensive ethnographic research, we seek to avoid the many pitfalls present in this field in which the starring role of human actors is played out alongside a significant yet ambivalent role played by animals within a larger heritage-oriented framework that serves to cast this close human/animal relationship as habitual and basically ‘natural.’ At the same time, however, animal rights movements have voiced critiques and concerns about these practices, perceiving them as a threat to the wellbeing of animals and raising legal issues surrounding the protection of this fundamental right and the defence of animal subjectivity.

## **2 Towards an Archeology of Research on Ceremonies Involving Bovines**

The approach modelled by Evans-Pritchard and Pitt-Rivers appears to have focused on the symbolic dimension of the human/animal relationship and the metaphorical significance that animals, and especially oxen, in their ethnographies, take on in diverse moments and elements of the collective lives of the populations they studied. However, this aspect converges and

interweaves with the functional role these categories of animals play in traditional societies as an indispensable assistance with subsistence activities (work, food production, clothing and coverings, etc.).

In relation to this basic division between oxen's functional and symbolic value in agro-pastoral societies in Africa and Asia as well as many other rural and pastoral societies in Mediterranean Europe (Duclos 1991; Spitilli 2011), Edmund Leach, in his essay "Anthropological aspects of language" (2007), identifies an interesting set of categories. For example, in terms of taboos and the way various communities organise their thinking about animal species, he finds that oxen are categorised as warm-blooded animals and sometimes (under specific conditions) as edible and domesticated. From this scheme, it appears that they end up in the category of livestock usually considered edible only when castrated (for instance, oxen are eaten whereas bulls are generally not) and grouped together with pigs and sheep on this basis.

In Leach's categorisation, this category of animal shares the most features with pets, animals living inside the domestic space that are not considered edible under any circumstances. Indeed, their defining feature is that the idea of eating them provokes the same disgust as the idea of abusing or eating human beings. They are thus close to 'ego' in terms of both interpersonal relations and symbolic register (for instance, in Leach's essay this category of close and highly domesticated animals comprises 'ego' - who the English anthropologist explicitly includes in his list - as well as dogs, cats, horses - although, interestingly, Leach includes a telling question mark next to this animal - and finally donkeys and goats). Leach's diagram appears to be useful for analysing the complex set of relations at play in the *Carresi* of southern Molise that constitutes the ethnographic basis for the observations on human/animal interactions, specifically men-oxen, that we present here.

In Leach's categorisation, the group of domesticated animals - in their dual role as pets and livestock - stands opposite the group of inanimate creatures, cold-blooded animals, ambiguous and aquatic creatures, game, non-edible wild animals and even zoo animals.

In the case of *Carresi*, the carting communities appear to categorise oxen somewhere between pets, animals with whom they maintain affectionate relationships and intense interactions, and livestock, with whom they maintain relationships that are highly familiar albeit limited to cooperation in agricultural and pastoral activities. These animals are considered edible only under certain circumstances, that is only if they have been castrated (Grasseni 2003). Leach also notes that many languages have a particularly large number of terms for indicating bovines - beginning with English, not to mention the languages of many African and Asian tribes whose lives revolves around herding. All these names indicate not only the sex, age, race, etc. of the animals but also nuances about the way they are used in

agro-pastoral activities as well as the affection-based human/animal relationships that also develop in farming. Indeed, this long list even includes the kind of personalised names – individual names – that are often seen in the carting sphere as well.

### 3 The Carresi Community of Practice

Preparations for the ritual race involve many local families throughout the year, eliciting interest, emotions and a range of activities including small-scale, creative entrepreneurial initiatives. Participants gather together with the animals and celebrate themselves on an annual basis by reaffirming the bond of involvement, cooperation and intimacy that ties humans, oxen and horses together around the foundational ceremonial act. Each group, with its individual and intimately specific cart, becomes a community unto itself beginning from and around the participants' shared knowledge about the practice of the feast (Lave, Wenger 1991).

By extending our ethnographic observation – only briefly mentioned here – beyond the specific moments of collective tradition, we were able to document the ways the communities involved in the Carresi maintained relationships of affection and constant care with their animals as well as a broader human/animal familiarity (going beyond oxen and horses) that children in these communities learn from a very young age.<sup>1</sup> Although these ceremonies are presented as and are in fact largely populated by men, this familiarity with the animal world symbolically extends to women and children as well, comprising these communities' entire system of meaning-making. At the same time however, on an everyday level the spaces used by men, in particular the stables, remain distinct and separate from the spaces managed and inhabited by women. In addition, the people who belong to these communities frequently extend the metaphors associated with the world of carting and with the habits and shapes of the animals to other meaning domains outside of the specific sphere of the Carresi. Humans engage in constant interactions with animals and unavoidably develop deep harmony and intimacy with the oxen and horses that are not limited to the moment of the race itself but rather unfold throughout the year in the life of the stables, in the course of their regular and continuous training sessions, and during more institutionalised trials.

<sup>1</sup> Although by now these communities are deeply modernised and de-ruralised, they continue to manage pets in a collective manner, such as the case of 'village dogs', that is more typical of rural societies than late modern ones. This practice, together with other elements, reveals aspects of ambivalence on the edge between 'traditional' life and new styles of social and collective life that are more in keeping with post-modern urban standards. See also Digard 2009.

Employing behavioural and relational frameworks based on human/animal relationship theories, many authors posit a relationship of engagement (Davis, Maurstad, Cowles 2008, 2013) characterised by intense emotions (for instance, the relationships between humans and pets in the domestic sphere, where the relationship is deeply personalised and affectionate) or “interpatience” (Candea 2010) (when interactions are frequent and intense yet characterised by cooperation for a specific purpose, not detached but involving less caring and anthropomorphisation of the animals involved). In light of the insights offered by recent research in animal studies, we would argue that the Carresi case involves both types of human/animal relationship. Furthermore, attentive observation reveals that the animals may return and respond to the human’s overtures, for instance by playing or by moving in response to certain calls, words, voices or gestures that are more familiar to them.

It is not easy to grasp this universe of differentiated relationships that are layered both over time and according to the type and intensity of relationship by carrying out a superficial observation of the carting performance as it manifests in the peak moments of the race days and subsequent religious procession. It is only by observing the various moments in which the human-oxen or rider-horse relationship is structured and consolidated that it is possible to fully understand the intense interaction required to engage in this competitive endeavour in pursuit of its reward, involving both ceremonial recognition and prestige in the social community.

In recent decades animal rights activists have asserted that “oxen are not born to run”, but in reality, since the traditional agricultural system came to an end, the oxen used in the Carresi races have been genetically selected and raised specifically for the purpose of running in the races. It is only if they turn out to be unsuitable that they are sent to be butchered or used in the more extended circuit of other traditional ceremonial practices, such as the procession of Larino, that uses oxen and cows for purposes other than racing. These oxen are a specific strain of the Podolica breed that is particularly physically lean and rangy, with joints and bones that facilitate the act of running;<sup>2</sup> indeed, it is known in the science of animal husbandry as one of the strains that more easily adapts to a specific environment and the various tasks it has been raised to perform in various periods.

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2 According to various studies carried out since the mid-1900s, the Podolica line of bovines were brought to Italy from central Europe around the fifth century to then spread throughout the peninsula. This kind of bovine continued to be used and bred throughout the Italian peninsula thanks to a specific build that made it particularly well-suited to labour and possessed of a remarkable degree of adaptability. In the first decades of the 1900s, the system of animal husbandry began developing the various ‘races,’ bred for meat and milk production in the North, meat production and work in central Italy, and mainly work in the South. See the following for an overview of the development of different Podolica strains: Bettini 1962; Albertario 1941; Matassino 1983, 1996; Matassino, Ciani 2009.



Furthermore, these animals, chosen from among a population already selected and raised for this specific purpose, are trained and prepared for racing from an early age through a complex system of feeding, cleaning, hydration, grooming, walks, interval training and regular trials leading up to the actual races. These practices are effective in preparing the animals in terms of respiration and musculature and familiarising them with the route they will need to follow.

In short, there is a set of knowledge forms and expert practices (Ingold 2000; Grasseni 2009) aimed at ensuring the animals maintain a constant state of good health and well-being. At the same time, they regularly interact with and gain familiarity with men and horses (usually housed in the same stables) as well as the specific racing equipment, namely the carts, reins, shafts or poles and whips that are usually used to urge the animals on and, especially, direct them along the route. The humans and animals must get to know each other, interact harmoniously and be in excellent health in order to act as a single unit during the course of the race.

During the hectic competitive performance of the Carresi as well as the long months of preparing for and awaiting the main event, humans and animals essentially interact on three levels. Through physical contact (stroking, grooming, massages, feeding, hugs and even kisses, as mentioned above); through sight (careful examinations to ascertain the state of the animals' health and their 'moods', expert scrutiny to understand at a glance whether or not the animal suffers from lameness, disease or other health issues, intense 'sympathetic' exchanges) and, last but not least, the voice - as the carters say, all the animals are capable of recognising tone of voice, including degree of nervousness or calmness. In the Arbëreshë communities, the men often speak to the animals in Albanian because that is what the oxen became accustomed to over the months and years of taming and training. This is a register of familiar tones and words established over time during the various phases of interaction: selecting the animal, bringing it into the stable, accustoming it to the environment and other animals, gentling, clipping, familiarising it with the race track, informal training, interval training and the official races, all leading up to the moment of the actual race. In the same way, the children who live in more constant contact with life in the stables are accustomed to and familiarised with this communicational register from a young age as well, with a part of the stable set aside for them.

Generally speaking, despite the fact that most people in these towns engage in an urban and trans-local lifestyle, these communities display a familiarity with animals that is based on deep understanding and widespread proximity among humans, oxen and horses. The animals wander down the streets of the town, are decorated, walk through the common spaces of the community followed and celebrated by the local population, are blessed in front of the main church, and are observed and recorded in

every thing they do by countless private and professional or semiprofessional videocameras, thereby producing images that will be watched and re-watched throughout the year in every significant moment of collective life. All of this seems to generate absolute familiarity, a kind of true intimacy between humans and animals that one rarely sees in contemporary life, an intimacy based more on care than exploitation – as our ethnographic observation to date has found – that is powerfully shaped by the idea of cooperation among all the components of the ‘cart’ (oxen, horses, and the men and women who support them). This intimate relationship bears no resemblance to the reified and biased representations provided by certain animal rights activists’ intense media attacks; rather, it is characterised by a form of compassion and interaction that deserves to be more fully investigated and promoted in light of the most recent insights of animal studies and zoo-anthropology as a privileged laboratory for developing a new vision of this relationship.

#### 4 The Carresi Legal Case

Although there is a deep solidarity and sense of collaboration and closeness between the people and animals involved in the ceremonial system within local communities, outside these communities animal rights organisations began to launch numerous attacks against the more competition-driven component of the Carresi as early as the late 1980s, claiming that the races involve possible instances of animal abuse and mistreatment. The people involved in these feasts often perceive animal rights groups’ attack and the subsequent intervention and censorship by public authorities (the police, Prosecutor’s Office, NAS, Carabinieri) as invasive and violent, especially in the hectic moments that precede or follow the competitions. During the *Carrese* of San Martino in Pensilis on 30 April 2014, a large group of police unexpectedly intervened during the frantic ritual phase of changing out the oxen and blocked the pairs of animals that had just been unchained in order to carry out on-the-spot tests to ensure that they had not been dosed with illegal drugs in any way, even though regular blood tests had been carried out on the oxen and horses listed by the various associations in the days immediately preceding the event. Faced with what appeared to be a veritable blitz, the men of the cart and numerous bystanders vigorously expressed their objections, accusing the police of mistreating people who were trying honestly and with devotion to preserve their traditions, instead of going after real criminals. This was a moment of extreme tension – talked about and discussed throughout the villages of the Carresi area – that clearly illustrated the clash between the newly consolidated sentiments of animal rights activists, the state-based system of law and order, and local tradition: a sort of emblematic synthesis of the ongoing conflict.

For their part, on several occasions public authorities spoke via their local representatives to insist that they had no intention of deconstructing or dismantling this tradition; rather, they claimed, they sought only to enforce compliance with the rules in a way that would allow everyone to fully and safely enjoy the celebrations, with no harm or detriment to the animals involved, as established by a law passed a few years before.<sup>3</sup> A few days later, a similar situation also occurred in Ururi, where the Carrese was celebrated on 3 May. The municipal square, where the carts pulled up at the end of the race and the jubilant population could finally celebrate the success of the winners, was literally militarised. Everyone immediately noted and commented on this development with disapproval, highlighting that this made both the people involved in the Carresi associations as well as simple supporters feel like criminals. The overall state of tension and threat perceived at the local level, exacerbated by the local press, gradually undermined the stability and internal balance of the Carresi associations, somewhat weakening community ties. Especially in Ururi, the fact that the NAS tests on three carts' oxen and horses showed different results led to a dangerous rift between one of the associations – which claimed to have run “a clean race” – and the others which, on the basis of these results, had evidently continued to use illegal substances despite repeated warnings of random checks and the previous episodes that had occurred in San Martino. Furthermore, one of the associations raised objections about the start of the race, which was allegedly moved up and therefore should have been invalid.

While there had already been some signs of conflict and tension between these two spheres in 2014, the ethnographic research conducted in 2015 found, if possible, a field even more densely filled with significant events and the basis for important insights both theoretical and methodological. After an entire year of heated controversy surrounding the cart races in which the Region proposed a special law to protect these races by exempting them from strict compliance with the rules imposed by the Martini ministerial decree, in April 2015 the controversy reached a dra-

<sup>3</sup> Police authorities made these statements on various public occasions and reiterated them informally, also during the local celebrations in 2014 in the face of the public unrest that had erupted around the episodes described above. In the meantime, some locally and regionally prominent political figures continued to reassert the importance of law and order and the carting associations' compliance with legal regulations as the only true solution for protecting and safeguarding the rituals, and invited these communities to regulate themselves in agreement with ASREM veterinarians and state institutions in order to ensure these ceremonies take place in accordance with current regulations. In this case as well, the 'dominant discourse' supported more severity in national and international regulatory frameworks in an effort to push the local festival communities in the same direction and convince them that this was the only possible way to protect the ceremonies that represent the core of local identity.

matic peak on 25 April (five days after the first Carrese celebration in San Martino in Pensilis) when the Public Prosecutor's Office of Larino issued a warrant to seize the stables of all three of the teams and their relative associations. The seizure of the stables cast three communities into frenzy and confusion and gave rise to a complex process that involved appeals to revoke and reconsider the proceedings, both of which were immediately rejected through a document of recusal. This recusal listed out the elements of the traditional race practices that would need to be changed in order to comply with national regulations and, more generally, adhere to requirements for protecting the welfare of the animals involved. In the place of the traditional races that were not carried out in any of the three municipalities, a number of activities took place between April and May, all very peaceful and civil. These included protests (torchlight processions, symbolic marches along the course of the race, etc.) as well as expressions of these communities' will to defend their ancient ceremonial practices. A local lawyer, formerly president of the regional bar, was tasked with supervising and supporting the drafting of new policy guidelines that would enable the Prosecutor to reconsider the seizure of the stables and allow the races to take place.

As anthropologists, we were brought in as experts (along with a veterinarian and livestock technician) and hence involved in the proceedings. Our technical report focused on both the heritage value of the traditions and the daily practices of caring for and training the oxen and horses involved, as well as ways of potentially resolving the thorniest issues of the case, associated with technical aspects, the terrain of the race track, shoeing and the use of prods. Throughout the proceedings, we also played provided consultation and mediation between the communities and the judicial agencies they were required to interact with (Ballacchino, Bindi 2015; Ballacchino, Bindi 2013/14). The proceedings were brought to a close and the stables subsequently released by the authorities on 22 December 2015, on the basis of the expert reports and new policy guidelines drafted by the Larino Prosecutor's Office. This entire process proved to be extremely interesting in two ways. First, this ethnography involved new ways of resolving conflict and mediating between national and international regulatory frameworks and the practices of local festive communities. Secondly, it offered an opportunity to reflect about the engagement that anthropologists inescapably end up practicing in relation to the heritage communities they work with in the context of efforts to safeguard and valorise these CH actors. Our reflection on this point is still ongoing and we plan to develop more complex considerations in the monograph we are preparing about the overall ethnographic research carried out in the four communities. Beforehand however, we plan to investigate the tangible ways that these communities are adapting and organising a result of the regulations agreed on with the Public Prosecutor in 2015 and any possible

reactions on the part of animal rights movements.

The three Carresi were celebrated again in 2016 and we have continued to monitor and track every stage of their development, identifying critical issues and debates as the Carresi groups sought to adapt to the new, shared regulatory framework, the way the races were actually run, the debates surrounding the work of the Unified Supervisory Commission established by the new regulations and the new issues that emerged following the results of the clinical tests and special audiovisual surveillance the police forces set up during the races.

However, we would also like to put forward an entirely new argument, noting how this case study not only illustrates the vitality and contemporaneity of controversies at the intersection of heritage processes and global hierarchies of value. At the same time, as mentioned above, the process of resolving this court case, with the direct involvement of anthropologists as expert witnesses for the Prosecutor's Office, and providing consultation and mediation with the claims raised by the carting communities, also raises a number of highly interesting questions. On one hand, there is the issue of ethnographers' engagement in the fields and the communities they work with and their grassroots participation in processes of both safeguarding and valorising the CH of heritage communities. These communities see ethnographers as key intermediaries between different levels of decision-making and governance, with all of the problematic implications that this naturally involves on both theoretical and methodological levels. Indeed, social scientists in these spheres are faced with a series of ethical dilemmas about the stance they ought to assume in the field, specifically the relationship of simultaneously studying and collaborating with these communities in safeguarding and valorising their heritage as well as process of preservation and self-documentation and, in some cases, in translating local discourses and practices into a language and rhetoric that can be understood outside the local context to enable dialogue with new sentiments about and representations of the human/animal relationship.

The case we have explored here, involving new regulatory frameworks,<sup>4</sup> heritage claims that manifest and articulate on various levels (local, regional, national and supranational) and a powerful impact by the media that both represents and distorts the phenomena in question,<sup>5</sup> shows how feasts involving animals represent one of the most heated and controver-

4 See the Ministerial decree "Ordinanza contingibile ed urgente che sostituisce l'ordinanza 21 luglio 2009 concernente la disciplina di manifestazioni popolari pubbliche o private nelle quali vengono impiegati equidi, al di fuori degli impianti e dei percorsi ufficialmente autorizzati" (11A12008) (Official Gazette, general series, no. 210, 9 September 2011).

5 Specifically, images of the feasts were used in the past to make police reports and launch criticisms of this ceremonial heritage or, on the other hand, to valorise and promote these practices.

sial sites of the clash between global hierarchies of value and HC that currently constitutes the dialectical terrain of all CH rhetoric and practices.

Indeed, animal welfare organisations view animals as a good that should be preserved and protected from traditional practices, which they consider backward and blind to the new, more reasonable and compassionate awareness of animal rights that is spreading on a global level (with all the ambivalences involved in this idea, as we have noted).

On the other side, the communities that have shared and replicated ritual races for centuries consider the oxen and horses a form of heritage and seek to defend their role as collaborators in the shared ritual goal of celebrating the town's patron saint and community bonds, thereby framing these animals within a broader concept of shared CH that must be defended and protected.

In view of the specific, complex ceremonial context only briefly mentioned here, southern Molise represents a privileged site that is 'good to think with' especially in relation to the life of contemporary humans alongside the world of animals and within their landscape, in terms of both rituals and the enactment of identity-producing, economic and touristic systems as well as processes that promote socialising within the community. As Clifford Geertz has noted, seeing heaven in a grain of sand is not a trick only poets can accomplish, and anthropologists, constantly navigating back and forth between the particular and the universal, can seek to explore global claims and demands for human and animal rights in a grain of sand, represented in this case by the Carresi. Perhaps this effort might lead to a useful deconstruction of misleading media rhetoric and a reflection on effective ways of thinking about intimate local values and cultural diversity, subjects that we believe deserve to be explored with greater meticulousness and scientific accuracy.

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# **Territories, Mega-Mining and the Defence of Indigenous Cultural and Natural Heritage: Case Studies from Mexico**

Giovanna Gasparello

(Dirección de Etnología y Antropología Social, Instituto Nacional de Antropología e Historia, Mexico City, Mexico)

**Abstract** This paper addresses the relationship between the defence of Indigenous territories against mining processes and the defence of their cultures and both daily and ritual manifestations. This is a mutually strengthening relationship that is based on the cultural significance of territory and the territorial roots of cultural practices. I describe two cases of the different uses of the demand for cultural recognition as a means for territorial defence in Mexico. The Wixárika people have claimed the sacred territory of Wirikuta as ICH, appealing to national and international institutions for its protection. The peoples of the Montaña Region of Guerrero appealed at Land Law and for the right to free, prior and informed consultation, while rejecting institutional projects of territorial protection.

**Summary** 1 Preliminary Remarks. – 2 Geo-graphies, Territory and Rituals. – 3 Indigenous Geo-graphies and Territorial Looting. – 4 “Wirikuta no se vende, ¡se ama y se defiende!”. – 5 Mining and Community Resistance in La Montaña of Guerrero. – 6 Heritage and Autonomy. – 7 Culture and Territory: Mutual Defence in Contexts of Violence.

**Keywords** Indigenous people. Mining. Mexico.

## **1 Preliminary Remarks**

This paper addresses the relationship between the defence of Indigenous territories against mining processes and the defence of their cultures and both daily and ritual manifestations. This is a mutually strengthening relationship that is based on the cultural significance of territory and the territorial roots of cultural practices, whose interweaving is inseparable and valued in contemporary Indigenous struggles. Territorial protection and cultural heritagisation are controversial mechanisms that at times are sought after (while at other times being rejected) by the Indigenous peoples of Mexico. I will describe two emblematic cases of the different uses of the demand for cultural recognition as a means for territorial defence. In the first case, the Wixárika people have claimed the sacred territory of Wirikuta as ICH, appealing to national and international institutions for

its protection. In the second case, the people of the Montaña Region of Guerrero used a strategy based on Land Law and appealed for the right to free, prior and informed consultation, while rejecting institutional projects of territorial protection.

## 2 Geo-graphies, Territory and Rituals

Ceremonies, rituals and festivals are living and changing expressions of contemporary Indigenous cultures. They include the world view that characterises each group, and reaffirm the close link between people and the territory where they live, therefore invoking a positive relationship with the natural elements on which human survival depends.

In reference to the concept of geographer Carlos Walter Porto-Gonçalves, I understand *territory* as an entity formed by culture and history, a place “in which identity is rooted in that which binds the real, the imaginary and the symbolic” (2001, 9); culture appropriates land, gives it meaning, and co-evolves with nature, defining the collective and individual identity of its inhabitants.

The mutually constitutive relationship between territory and culture has been widely studied within the field of anthropology. Gilberto Giménez coined the definition of *cultural territories* as being “often superimposed in terms of geography, economy and geopolitics, as seen from space-expressive symbolic appropriation” (2000, 26). Giménez demarcates three dimensions in the relationship between culture and territory: territory as a form of cultural objectification; a range of institutions and spatially localised cultural practices (for example ritual and ceremonial practices); and as an object of representation, emotional attachment and a symbol of socio-territorial belonging (Giménez 2000, 28-9). In his definition of *biocultural territory*, Eckart Boege (2008) insists on “domesticated biodiversity” and the “use of natural resources as cultural patterns”. Finally, the interdisciplinary perspective of ethnoecology has defined the *cosmos-corpor-praxis set*, that is the “productive practice (*praxis*) organized under a repertoire of traditional knowledge (*corpus*) and, relating the interpretation of nature with that task, the symbolic system in relation to the belief system (*cosmos*) connected to rituals and origin myths” (Toledo et al. 1993, as quoted in Boege 2008).

According to Zárata, the ritual space is “a privileged area used to show the processes of meaning and symbolic appropriation of a particular territory” (2014, 207). The *geo-graphies* (Porto-Gonçalves 2001) of Indigenous territories are culturally and symbolically marked: mountains, springs and other natural sites are sacred places of worship, where there are natural forces, powers and saints that arrange the world and give meaning to human existence; paths and roads are the busiest pilgrimage routes for many communities during rituals and celebrations.

### 3 Indigenous Geo-graphies and Territorial Looting

In recent years, the indiscriminate exploitation of natural resources has jeopardized not only territorial integrity, but also the survival of cultures and peoples themselves. This ‘predatory capitalism’, based on the plundering of natural resources, is the clear manifestation of the process defined by Harvey (2004) as “accumulation by dispossession”, which is the commodification of natural and cultural commons, and its intensive exploitation (in most cases of a transnational nature and export-oriented for consumption on the world market).

Territorial expropriation connected to the ‘new extraction’ process (Dougherty 2016),<sup>1</sup> where territories are uniformed and converted into enclaves of export, involves the expropriation of ecological, economic and socio-cultural diversity, which are deeply intertwined dimensions (Escobar 2011).

As a form of colonial violence, expropriation is basically an expropriation of livelihood, the means through which life forms emerge and are re-created. (Machado 2011, 147)

In addition to being one of the most aggressive forms of territorial looting, mining represents a paradigmatic expression of the same: “probably more than any other activity, the historical evolution of modern mining is intrinsically linked to the emergence, constitution and political avatars of colonialism/coloniality” (Machado 2011, 141), particularly in Latin America. This renovated colonial process has a particular impact on violence towards Indigenous peoples: in Mexico, 14% of the national territory is under mining concessions,<sup>2</sup> a figure that rises to 17% in Indigenous territories (Boege 2013;<sup>3</sup> López Bárcenas s.d.). The country’s current Mining Law determines that mining is the preferred utility over any other activity on the ground, which can lead to territorial expropriation in order to carry out mining activities over any other interest. This contravenes the provisions of ILO 169 Convention, which raises the fundamental right to consultation (López Bárcenas 2010, 2013).

Today the traditional underground mines, which continue to claim dozens of lives in the explosions and landslides occurring inside, have largely

1 The phrase refers to “industrial transformations in global extractive industries, which encourage the expansion of extractive activity across the global south and elicit greater levels of resistance from civil society across a scalar level” (Dougherty 2016, 3).

2 Gobierno de los Estados Unidos Mexicanos 2015, 533.

3 Boege, Eckart (2013). “Minería: el despojo de los indígenas de sus territorios en el siglo XXI”. *La Jornada del Campo*, 69, 15 junio.

given way to the even more nefarious opencast mining, or ‘toxic megamining’, which uses huge quantities of water and chemicals such as cyanide and arsenic, and causes grave environmental liabilities.<sup>4</sup> Due to this situation, the OCMAL has identified at least 212 conflicts, of which 38 are in Peru and 37 in Mexico.<sup>5</sup>

Indigenous peoples are the ones most affected by this process due to the wealth of the territories they inhabit and the relationship that Indigenous societies have with territory, expressed in the whole of *praxis-corpus-cosmos* (the practices of agricultural use, health-based, social and economic knowledge connected to territory, and the symbolic and ritual universe that give it order). For this reason, territorial expropriation often means cultural destruction and ethnocide.

Moreover, Indigenous peoples are the main protagonists of the struggles of resistance against territorial looting projects. Within the territorial and cultural defence there is a relationship of necessity: ‘biocultural’ territory is a condition for cultural reproduction, therefore the perpetuation of cultural events is a form of territorial defence, as is the explicit defence of cultural corpus by means of immaterial heritage defence. At the same time, the Indigenous peoples’ defence of land and territory involves the defence of cultural corpus as a whole. The defence of holy places for Indigenous spirituality and ritual geography, of biodiversity that is the basis for medicine and traditional food as well as production activities, is the driving force of the struggles that utilise creative mobilisation, direct action and legal struggle.

The struggles for territorial defence are therefore protecting a way of life; these manifestations represent the resistance to neo-colonial expropriation. As an expression of diversity, cultures and their manifestations are a form of resistance practiced by individuals, historical subjects of their own particular cultures, economies and ecologies.

#### **4 “Wirikuta no se vende, ¡se ama y se defiende!”**

The Wixárika people currently live in central-western Mexico, in the Sierra Madre Occidental.<sup>6</sup> Their territory spans over the states of Jalisco, Nayarit, Zacatecas and Durango. In the Wixárika culture, the spiritual plane has

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4 These are “solid or liquid residues that are generally dangerous to the environment and human health that are left as remnants of mining activity” (Infante 2011, p.3).

5 See [http://mapa.conflictosmineros.net/ocmal\\_db](http://mapa.conflictosmineros.net/ocmal_db) (2017-12-15). The conflict in the Montaña Region of Guerrero is not taken into account by the Observatory, therefore the figure for Mexico increases to 38 conflicts.

6 The title of the paragraph is the slogan for the campaign for the defence of the sacred territory of Wixárika people.

a special relevance and articulates the other organisational aspects: self-government, healing and educational processes, administration of justice, as well as material production and reproduction, *i.e.* agriculture and trade.

The 20,000 Wixárika, people living in the five communities and political-ceremonial centres as well as in remote villages located amongst about 50,000 ha of arid mountains and deep canyons, have interwoven their territory for centuries.

They do blood sacrifices, ceremonies and pilgrimages to holy places located throughout western Mexico. These practices relate changing kinship ties and subsistence production sites with a surrounding system of worship, religious posts in native temples and long pilgrimages to sacred sites that are part of what is called a 'root' network. [...] Over the centuries, this system of social organization has spread throughout more than 90,000 km<sup>2</sup> in five states that make up the ceremonial territory or *Kiekari*. (Liffman 2012, 37)

The Wixárika territoriality expresses the ritual relationship between Indigenous families and their gods: *Kiekari* (cultural territory) is constructed within the connection between the shrine (*xiriki*) that exists in every household and the twenty temples (*tukipa*) located on the ancient roads, which lead to the five corners of creation that define the east, south, west, north and center boundaries of the territory (Liffman 2012, 95). Each cardinal point corresponds to a sacred site, the Wixárika centre of "radial territoriality" (Liffman 2012, 37).

The pilgrimages along the sacred *geo-graphy* instituted a spatial order of the lived world while rituals and sacrifices made in every shrine, temple or sacred site maintain reciprocity between the people and their gods, and therefore control natural phenomena and the fertility of the earth and the people.

For the Wixáritari<sup>7</sup> people, pilgrimage is part of their way of life and living in the world and it asserts a logic of territorial appropriation that goes far beyond the territory used for living and production (subsistence and material reproduction), covering a broad range of that which is 'symbolic' and equally necessary to cultural reproduction. Therefore, the Wixáritaris claim cultural rights to a territory that, according to land legislation, belongs to other population centres, which are often non-Indigenous communities.

This is the case of the Wirikuta sacred site, which lies more than 400 km in a straight line from the center of the territorial residence of the Wixárika people. Wirikuta covers a large area (140,200 ha) between the

7 The collective name of the Wixárika people.

plains and the Sierra de Catorce. The Cerro Quemado, home of Father Sun Tatewari and Big Brother Tamatsi Kaenyumare, the Deer, “seated above the garden of peyote in the Wirikuta desert” is in the mountainous part (Liffman 2012, 129). Those in charge of the religious Wixárika rituals from each settlement and each temple make an annual pilgrimage to this place. This journey is done on foot and takes about forty days round trip. Upon reaching Wirikuta, the *kawiteros* carry the sacrificial offerings to the rising sun and ‘hunt’ the peyote, a sacred cactus that represents the god-deer, and has entheogenic and psychedelic properties. They take their ‘meat’ back home to renew the life of the whole group, because the peyote-deer will turn into corn following its ceremonial consumption (Liffman 2012). In Wirikuta, there are an array of altars located on hills and springs.

The sacred territory of Wirikuta has been the object of protection and heritagisation policies that are supported by the authorities and representatives of the Huichol people. The strategy that focuses on cultural territory heritagisation is explained by the fact that the Wixaritari do not inhabit many of the territories they claim as part of their own biocultural territory, and therefore cannot defend them by means of demanding compliance with property rights grounded in agrarian legislation.

In 2001, following an express request by the Wixárika people, the state government of San Luis Potosí declared Wirikuta and the Ruta Wixárika Histórico Cultural as a Natural Sacred Site and a ANP, with an area of 140,000 ha. According to the Area Management Plan (212), to “dump or discharge pollutants [...] or divert water flows; and substantially modify the landscape” is prohibited in the core zone. Since 2004, the INAH has requested that Wirikuta be registered on the WHL of UNESCO,<sup>8</sup> but the application has not been successful, as I will later explain. It is evident that the Mexican government does not have much interest in the process, as the eventual recognition of the sacred heritage site would restrict mining activities in the area, particularly those which have been widely favoured by Mexican authorities.

The heritagisation claim of the Wixárika sacred territory has intensified as a defence strategy against mining. Although underground mining has marked the region since the colonial era, this activity reemerged as open-cast mega-mining with an enormous devastation potential. In 2005, the Canadian company *First Majestic Silver* obtained 22 concessions, totalling 6,300 ha, 70% of which are within the ANP (approximately 45 km<sup>2</sup>). But the greatest threat came in 2011 with the *Universo Gold-Silver Project*, launched by *Revolution Resources* (Canada) and *Frisco* (Mexico), concessionaires of 59,000 ha, which equates to 42% of the total surface area of the ANP.

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8 <http://whc.unesco.org/en/tentativelists/1959/> (2017-12-15).



If allowed to advance in mineral exploitation, such projects could irreparably damage Wixárika cultural reproduction, whose high level of resilience manifested over the course of time could hardly resist the transformation of a sacred mountain into a crater, the ‘garden of peyote’ into a plain to be crossed by endless traffic of cargo trucks, and the sacred springs into poisoned wells.

Using heritage discourse as tool for territorial defence, in 2012 the Unión Wixárika de Centros Ceremoniales Jalisco, Durango y Nayarit A.C., requested UNESCO to register the Wirikuta Pilgrimage on the USL,<sup>9</sup> with which they seek not only the heritagisation of the territory, but also of the lived and performed space that takes part in the pilgrimage.

In 2013, the Unión Wixárika and the Consejo Regional Wixárika released a statement demanding that the Mexican government “initiate and carry out the process for our sacred territory of Wirikuta to receive protection and the effective recognition by UNESCO, not only regarding the 2003 UNESCO Convention, but also the 1972 UNESCO Convention”.<sup>10</sup>

The legal defence strategy held up by the Wixárika people’s representatives against the mining companies, focused on the lack of respect for the right to free, prior and informed consultation, as recognised by the ILO Convention no. 169. They claimed that Indigenous land rights do not only include land and surfaces on which they have established their communities, but that habitat and environment must also be recognised. The right to consultation has also played an important role in the negotiations related to the recognition of Wirikuta’s heritage. In 2013, the ICSICH rejected the registration of the pilgrimage on the homonymous list because the Mexican government did not involve all Wixárika communities in the consultation process; this was done in a way that the right to consultation (that the Wixárika communities made an appeal for) was used against them, and the Mexican government benefitted from their faults. It is important to note the underlying vice in UNESCO’s decision, which limited itself to only lightly pointing out the fact that the government itself put the site at risk by granting mining concessions.

Between 2012 and 2013, appeals filed by the Consejo Regional Wixárika en Defensa de Wirikuta were accepted and all mining concessions within the area were suspended (but not cancelled) in order to resolve the conflict. These concessions will remain valid until 2060.

Like the legal defence, which has appealed to both international law and forums (such as the UN) and to national legislation and Mexico’s own regu-

9 *Declaration of the Unión Wixárika to propose the Wirikuta Pilgrimage as Cultural Heritage of Humanity*, 13 March 2012.

10 <https://cencos.wordpress.com/2013/07/02/el-consejo-regional-wixarika-y-la-union-wixarika-plantean-se-declare-wirikuta-patrimonio-natural-y-cultural-y-no-solo-inmaterial/> (2017-12-15).

latory system, the campaign that was organized to inform, raise awareness and coordinate protests was carried out amongst different social spheres. On the one hand, it opened up the possibility for organisations and solidarity groups to participate in some of the traditional celebrations, thus sharing sacred rituals with those who showed willingness to support the anti-mining struggle. The risk of desacralising the discourses and practices that had previously been covetously concealed, an implicit element of this process, is justified by the imposing risk perceived by the Indigenous people (Liffman, forthcoming). Examples of this process are the recurring invitations to NGOs, the media and 'organized civil society' to participate in the rituals and spiritual ceremonies that give structure to the calendar and take place within the sacred sites of the Wixárika geography. This began with the opening of the collective divination held in Pariteka, the point of the sun's emergence, in February 2012.

Also, the Consejo Regional Wixárika itself has favored "the almost museum-like exhibition of sacred symbols, practices and discourses by Wixárikari ceremonial experts" (Liffman, forthcoming) as well as the spectacularisation of some of the most striking and folkloric artistic manifestations. It has promoted the widespread dissemination of a standardised image of the Wixárika people by using a broad spectrum of media and promoting massive events.

An example of this was the Wirikuta Fest in 2012, which had the intention of socialising the cause and raising funds to support the overall defence of Wirikuta. The event was attended by more than 55,000 people, and a dozen well-known rock bands performed at the show. Between 2010 and 2014, several short documentaries were made and a feature film was released with significant international production and distribution. *Huichol. The Last Guardians of Peyote* (Hernan Vilchéz and Paola Stefani, 2014) tells the history and traditions of the Wixárika people.

## 5 Mining and Community Resistance in La Montaña of Guerrero

The Montaña Region of Guerrero, in southern Mexico, is inhabited by different Indigenous groups, such as the Mè'phàà, Na saavi and Nahua, as well as by non-Indigenous communities.

The territory of the Montaña Region, like the Wixárika *Kiekari*, is socially and politically constructed by the collective subjects who inhabit and claim it, while at the same time being the object of strong ritualisation practices. For example, the Mè'phàà celebration of Tata Bègò or San Marcos, which separates the dry season from the rainy season, is a stage of the ritual cycle that continues with the feast of the Holy Cross, which coincides with the planting of corn, in early May. There is a feast in honour of San

Miguel where the first new corn<sup>11</sup> is received, and in January there is a fire ceremony that celebrates the community authorities taking on their new positions and gives thanks for the harvest (Dehouve 2007, 2010; Guerrero Gómez 2006). This ritual cycle – which is practiced amongst the different Indigenous communities – accompanies the agricultural cycle and shows how material production and social and symbolic reproduction are closely linked and rooted in territory and natural elements. The territory of the Montaña Region is a symbolic map marked by multiple sacred sites, where rituals dedicated to *natural powers and spaces* are held and regulate the lives of women and men: Agu (Fire), Ak<sup>h</sup>a? (the Sun) and Gõ? (the Moon), Mbaa (Earth), Huba (Hill) and the Water Spring.<sup>12</sup>

Festivals and ceremonial dances, with music, costumes and masks that contain the characteristics of each of these elements, are one of the most valuable aspects of Mè'phàà culture. The participation of young people, children and the elderly, women and men, each with their own role, shows that the permanence and reproduction of the celebrations and rituals is not to up for debate, despite intense migration and cultural globalisation (Gasparello, forthcoming; Neff 1994).

For years, the Sierra and Montaña regions have been in the crosshairs of mining companies, since they make up what is known as the 'Golden Belt'. This is the area that houses the largest gold mines in Latin America (Los Filos-El Bermejil and Nukay in the municipality Eduardo Neri, Media Luna in the municipality of Cocula, and others), all of which are opencast and operated by foreign companies. From 2010 to 2014, the mining concessions pertaining to the territory of the state of Guerrero doubled, rising from 10.66% to 22.62%.<sup>13</sup>

According to the Tlachinollan Human Rights Center, in the Costa Chica and Montaña regions “between 2005 and 2010, almost 200,000 ha of land have been turned over by the Federal Government to foreign companies by means of 50-year concessions that allow them to conduct exploration and mining without regard to the Indigenous peoples’ rights to territory and consultation”.<sup>14</sup>

Two major concessions affect the Montaña Region: the Diana-San Javier

11 This refers to tender, new ears of corn. In Mexico, as in the rest of Mesoamerica, corn is the base of the Indigenous peoples’ diet, which is why it has been made sacred and ritualised since the pre-Hispanic era.

12 The phonetic transcription of these words is taken from the *Basic Mè'phàà vocabulary*. SIL-Mexico Electronic Working Papers, 9. URL <http://www.mexico.sil.org/resources/archives/56751> (2017-12-15).

13 Secretaría de Economía (2014), *Panorama Minero del Estado de Guerrero*. México: Servicio Geológico Mexicano.

14 <http://www.tlachinollan.org/Casos/mineria-en-la-montana-y-costa-chica-de-guerrero-simbolo-de-esclavitud.html> (2017-12-15).

concession in the eastern part, and that which came be known as the Corazón de Tinieblas in the western part. The first of the two is an active mining project led by the Canadian company Camsim Minas on a concession of approximately 15,000 ha. In the second case, the granting of 50,000 ha affects the lands of several Indigenous communities: Totomixtlahuaca, Acatepec, Tenamazapa, Pascala de Oro, Iliatenco, Tierra Colorada, Tilapa, San Miguel del Progreso and Colombia de Guadalupe. The concession was granted to the English company Hochschild Mining, who left the project in 2016 after being sued by the affected communities; however, the concession is still valid and available.

But the Indigenous peoples of these lands know how to defend their rights. This is where dozens of Mè'phàà, Na Saavi, Nahua and Mestiza communities in 1995 formed the CRAC-PC, an autonomous organisation that is responsible for ensuring security and justice in the region. In November 2010, company officials from Hoschild Mining, which at the time was the holder of the Corazón de Tinieblas concession, presented themselves at the offices of the CRAC-PC to report that they would perform overflights in the region and that they were given permission to do so by the INEGI and the SEDENA.

The CRAC-PC soon began to alert communities across the region by organizing an information campaign and resistance against extraction projects. The mobilisation was immediately joined by productive associations, community radio stations that broadcasted in the area, as well as students and professors at the Universidad de Pueblos del Sur and Universidad Intercultural de Guerrero, which are both based in the region.

Since 2011, regional assemblies frequently took place so as to define a strategy for the integrated defence of the territory. The Indigenous communities of the Montaña Region claimed the need to safeguard ecological, cultural and productive integrity, and expressed their rejection of any extractive intervention, regardless of the compensation offered. At the same time deep internal conflicts impacted the CRAC-PC, which have been interpreted as 'the engineering of conflict', which is a divisive tactic that is often implemented by transnationals to undermine the organisational capacity of those who oppose dispossession by their projects (Mercado Vivanco 2014).

Affected agrarian groups mobilised their community structure (based on the cargo system and the communal assembly) in the organisational process that gradually developed against mining. In 2011 the CRAADT was formed. Through mobilisation, the Council has reached national visibility declared the Montaña Region as a "mining-free territory" in July 2015.

Unlike the heritage claim of the Wixaritari, the CRAADT of the Montaña categorically rejects all mining concessions and the creation of the Biosphere Reserve in the Montaña, which was proposed in 2012 by the CONANP and the SEMAREN, with the institutional support of the Univer-

sidad Intercultural de Guerrero. The Concejo claims that the inhabitants of the twelve villages that would be affected by the Reserve project (with a total area of 157,896 ha) have not been consulted, as in the case of the mining projects.

Therefore, it states that

We, the Native peoples of the Montaña Region, publicly reiterate our opposition to the creation of a biosphere reserve in this region that is forgotten by the government authorities of Guerrero, because it implies that the federal government may take control of our ancestral lands; it would also subject us to legalities that are foreign to our ways of community organization, prohibiting the practices of our traditional activities related to the use and enjoyment of our natural resources. Our concerns about the impact of the conservation and mining projects that the government is promoting on our lands are serious, legitimate and informed.<sup>15</sup>

There is an explicit rejection of conservation policies through which natural commons can be used to access “programs of national or international stimuli, such as payment for environmental services, and access to green or fair markets” (CONANP).<sup>16</sup> The Consejo claimed that “our communities will be in charge of the regulation, monitoring and maintenance of ancestrally conserved lands. No longer will we accept certificates, or enroll in any official figure of our ancestrally conserved lands”, emphasising the collective and historical (ancestral) responsibility of Indigenous peoples in the effective conservation of their territories.

In addition to the mobilisation, the Tlachinollan Human Rights assisted in devising a legal defence strategy against mining concessions. The strategy is based on international laws regarding human rights, and national agricultural legislation. In the first stage, ‘tough’ assemblies were carried out in many villages. In these assemblies, the eligible shared land owners voted on Agreement Acts in which it was stated that exploration and mining were not allowed on their territory. Those Acts were then noted in the Registro Agrario Nacional.

In 2013, the community of San Miguel del Progreso (*Juiba Wajiiin* in Mè’phàà), whose territory makes up 80% of the Corazón de Tinieblas concession, filed a petition for relief stating that the delivery of concession titles based on the Mining Law violated the Constitution and international treaties ratified by the Mexican State. The ruling issued in 2014 found that

<sup>15</sup> Consejo Regional de Autoridades Agrarias en Defensa del Territorio, Press Release, 29 April 2013.

<sup>16</sup> [http://www.conanp.gob.mx/que\\_hacemos/areas\\_certi.php](http://www.conanp.gob.mx/que_hacemos/areas_certi.php) (2017-12-15).

the Mè'phàà community's rights had been violated due to the granting of concessions that did not respect their right to free, prior and informed consultation, as provided in ILO Convention no. 169. Finally, the case went on to the Supreme Court after pointing out the unconstitutionality of the Mining Law.

In 2016, with the ongoing trial, Hochschild Mining withdrew the project from the region. The concession, however, is still available for new investors.

## **6 Heritage and Autonomy**

In this context, the question arises whether the characterisation (and the eventual legal protection) of cultural and spiritual expression as ICH and of territory as CNH can be useful tools for their defence.

The arguments in this respect are contradictory. As we see in the case of the Wixárika people, the use of heritage as a means of protection can be a powerful tool for the legal defence of territory and culture. The vision of CH 'from below' refers to a "sense of belonging focused on the constitutive role of ideas and cultural values of individuals, communities and nation states as [...] an event created by the free decision of a group of people to take, carry and transmit cultural behavior" (Arizpe, Nalda as quoted in Machuca 2004, 75).

But the heritagisation of life also has many risks. Heritage is a value-laden representation of a hegemonic project of symbolic domination, a concept which "involves the regulation and negotiation of the multiplicity of meanings of the past, as well as the arbitration or mediation of cultural and social policies of identity, belonging and exclusion" (IUAES-ISCC Commission on ICH 2012, 27). An important limit found in heritagisation processes involving Indigenous peoples and cultures lies in the racist and mononational prejudice (one State = nation = culture) that characterises the institutional participation of many states, as is the case of Mexico. Therefore, to consider Indigenous cultures and cultural territories as 'intangible heritage of Mexico' avoids the explicit recognition of culture bearers as the rightful owners of their cultural manifestations.

In the case of heritagisation processes of natural and cultural goods, the most obvious risk is its 'extractive' use, that is with the aim of dispossessing the inhabitants (in this case Indigenous peoples) of their sovereignty over the territories where they live and with the right to determine their own forms of land use and development plans. This reality is evident in the ruling of the CRAADT in the Montaña Region of Guerrero, which counters State conservatism with Indigenous practices that have 'ancestrally preserved' territories, in a discourse laden with essentialist tones that categorically and unequivocally reaffirms sovereignty and Indigenous col-

lective rights.

Among the risks linked to the heritagisation of culture, Villaseñor and Zolla Marquez show that “the criteria used by UNESCO to determine intangible heritage, privileges the safeguarding of specific cultural products to the detriment of the processes and relationships that determine their production. Thus, the declarations tend to focus on the recovery, protection and promotion of visible and material traits of a cultural practice (such as a celebration, a dance, a ritual or a market), and not on the social logic that gave rise to it” (2012, 83).

In this perspective, it is particularly dangerous to heritagise ritual life (included in the UNESCO 2003 Convention)

because it implies the possibility of generating conflict between cultural values conferred by external individuals and institutions, and the religious meaning established by those who practice them. (Villaseñor, Zolla Marquez 2012, 88)

A risk of this type has been mentioned in connection with the exhibition of Wixárika ritual events and ceremonies, and this is made evident when there is a blurred distinction between intimate rituals and the public sphere, a division that is controlled by the Wixárika spiritual and ritual authorities. According to Liffman (forthcoming), in the case of Wirikuta, the gap between the material features (objects of heritagisation that are exhibited in the public sphere) and relationships (which characterise ritual and social logic) is evident in territorial objectification.

For example, public discourse tends to emphasize the permanence of the sacred in the landscape of a Wirikuta whose boundaries are clearly drawn on a map. On the other hand, the classic shamanistic discourse does not place so much emphasis on stability but rather on variability and other places related to the deified ancestors. (Liffman, forthcoming)

ICH is specifically made up of a system of interlocking elements, ranging from the sociocultural context to specific objects, and includes landscape and territory, “an intangible element that represents fundamental support for the identification of cultural heritage” (Machuca 2004, 83).

The territorial definition of heritage is a problem that has not yet been resolved and that recent research suggests is very important, as several Indigenous peoples in Mexico are struggling to safeguard their holy sites, which are recognized by ILO Convention no. 169. Although they have great strategic value in specific contexts, protection policies often involve vertical and hierarchical decisions; also, “the process of ‘heritagisation’ of human actions always involves the creation of monitoring systems and quality evaluation” (Commission on Intangible Cultural Heritage 2012, 26).

Therefore I believe that, in addition to protecting cultural, tangible and intangible heritage, legislation and public policies should be directed towards the recognition of Indigenous peoples' broader right to autonomy, which includes both the territorial aspects, such as those that are cultural and political by nature, and the power to govern their territories and have full decision-making rights in the projects that are developed within their communities. According to the position expressed by Macmillan, Indigenous struggles for recognition include the claim to political, economic and social rights, and "require something more than just the protection of their cultural heritage"; the protection of TK and TCE's "is first and foremost a question of Indigenous peoples' rights" (see Macmillan, in this volume).

## 7 Culture and Territory: Mutual Defence in Contexts of Violence

The 'personal' and direct relationship between the inhabitants and the natural elements that make up the *geo-geography* or *biocultural territory*, expressed in offerings and pilgrimages, is a supporting element that explains why one should live in a certain place and not elsewhere, and is what gives radicality to community defence against extractive megaprojects. While territory is a space for natural, economic, cultural and organisational production and reproduction, those who live there will not allow for it to be transformed into a 'sacrificial zone', that is an empty space that is functional to private interests by eliminating the population and its previous ways of life (Porto-Gonçalves 2008).

Territory loses the meaning of its identity and fails to produce the imaginary when the close and mutually dependent relationship between people and nature is broken (the disappearance of agricultural activities, implementation of other forms of subsistence and passive welfare programmes, land use as payment for environmental services or monocultures for export) or when conditions do not allow for individual and collective life (pollution or situations of extreme violence such as war, militarisation, paramilitarisation, or occupation by organised crime).

In addition to the processes of resistance to territorial dispossession, there are increased conflict and direct violence in the different regions of Mexico that are affected by extractive projects, which add to the conditions of structural violence already present in those areas. This creates social vulnerability and represents a serious violation of individual and collective human rights, which Rodríguez Garavito (2012) has defined as *mined social fields*. In case studies, there is a direct link between mining megaprojects and disputes such as the fragmentation process of the community's social fabric and the polarisation of the population between those who are in favour of the projects (and particularly those who support the easily bribed local authorities) and those who oppose it. Mining compa-



nies have been known to use paramilitary groups and criminal gangs for intimidation purposes, as well as judicial and repressive actions by the state apparatus against opponents.

Moreover, mining companies will take advantage of situations of violence that lead to community displacement and negotiating with violent actors guarantees the continuation of their activities. An example of this is the situation in the 'Golden Belt' of Guerrero, in the municipalities of Iguala, Cocula and Eduardo Neri, where the terror imposed by criminal groups linked to drug trafficking and colluded political and public security institutions has caused thousands of people to abandon their villages and land. On a larger scale, the mining industry, although formally legal, is optimally developed in situations where legality and state control is weak, because their activities involve a long series of violations of individual and collective rights that would not be permitted in a situation where 'rule of law' was present. Also, the hybrid nature of mining activity that falls between legal and illicit formally allows for negotiations with both institutional representatives and organised crime. This protects their operations in exchange for certain compensations.

In defending their territory, Indigenous peoples also defend their culture and sense of existence, that is their identity as *peoples*. The persistence and strengthening of cultural and spiritual manifestations that are linked to the territory is also a form of resistance as it reclaims the meaning of territory beyond mere economically exploitable resources.

These processes of resistance to exploitation and self-defence are multiplying throughout Mexico. Like the Wixárika peoples' fight to save the sacred sites of Wirikuta from the voracity of mining, the native peoples of Guerrero protect their Montaña Region and assert their right to autonomy. "Mining will never happen on our territory. We will defend our land at any cost, even if it costs us our life" says Pedro, who as a young boy began to participate in the ceremonial dances of his community, Colombia de Guadalupe, in the heart of the Montaña Region. He knows that Tata Bègò, the 'Lord of Lightning and the Mountain', is on their side.

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## **Law no. 1089 of 1 June 1939**

### **The Origin and Consequences of Italian Legislation on the Protection of the National Cultural Heritage in the Twentieth Century**

Francesca Coccolo

(IMT School for Advanced Studies, Lucca, Italia)

**Abstract** The author seeks to set out a criticism of the alleged innovations brought about by the 1939 Italian law on the “Protection of objects of artistic or historical value”. The law came in those years during which Fascist authorities struggled to keep on national soil a great deal of cultural property, which belonged to those who were trying to flee Italy following the harshening of persecutory regulations. Yet, scores of valuable public and private works of art had been reaching Nazi top brass following the Italian government’s own initiative. This eventually hindered the legitimacy of part of the cultural restitutions granted to Italy by the Allied military authorities after 1945.

**Summary** 1 Why to Discuss a 1939 Law After Eighty Years. A premise. – 2 Historical Notes for an Appraisal of the Measure. – 2.1 Political Collusion and the Art Market (1933-43). – 2.2 Jewish-owned Cultural Property. – 3 Effects on the Application of International Law on Cultural Restitution after 1945. – 4 Final Remarks. Demystifying Law no. 1089.

**Keywords** Cultural property. Restitution. Fascism.

## **1 Why to Discuss a 1939 Law After Eighty Years. A premise**

Part I of this volume takes into account the multifaceted factors that have and continue to threaten cultural property worldwide. Previously, the topic was investigated during the first session of the international conference held in Venice in 2015. In the wake of this initiative, it seemed worth retracing the somewhat controversial dawn of the current Italian legislation on protection of cultural property, beginning with Law no. 1089 of 1 June 1939, which is indeed the cornerstone upon which the subsequent legislation was built.

The 1939 measure stems from a broader reform within the Italian administration that Giuseppe Bottai – Fascist Ministry of National Education – carried out in the 1930s. From these origins, Law no. 1089 is both one of the founding principles of current art legislation and a genuine legacy of the Fascist dictatorship. This twofold nature has inspired a (re)considera-

tion of the measure, which has gained new perspectives thanks to the debate fostered by this volume. Following the establishment of the first Italian Republic in 1946, Bottai's reforms remained formally and substantially untouched for over four decades.<sup>1</sup> The Veltroni-Melandri Consolidated Act can be regarded as a long-awaited attempt at harmonisation. Nevertheless, both Law no. 1089's structure and language would stand intact (Cosi 2008). Indeed, Law no. 352/1997 had the Veltroni-Melandri being nothing more than a "formal and substantial coordination", a "reorganisation" and "simplification of proceedings".<sup>2</sup> Owing to a literal reproduction of the 1939 provisions, the Veltroni-Melandri Consolidated Act appears not to have been able to substantially improve the matter, thus driving Bottai Law, its formulations and principles, well beyond the end of the twentieth century (Sciullo 2000).

After Bottai's reforms, a major innovation took place on 22 January 2004 with the adoption of the *Urbani's Code*.<sup>3</sup> Its key new features lie in the solutions given by the Code to previous administrative and procedural issues affecting cultural protection and preservation (Cosi 2008). For instance, one measure was meant to regulate antiques and second-hand property trade (arts. 63 and 64), while another modified cultural property circulation and restitution provisions according to current European and international guidelines (arts. 64*bis*-87*bis*). Nevertheless, there is a clear resemblance between Urbani's Code and its Fascist ancestor, based on its wording and content alike.<sup>4</sup> Moreover, it took four years for Bottai's law to be abrogated after the entry into force of the 2004 Code.<sup>5</sup> Yet, even if the long-standing Fascist law was eventually put aside, cultural legislation in Italy largely still recalls those original statutes. Even now, private and pub-

1 Law 1089/39 has not faced any relevant amendment, except for the harmonisation of provisions regarding export procedures with the new EU agreements on free movement of goods. See Law 8 August 1972, no. 487 (<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1972-08-08;487!vig=>), following the ECtHR ruling of 10 December 1968 (*Commission of the European Communities v Italian Republic*, 7/68, in *Racc.*, 562 ff) (2017-12-15).

2 Law 8 October 1997, no. 352, "Disposizioni sui beni culturali". *Gazzetta Ufficiale*, 243, 17 October 1997 (s.o. 212).

3 *Gazzetta Ufficiale*, no. 45, 24 febbraio 2004 (s.o. 28/L).

4 Indeed, Part Two, Title I of the Code was drafted based on a scheme laid out by Fascist lawmakers. After outlining the object of their dictates, Urbani's Code and Law no. 1089 both begin with those provisions regarding the preservation and protection of art objects, then moving on to the regulation of sales and exports. In the 1939 and the 2004 texts alike, chapters on archaeological findings follow right after. The 2004 Code frees itself from the old structure only later on, through its new insights on public access to and enhancement of CH (Title II, Part Two).

5 D.L. 22 December 2008, no. 200, "Misure urgenti in materia di semplificazione normativa". Also Law 18 February 2009, no. 9. *Gazzetta Ufficiale*, 42, 20 February 2009.

lic objects of art, as well as some places of natural relevance, are subject to a regime of special protection based in Law no. 1089. This is the reason why political and historical circumstances surrounding the drafting and approval of Bottai's provisions deserve renewed attention.

## 2 Historical Notes for an Appraisal of the Measure

### 2.1 Political Collusion and the Art Market (1933-43)

Almost ten years after the March on Rome and the inception of the Grand Council of Fascism, Mussolini's and Hitler's governments chose contemporary art as a launchpad for their renewed ties. On 14 February 1933 – a few days before the Reichstag fire and the Nazi Party's dictatorial takeover – the Kronprinzenpalais in Berlin inaugurated the exhibition *Neue Italienische Meister*. The Italian ambassador Vittorio Cerruti presided along with the president of the German Parliament and interim minister of Prussia, Hermann Göring. The latter took the opportunity in his opening remarks to recall a long-standing cultural and political brotherhood between the two governments.

Interestingly, the selected exhibits were merely the first example of many unequal cultural 'exchanges' Nazi leaders were particularly keen on throughout their two decades of power. On this occasion, Italy presented claims for the return of a national masterpiece by Francesco Paolo Michetti, *Iorio's daughter* (1895). Eventually, its government ended up paying a considerable amount of money to the Nationalgalerie where the painting had been displayed since 1906. With this sum (36,000 Reichsmark) the Berlin gallery purchased several Italian and German works. As a result, Germany received fifteen pieces by renowned representatives of the Italian avant-garde, including Funi and Sironi, Severini, Modigliani, De Chirico and Carrà, in exchange for the price of a single piece of artwork (Scholz, Obenaus 2015).<sup>6</sup> In May 1939, when the Pact of Steel definitively led Italy into the tragic path of Hitler's politics, art market speculation by German buyers took off. The situation did not immediately become a clear abuse by Nazi authorities, thanks to the newly consolidated relationships between

<sup>6</sup> These early celebrations did not spare Italian art from the severe eye of the German commission responsible for the seizure of so-called degenerate art. In November 1937, works by Sironi, Montanari and Modigliani were taken away from the Nationalgalerie and amassed in some Köpenicker Straße warehouses. Later on, only Sironi's *Composition* and Montanari's *Christ* found their way back to the Berliner Museum. Modigliani's *Head of a woman* was marked as "internationally valuable" and, in June 1939, it was sold at auction by Fischer Gallery in Lucerne, along with many other so-called 'degenerate' – but profitable – pieces (Scholz, Obenaus 2015).

the two dictatorships.

In June 1939 Hans Posse, director of the Dresda Galleries, was tasked with running the Linz Collection and its dedicated committee, the Sonderauftrag Linz, on behalf of the Führer.<sup>7</sup> From that moment until his death in 1942, Posse became the primary contact for every middle-men working to enrich Hitler's collection.

A key agent to Sonderauftrag Linz in Italy was Prince Philipp von Hessen, married to King Vittorio Emanuele's second daughter and SA commander since 1925. The Prince provided Posse with extensive local support and made a bargaining chip out of Italy in order to be granted top brass approval.<sup>8</sup> At the same time, Hermann Göring extensively relied on less ordinary types of transactions such as exchanges and donations prompted by personal and political interests.

In mid-1937, the Prince of Hesse accompanied Sonderauftrag Linz's representatives on their tour of Italy. Soon after, the Führer's attention was drawn to the Roman statue dubbed *Discobolo Lancellotti* after its owner, Prince Filippo Lancellotti.<sup>9</sup> Consequently, the owner asked the Ministry of National Education for permission to sell and transfer the piece to Germany. The Ministry turned down the request, as the statue was listed as unsellable under Law 364/1909 provisions on antiquities and works of art. Given the repeated and pressing demands, the Directorate General of Fine Arts set up a commission of three State officers,<sup>10</sup> in line with the 1909 Law. The commission's report, as well as the final decision by the Supreme Council on Antiquities and Fine Arts, claimed that transferring the *Discobolo* represented a severe loss for Italy's CH.<sup>11</sup> On 7 May 1938, a note from Germany pointed out the Führer's personal interest in the *Discobolo*, asking for the export license to be approved.<sup>12</sup> Once again, Bottai

7 A real distinction did not seem to exist between art objects from Hitler's private collection and those meant to end up at the Linz Museum. In both cases acquired pieces were catalogued as Führer's property (NARA, National Archives and Records Administration, *Records of the Roberts Commission*, 1943-6/Consolidated Interrogation Reports/C.I.R. # 4. Linz: Hitler's Museum and Library).

8 NARA *Records of the Roberts Commission*, 1943-6/Consolidated Interrogation Reports/C.I.R. # 4. Linz: Hitler's Museum and Library.

9 Renowned marble Roman copy (II century A.D.) now displayed at the National Roman Museum of Palazzo Massimo in Rome.

10 Biagio Pace, Amedeo Maiuri and Carlo Anti.

11 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point, 9-14.

12 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point, 15.



personally refused to fulfil Germany's request, yet on 3 June 1938, Mussolini ordered the Minister to approve the transfer of the statue to Germany.<sup>13</sup> Following this procedure, scores of masterpieces were moved from Italy to Germany as soon as the Führer or its Reichsmarschall claimed them.

In 1941 a piece in a State collection got for the first time involved.<sup>14</sup> On 13 August, a note by Mussolini to the superintendent of Trent ordered that the ancient German altarpiece displayed at the City Museum of Vipiteno (Bolzano) be donated to Göring as a birthday gift.<sup>15</sup> The following year, in January, the altarpiece was put on a train to Berlin and handed over to the Reichsmarschall.<sup>16</sup> In June, Bottai complained to the Foreign Affairs minister Galeazzo Ciano about the duty-free privilege given to Germans while the Vipiteno negotiations were still undergoing. Ciano simply settled the issue by assuring that his Ministry would foot the bill. This eventually led to the Italian State charging itself while the Reich authorities had been totally exempted from any payment (Siviero 1984). While the Vipiteno affair was ongoing, Bottai asked Superintendencies for comprehensive lists of artworks recently transferred to Germany. Issued on 1 September 1941, the order included a request for reports on the activity of German buyers within the Italian art market (Siviero 1984). A few days later, the head of Lazio's Superintendency, Rinaldo de Rinaldis, reported the most frequently occurring name in his records to be the Prince of Hesse. Based on his statements, the Prince was not just personally in charge of frantically purchasing works of art, he also happened to be particularly helpful whenever a German dealer needed an export permit granted despite Italian restrictions.

In November 1941, after having re-issued a ban on the transfer and export of State and other public cultural property (circular no. 170), Bottai allowed for 34 crates filled with artwork to be transferred to Germany on behalf of Göring. The Reichsmarschall was in Florence one more time towards the end of 1942, rounding up scores of antique dealers and middlemen (Siviero 1984). Among them was Eugenio Ventura, who carried

13 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point, 26-27.

14 Even if the events in Italy after military occupation go beyond the scope of this work, it must nonetheless be noticed that a severe threat to State and public collections only appeared towards the end of 1943, when Germany took control of the Fascist administration.

15 The altarpiece, dated 1456-8, comprised four wooden panels by Hans Multscher. Two-panels of unknown authorship belonging to the same period and school came with it (Siviero 1950).

16 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Correspondence, 93-5.

out the exchange of several masterpieces with Göring's agent, Walter Andreas Hofer. Eleven Renaissance paintings were thus handed over to the Germans in exchange for nine impressionist masterpieces belonging to the Nazi art hoard stored at the Jeu de Paume in Paris.<sup>17</sup> In March 1943, Hofer returned again to Florence in order to complete the transaction and to grant Ventura with false statements meant to trick Italian authorities.<sup>18</sup>

## 2.2 Jewish-Owned Cultural Property

Up to 1943, the Fascist administration had been the only one responsible for carrying out racial persecution against individuals and their property on Italian soil. Provincial storage depots, banks, shipping companies and State agencies such as the Ente di gestione e liquidazione immobiliare (the agency for estate management and liquidation, specifically created to enact racial provisions against Jewish property)<sup>19</sup> confiscated and retained huge amounts of private belongings. This happened due to three key acts, namely: tighter border controls following the RDL no. 1928/1938; limits to private ownership imposed on Jewish citizens by RDL no. 1728/1938; ownership restrictions for private citizens from enemy countries after the 1939 law of war (measure enacted by RDL no. 1415/1938). After the proclamation of the Manifesto in Verona on 30 November and the increase in severity of the RSI's racial policies, all Jewish property became subject to seizure by Italian authorities. However, before the military occupation by the Reich, a relatively small number of artworks belonging to seized property had been transferred to Germany.

A notable example of one of these was a privately-owned painting by Rubens seized by the Florence Superintendency. Despite the owner withdrawing her export request in order to have the artwork returned, the piece was sold to representatives of the Führer after negotiations taking place in 1941. Indeed, Italian local authorities had been actively involved from the start.

However, at the beginning of 1938 only a few actions had been taken against cultural property owned by Jewish citizens and communities,

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<sup>17</sup> Among the 11 paintings exchanged by Ventura there were one *Madonna* by Paolo Veneziano, Reni's *Atalanta and Ippomene* and two Della Robbia's. Göring gave away works by Cézanne and Degas, Van Gogh, Monet, Renoir and Sisley.

<sup>18</sup> NARA *Records of the Roberts Commission, 1943-6/Consolidated Interrogation Reports/C.I.R. # 2 - The Goering Collection.*

<sup>19</sup> Set up by R.D.L. 9 February 1939, no. 126, "Norme di attuazione ed integrazione delle disposizioni di cui all'art. 10 del R. decreto-legge 17 novembre 1938-XVII, n. 1728, relative ai limiti di proprietà immobiliare e di attività industriale e commerciale per i cittadini italiani di razza ebraica". Repealed by R.D.L., 26, 20 January 1944.

even if inventories of property belonging to victims of political and racial persecution had already been compiled. At that point in time, attention was mostly focused on attempts to export valuable art by those who were fleeing the country.<sup>20</sup> For instance, in January 1939 the Directorate General of Antiquities and Fine Arts had to address a request by the Trent Superintendent and his colleagues regarding some high-value property seized after custom controls. A government note eventually assigned priority to the *integrity of the national heritage*, national law being thus aimed at enriching public collections. On 4 March 1939 (a few months before the Bottai Law was approved), the Ministry of National Education issued circular no. 43 in order to address the massive outflow of foreign Jews from the end of the previous year. This prompted custom officers to cut down on the issuance of *nulla osta* and to overestimate the value of artworks, so as to prevent private owners from exporting their collections. Subsequently, on 13 September 1940 the Directorate General of Public Safety issued circular no. 63886 on the ban on trade in Jewish owned artworks and antiquities.<sup>21</sup> Subsequently, a rebuilt Fascist Council of Ministers released a decree by Mussolini on the seizure of Jewish cultural property. The decree never officially entered into force. Nevertheless, the new minister of National Education Biggini imposed its implementation on all local authorities as early as December 1943.<sup>22</sup> Seizure of Jewish art and memorabilia by the Italian government eventually merged into a more comprehensive racial policy, which resulted in the confiscatory law of 4 January 1944. Consequently, in April, the Ministry appointed fine arts officers as the holders of seized artworks and other cultural property, thus aiming at preventing them from being lost, smuggled or scattered among officers' parlours.<sup>23</sup>

20 NARA *Records Concerning the Central Collecting Points*, "Ardelia Hall Collection". Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still At The Munich Central Collecting Point,17.

21 Commissione Anselmi 2001.

22 Circular 1 December 1943, no. 665, *Requisizione delle opere d'arte di proprietà ebraica* (Commissione Anselmi 2001).

23 Commissione Anselmi 2001.

### 3 Effects on the Application of International Law on Cultural Restitution after 1945

At this point, it is interesting to consider how this misapplication of the Italian law on protection of cultural property spread, severely undermining the legal grounds on which to base any request for post-war international restitution. This assessment must take as its starting point those provisions stemming from the international regime on State responsibility and its primary codification, the 2001 ILC Draft Articles.<sup>24</sup> These articles largely reflect the tentative formulations brought forward within the League of Nations, starting in the 1930s. For this reason, the principles behind the 2001 Draft Articles are likely to apply here despite coming significantly after the events in question and despite their non-binding nature. Furthermore, doctrine and practice regard some of these principles as part of general law (Focarelli 2012).

The 2001 Draft Articles definitively link the conduct of the State to that of its agents, whether they are persons or organs (arts. 4-11). This approach is based on judicial practice, which progressively tends to condemn individuals acting on the behalf of the State rather than States as political entities. Part of the current doctrine has dubbed this practice ‘clever sanctions’, regarded by Picchio Forlati (2004, 126) as crucial in order to tie a State’s actions to its identifiable agents. International judgments following this orientation have often resulted in a more consistent and effective application of humanitarian law, owing to their ability to directly address the state *élites* and decision makers responsible for breaking the law (Zagato 2007, 150).

Questions now arise as to whether the Third Reich and its major representatives (or people acting on their behalf) may be held responsible for committing internationally wrongful acts which would legitimate Italy’s claim for the restitution of art objects transferred to Germany prior to 1943.<sup>25</sup> This is to assess if it would be reasonable to consider the breach of Italian customs and cultural property law by Germany during peacetime as a breach of international law. In order for this to be the case, a rule of international law binding States to respect for other State’s domestic

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24 [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) (2017-12-15).

25 The 1954 Hague Convention and its (Second) 1999 Protocol also draw on principles of State responsibility. Nevertheless, they belong to international humanitarian law and for this reason their provisions only apply in the event of use of armed force and military occupation (see 1954 Hague Convention, art. 18 and 1999 Protocol, art. 3).

law should have been in place at that time.<sup>26</sup> However, no such rule exists nor existed at the time, other than that requiring respect for State sovereignty, as codified in the San Francisco Charter of the UN of 26 June 1945 (and even earlier, in the Montevideo Convention of 1933 on the Rights and Duties of States). Art. 2(1) of the UN Charter can be interpreted as a commitment not to interfere with each State's internal sovereignty and independence, thus regarding the need to abide by its internal law as a rule within the international community. This argument nonetheless fades away under the long-established principles of State jurisdictional immunity to be granted to each foreign entity.<sup>27</sup>

Despite these considerations, claims for the return of artworks removed before the military occupation by the Nazi forces might well have relied on the Bottai Law's provisions and their enactment. However, the unlawful transfer of Italian cultural property to Germany before 1943 must be regarded as a case of collusion, rather than a direct violation of State sovereignty. Indeed, Italian authorities at no point had been firmly invoking Law no. 1089 to ward off Nazi pressing requests for high-value and renowned pieces of art, but rather complied with them.

Irrespective of its own political responsibility, at the end of the war Italy filed several claims to the US AMG in Germany. Requests concerned not only the cultural property seized and ransacked on national soil following the Wehrmacht's invasion, but also comprised property sold and transferred between 1937 and the downfall of Mussolini's government. Based on previous considerations, US military authorities could have reasonably turned down Italy's claims for artworks transferred to Germany before 1943. Indeed, the Peace Treaty between Italy and the Allies (1947) entitled the former – art. 77(2) – to a right of restitution only for property seized under duress by the Germans after September 1943. Despite this provision, US policies on the matter were far from clear, not least because of its plans for political endorsement within the newborn Italian Republic. At the same time, post-war political turmoil represented a unique opportunity for Italy to firmly uphold its demands, despite its controversial past.

Interestingly enough, both the first parliamentary elections of the Italian republic and the sudden order from Washington for the return to “claiming governments” of all cultural property transferred by Nazi authorities against domestic law – not necessarily under military occupation or po-

26 1970 UNESCO Convention and its art. 3 on the respect of each State Party's provisions for the protection of cultural property do not apply to events preceding the Convention itself.

27 Object of the 1961 Vienna Convention on Diplomatic Relations and already part of customary international law (Focarelli 2012).

litical collusion - were dated April 1948.<sup>28</sup> From 1945 onwards, no other US-AMG directive would ever endorse such a position.<sup>29</sup> Years later, worsened international relations and brewing campaigns of suspicion put an end to this season of restitution. This is testified by the diplomatic uproar in 1948 following the restitution to Italy of several artworks, which were among those transferred to Germany after 1937. As a result of reciprocal protests and accusations among Italy, US and Germany, US occupation authorities removed themselves from ongoing negotiations with the Italian representatives for the return of the remaining cultural property held in Germany. This led to progressively leaving the issue of international restitution of artworks to the competent German authorities. German officers, who initially complied with Italy's requests, soon found themselves eager to act based on diplomatic (thus unpredictable) grounds rather than building on the previous Allies' policy on war reparations. As for the Italian government, the 1950's and 60's saw no effective political initiatives towards the return of what was still left abroad.

#### 4 Final Remarks. Demystifying Law no. 1089

From the 1950s onward, expert and the public opinion did not seem overly keen on stressing the political paradox of the historical premises and provisions of Law no. 1089. Conversely, current contributions display rather positive approaches toward the 1939 measure (Tamiozzo 2009). This may be owing to a tendency to not fully distinguish between the achievements of this law and those generally obtained by Bottai's general reform of the fine arts administration (Cosi 2008). More often than not, this approach disregards the clear *raison d'être* of the single law, losing the opportunity for a more comprehensive historical review. The Minister of National Education's own words on the matter give nonetheless good hints in these regards.

On 26 March 1938, Bottai officially commented before the Senate on his Ministry's annual report, ushering in his legal reforms to the cultural sector. Unsurprisingly, the Fascist minister chose strongly provocative wording, calling for a much-anticipated transition from a protectionist and

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28 NARA *Records Concerning the Central Collecting Points, "Ardelia Hall Collection"*. Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Correspondence, 36.

29 The issue had been extensively considered on one occasion only, *i.e.* in the report submitted by the Director of the MFAA Italian branch, Norman T. Newton, on 5 January 1946 with the title *Works of art exported to Germany by Fascists* (NARA *Records Concerning the Central Collecting Points, "Ardelia Hall Collection"*). Munich Central Collecting Point, 1945-51/Restitution Claim Records/Italy Claims - Paintings Claimed by Italy Still at The Munich Central Collecting Point, 25-35).

conservative, even passive, safeguard<sup>30</sup> (in place since Law no. 364/1909) to a more exploitable one.<sup>31</sup> This clearly matched a much more flexible application of contemporary rules on the transfer and sale of artworks. Indeed, even if Bottai's statements were indisputably in favour of protecting CH, boosting the economy through a strengthened art market appeared more than ever to be in harmony with new (but not further specified) national demands (Bottai 1940).<sup>32</sup> Indeed, a few months after addressing the Senate, Bottai allowed *Discobolo Lancellotti* to be transferred to Germany, in an open clash with the government Commission of Fine Art.

Moreover, Bottai repeatedly claimed that protectionism on the art market was a consequence of the 1909 Law. In a speech before all Italian superintendents gathered in Rome in July 1938, he could not help but call this same law obsolete. Ultra-liberalism and lack of proper inventories in the wake of Italy's unification had been common justifications for the rigor of Law 364/1909. Consequently, the minister had assured his audience the inventory of works of art would now be complete enough for the government to loosen legal bonds still in place.<sup>33</sup> This also meant he planned on limiting the more severe provisions on transfer and sale to those cases implying extreme cultural losses for the national CH. For too long the art market had been suffering tough limitations and heavy taxation,<sup>34</sup> the minister maintained (Bottai 1940). Eventually, these government commitments were to result in draft articles on the safeguard of objects of artistic and historical relevance, which would later become Law 1089/1939.

In this regard, particularly noteworthy in the context of racial persecution and abuse of powers of the 1930's is the extension of the power of seizure, previously limited to situations where the integrity of the artwork was at risk, to more generic reasons of "public interest" (a wording that the 2004 Urbani Code contains unchanged). More in detail, this public interest included the need for restoration as well as the rather ambiguous

30 "[T]utela difensiva e conservatrice, di carattere passivo" (Bottai 1940).

31 "[T]utela manovrata" (Bottai 1940).

32 "[N]uove esigenze nazionali" (Bottai 1940).

33 In his 1956 Commentary on Law 1089/1939, the Calabria Superintendence of Antiquities officer Placido Olindo Geraci claimed that in the late 50s an exhaustive inventory of cultural property belonging to State and public bodies was not yet in place. The situation became particularly serious when it came to major national museums and this affected local and city museums alike. Collections were thus exposed to great threats, which grew more serious during and soon after wartime: "[I]l censimento esatto di tutte le cose di proprietà dello Stato e degli enti diversi da esso lascia molto a desiderare e gli ultimi eventi bellici hanno peggiorato la situazione: persino Musei nazionali importanti mancano ancora d'inventari aggiornati e completi, senza dire di quelli provinciali e civici, ciò che è causa di gravissimi abusi" (Geraci 1956).

34 "[T]roppo rigide limitazioni e troppo forti gravami fiscali" (Bottai 1940).

‘enrichment’ of national cultural assets (see Law 1089/39, art. 54). Additionally, auction house regulations had been deliberately excluded (and so are nowadays), so as not to hinder market growth. This growth was expected to open the opportunity for State and other public artworks to be either sold or swapped. Indeed, Bottai regarded these unprecedented exceptions to the long-standing rule of inalienability of State property as a means of stimulating the national economy (Bottai 1940).<sup>35</sup>

Additionally, compared to previous measures on the fine arts sector (namely, Nasi Law of 1902 and Rosadi Law of 1909), it could be argued that the achievement of Bottai’s Law was the reorganisation of principles that had already been in place for at least thirty years. Yet, these same principles did not seem to urge initiatives such as a new law on the verge of a global conflict, amidst racial and political repression. This lack of urgency also lies in the fact that no regulatory acts whatsoever eventually implemented Bottai Law’s provisions. Indeed, the 1913 regulations for the application of Rosadi Law no. 364/1909 remained fully applicable, as they still are nowadays (based on Urbani Code’s art. 130). In this regard, when Placido Olindo Geraci put forth his tentative amendment to Law 1089, he underlined the law’s broad misapplication and ineffectiveness (due to “several unpredictable and unlucky events”<sup>36</sup>). For Geraci, an overall lack of any judgements relying on Law 1089 was even more regrettable given what he regarded as a massive breach of its provisions (Geraci 1949).

In summary, while Bottai issued Law 1089 so as to tailor the art market to political interests and loyalties, its provisions were nonetheless misapplied in order to justify a drastic restriction on the transfer of cultural property belonging to persecuted individuals. Ironically, the only exception to these strict border controls were given to those pieces claimed by the Nazis, State- and public-owned artworks included. Therefore, Law no. 1089 of 1 June 1939 appears as a key element in the overall 1930s/40s fascist policy of malpractice and abuse, rather than a game-changer in the development of the Italian law on cultural protection. Indeed, this leaves us with doubts as to whether Law 1089/1939 was ever meant to be. Despite this, the current legal regime on CH (as well as higher education) in Italy appears to have excessively relied on this Fascist construct, rather than building on previous and more praiseworthy legislation.

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<sup>35</sup> Notably, the draft articles allowed for Italian cultural institutions to exchange works of art only if a foreign counterpart was concerned. The requirement was eventually withdrawn from the final version of Law 1089. However, questions on to why the original version of art. 25 bores such reference remain. As Grisolia points out, doubts also arise as to the reasons for exempting the exchange of artworks from preservation and public accessibility requirements, which characterise any other kind of property transfer within Law 1089 (Grisolia 1939).

<sup>36</sup> “Una serie di imprevedibili e malaugurate circostanze” (Geraci 1949).



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# **Memory of Ephemeral**

## **The New Problems of Intangible Cultural Heritage**

Elisa Anzellotti

(Università della Tuscia, Viterbo, Italia; Université Paris 8, France)

**Abstract** This essay deals with the topic of the juridical and conservative problem of an ICH. In the last years, a significant interest has grown for this and for cultural diversity as a form of enrichment. This led to the birth of two UNESCO Conventions (2003 and 2005). The aim is analysing how these Conventions have been incorporated in Italy and the problems that are arising with this incorporation. The example that will be addressed is the one of dance - especially folk - and the difficulty of its classification (ICH, cultural expression) and its subsequent safeguarding (is it better a museum or an archive to preserve the 'memory of the ephemeral?').

**Summary** 1 Introduction. – 2 The Intangible CH and Its Dynamism. – 3 The Definition of CH in Italy and the Problems of Reception of the UNESCO Convention. – 4 Dance as ICH and the Problems of Conservation. – 5 Museum or Archive: How to Preserve an Ephemeral Heritage? – 6 Conclusions.

**Keywords** Memory. Intangible. Dance.

### **1 Introduction**

Memory is what characterises and identifies the human being and each of us is an heir and a creator of memory. It is generally associated to 'materials' - as the historian Jacques Le Goff said (1982, 443) - such as documents (chosen by the historian) and monuments (heritage from the past). Both make sense only if their value and connection to time are recognised.

Today we assist to the passing of the concept of linear time because the present is constantly run over by a continuous chase of the future, and the future becomes too soon the past. On the contrary, memory becomes weaker and weaker, whereas despite the opportunity of conservation in many ways. This aspect is part of the more complex phenomenon of globalisation, which produces many dichotomies in the current era, such as oblivion caused by the overabundance of conservation, but also a deep cultural crisis and an

increasing homologation<sup>1</sup> (Lipovetsky 2013; Adorno, Horkheimer 1966).

Maybe in response to all of this, in the last years, a significant interest has grown for the ICH and for cultural diversity as a form of enrichment. This led to the birth of the 2003 UNESCO Convention – born from the observation of the absence on the world map of the masterpieces of the world's southern cultures, mostly characterised by immateriality – and the 2005 UNESCO Convention. It is possible to notice how these two Conventions are strictly connected, being the ICH a main factor of cultural diversity. Both are of great importance, as they are rooted in the UDHR of 1948. Cultural diversity sprouts after all from a framework of democracy, tolerance, social justice and mutual respect between different cultures and populations and is an essential factor in ensuring peace and security on the local, national and international scale, honouring the importance of cultural diversity as part of the fulfilment of human rights and freedom proclaimed in the UDHR. These same principles are increasingly being challenged by forms of racism expressed in various ways, including questionable political choices.

In this paper, I analyse how these Conventions have been incorporated in Italy and the problems that are arising from this incorporation. The example that will be addressed is the one of dance – especially folk – and the difficulty of its classification (ICH, cultural expression)<sup>2</sup> and its subsequent safeguarding.

The 2003 UNESCO Convention offers a specific definition of safeguarding (art. 2):

‘Safeguarding’ means measures aimed at ensuring the viability of the ICH, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

In Italy, we talk more often about preservation and conservation, giving a limiting connotation to the term and in some cases even a negative one. The word ‘conservation’ may be perceived as an operation of freezing/enclosing, therefore negative, which then reflects into the biased topic of museums and in general of ‘places of conservation’.

1 Many scholars speak about cultural disorientation (Lipovetsky 2010), age of oblivion (Judt 2009), cultural industry created by the changes of the new technologies (Lyotard 1981). The debate is extensive but these few examples are already sufficient to understand the scope.

2 Identifying this category is not easy (Tarasco 2004; 2008), but in this context I would consider dance as ICH. The plain identification as activity seems simplistic and in our juridical system there is not clarity on this term, although defined by the UNESCO Convention of 2005 (art. 4(4)) and even included in the name of the corresponding Ministry: MIBACT.

## 2 The Intangible CH and Its Dynamism

Since many years some Countries, particularly those founded on oral culture or having a big component of intangible heritage, have dedicated before others particular attention to this kind of heritage (especially after armed conflicts that had threatened their cultural identity). For instance, Japan in 1950 had laws for the protection of CH, ICH and for people defined as 'living treasure' (Isomura 2004).

The expression 'intangible heritage' was used officially for the first time in a conference held in Mexico in 1982. Through the years various interventions followed (Le Scouarnec 2004, 26-40), where the focus on this type of heritage increased, until 17 October 2003, when the adoption of the 2003 UNESCO Convention by the UNESCO and by the GA during its thirty-second session in Paris took place. 137 Countries signed this agreement, including Italy.

Every State had to adopt this agreement into its own legal system, with many difficulties. Some problems arose from the definition of ICH,<sup>3</sup> in fact some States did not consider the Convention adequate and refused to even sign it.

The ICH is defined in art. 2:

1. ICH means the practices, representations, expressions, knowledge, know-how - as well as the instruments, objects, artifacts and cultural spaces associated therewith - that communities, groups and, in some cases, individuals recognize as part of their CH. This ICH, 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 gives them a sense of identity and continuity, thus promoting so the respect for cultural diversity and human creativity. For the purposes of this Convention, it will consider such intangible CH only to the extent that it is compatible with existing instruments relating to human rights and the requirements of mutual respect among communities, groups and individuals as well as sustainable development.

2. The ICH as defined in paragraph 1 above, is manifested *inter alia* in the following areas:

a. oral traditions and expressions, including language as a vehicle of the ICH;

**3** On a terminological question linked to this kind of heritage, see Cirese (2002, 66-9). There is less homogeneity of terms for the word 'heritage'. Someone speaks about property, some of tradition, etc. In general, on the importance and the difficulty of finding a standard terminology, see van Zanten (2004, 36-43).

- b. performing arts;
- c. social practices, rituals and festive events;
- d. the knowledge and practices concerning nature and the universe;
- e. traditional craftsmanship.

Indeed, the definition of ICH is too wide, without any specifications. This was however done in order to include more possible variations, although there are different opinions on the subject.

Scovazzi (2012, 6) identifies three essential components in the formulation: the manifestation of a practice (as expressed in the first two paragraphs of art. 2), the custodian community and a cultural space. We immediately notice how fundamental are for the first two aspects - the people and the community - and how an overlap between object and subject on the protection process can be created (Maguet 2011).

The object of protection corresponds in many cases to the people and their knowledge, therefore in some way the safeguarding of the heritage depends on them. However, they are also the subject who owns the heritage and often it is not about a single person, but a plurality. Therefore the consideration of a collective right appears within the identification of the subject of law; not surprisingly the participation of the community in the management and enhancement of the ICH is fundamental (As.pa.c.i. 2013).

Another problem is linked to the time, because the protection of this heritage is projected into the future, that is to say that future generations will become its 'owners' and guarantee its survival. It is as if these future generations, heirs of the tradition, had an unwritten obligation, a strict liability; there is therefore a succession of times and rights. It is said that only the silence of a generation may determine the vanishing of a tradition.

The main problem is the identification of the object of conservation and of its nature. It can have a material manifestation, but its essence is not generally in the material form, but into something of intangible nature such as knowledge, a *savoir faire* kept within a person. So, there is an overlapping between the material and the intangible, and between the subject and the object of law.

Usually one can speak about a community that, in some way, is responsible for the survival of a heritage and of passing it to future generations. So there is also a problem linked to the time.

Finally, a significant problem is the changeability of this 'heritage', because it is a living thing.

All of this generates many juridical problems because it puts at risk a based principle of law: certainty.

However, there are theories according to which, on the contrary, pro-



vocatively, the immateriality sometimes can be a strength point. The intangible heritage cannot suffer from physical destruction and, being transmitted from generation to generation, would have a greater longevity. An interesting metaphor used in this regard by Ahmed Skounti (2011, 25) compares this transmission from generation to generation to genes passing from one descendant to another. This would also imply an 'evolutionary' change involving adaptation to time.

The subject is therefore in evolution, as well as the object.

We are facing a dynamic heritage, since it is alive, varies and changes. In this regard, it is interesting to notice the quote by an American writer of the Indian newspaper *Pueblo*, Leslie Marmon Silko (quoted in Portelli 2007), who says:

Today people think that ceremonies must be performed exactly as we have always done, and just a slip of the tongue could cause the ceremony to be discontinued or the sand pattern destroyed [...] But long ago, when people received these ceremonies, a pattern of change began immediately, either for the ruining of the yellow gourd rattle or the shrinking of the skin on an eagle's claw, or just as the voices of the singers changed from generation to generation. You see, in many ways, the ceremonies did nothing different from changing.

The changeability and mutability are therefore elements to be taken into consideration. Also from the legal point of view, one assists to a dynamic and under construction heritage, which would paradoxically lead to absurd, having to protect all that contributes to the asset of heritage and its definition. This would also undermine the basic principle of law that is certainty.

It is understandable, therefore, that the difficulties on the level of protection are not few, as specifically mentioned in the UNESCO Convention. It applies to all levels (local, national and international) and to all contexts, and concerns the creation of inventories,<sup>4</sup> administrative and financial measures to ensure the continuity of distinct practices.

Therefore, preserving does not mean making a material object last, but keeping the gesture, the movement, the songs that involve the body of

4 Tornatore notices how an inventory is an attempt to neutralise, because it allows you to abstract the practices inventoried by the effects and emotions, but paradoxically this action to inventory increased the interest of researchers (Grenet; Hottin 2011, 17). It is not easy to create an archive/inventory, the risk of 'freezing', to make something aseptic is high, but if someone takes the first step, it is important for the future and for the conservation. It is important, however, not to distort the heritage with these actions of conservation and thus transform the CH ethnographic find into a kind of victim to cannibalise (to borrow the title of a French exhibition *Le musée cannibal* to Ethnographic Museum in Neuchâtel, 9 March 2002 - 2 March 2003, which criticised these possible distortions of the research).

practitioners, so that the physical body is a metaphor for the community, as well as the object of protection.

Here a further issue arises regarding the fine line between material and intangible.

One example that often arises in this regard is that of the Ise Temple in Japan. It is rebuilt, every 20 years, from scratch using techniques handed down from generation to generation (Munjeri 2004, 13-21); it is true that the temple is not the original one, because the materials are new and the manufacturers are different, but in this case the technique has remained the same for centuries: it is the intangible element that counts and that must be protected.

In Italy, these same questions were first presented with the DEA heritage, the determination of which is not easy. The concept of culture causes frequent confusion and is extremely subjective, deciding each time what is heritage and what is not. Fundamentally it is the context; here lies the difference between the artwork and the DEA heritage, because an object of folklore has no aura that makes it unique. It is not important to the object itself, but to its use and everything that relates to the world around it; in other words, the meaning that a community gives to that object, in a particular time and/or space. It can then be rightly said that the ICH "does not consist of objects or text, but in the socially widespread possibility to create them or recall them" (Portelli 2007).

According to that, this new category of heritage is strongly linked to memory, the evocation of which allows certain traditions to continue existing. Portelli (2007) emphasises that it is not possible to repeat the same songs and music as most of the popular expressions are related to improvisation and subject to the irruption of the present. On the other hand, memory itself is primarily a process, consisting of research and revisions related to depositaries ability to recall them and update them.

### **3 The Definition of CH in Italy and the Problems of Reception of the UNESCO Convention**

The boundary between the material and the intangible is very thin, not only about the concept of intangible heritage itself, which has material expression, but also of CH. This fact has a number of 'values' that go beyond its materiality, which would flee even any economic evaluations, but are intended to be protected by the legal system because of what they represent (Giannini 1976; Morbidelli 2014).

Definitions that are too related to material outward expressions are, therefore, to be avoided, and this was clear by the end of the nineteenth century, when it began to reflect on the CH. Bronislaw Malinowski ques-

tioned the 'closure' towards those aspects that named material culture (Malinowski 1931, 621-45).

Then it is no coincidence that today there are more and more theories exploring new ways for understanding the nature of heritage and artworks, looking for solutions that include more possible variants. Smith, for example, sees CH as a 'cultural process' linked to human actions and therefore linked to the social identity (2006, 44 and ff.); whereas other theories favour a holistic definition of cultural CH by bringing them together under the concept of resource (D'Alessandro 2014, 217).

In Italy, the definition of CH is provided in art. 2 of the 2004 Code, whose second paragraph states:

CH includes in its definition the immovable and movable things which, under Articles 10 and 11, have artistic, historical, archaeological, ethno-anthropological, archival and bibliographic and other things identified by law or under the law as evidence of civilization.

The term "testimonianza avente valore di civiltà" (evidence of civilization) is a result of numerous discussions and changes, seeking to encompass the greatest number of possible meanings. However, the reference to arts. 10-11, containing a list of objects under protection, seems to show a substantial closing to our intangible heritage.

This is partly confirmed by different judgments<sup>5</sup> that, in addition to underlining this problematic distinction between the material and the intangible as part of the same heritage, reaffirm how the cultural values, in order to be preserved, must be "embodied or incorporated into structures and these structures should in somehow be perpetual or stable" (Assini, Francalacci 2000, 46).

This need for a material manifestation is repeated in the same art. 7*bis* of the 2004 Code, implementing the 2003 UNESCO Convention,<sup>6</sup> which reads:

<sup>5</sup> See for instance the case of Fiaschetteria Beltrame in Rome, whose constraint was considered legitimate by the decision of the State Council s. VI, 10 October 1983, no. 723 (*Cons. Stato*, 1983, 1, 1074) but it was considered illegitimate constraint for the library Croce, State Council, s. VI, 5 May 1986, no. 35 (*Rivista giuridica dell'edilizia*, 1986, 1, 585). Numerous other examples are possible: the Ancient pharmacy of Piazza del Campo in Siena, State Council, s. VI, 18 October 1993, no. 74 (*Rivista giuridica dell'edilizia*, 1994, 1, 133); the Library of Teatro di Reggio Emilia, State Council, s. VI, 23 March 1998, no. 358 (*Cons. Stato*, 1998, II, 454); the Caffè Genovese in Cagliari, State Council, s. VI, 28 November 1992, no. 964 (*Cons. Stato*, 1992, 1725).

<sup>6</sup> Italy ratifies the Convention through Law no. 167, 27 September 2007, and, in the same context, the Parliament ratified also the 2005 Convention UNESCO, adopted on 20 October 2005, by means of Law no. 19, 19 February 2007. For this, with D. Lgs. 26 March 2008, no. 62, the art. 7*bis* is added to the 2004 Code.

The expressions of collective cultural identity covered by the UNESCO Convention for the Safeguarding of the ICH and for the protection and promotion of cultural diversity, adopted in Paris, respectively, 3 November 2003 and 20 October 2005, qualify for the provisions of this Code if they are represented by material evidence and the conditions are fulfilled and the conditions for applying Article 10.

As we can see, this article underlines the rejection of our legal system to this kind of heritage, because the legal concept recognised the necessity of materiality. Abroad, however, there are openings in this regard, seen in Spain, where there is a coherent and integrated law for the protection of the Spanish CH in all its forms, regardless of its Material substrate,<sup>7</sup> or the Portuguese or of Latin America, which mostly refer to the aforementioned Spanish. In Italy, when the Convention is signed, the only legislation that really protected an intangible heritage was the law 482/1999 on the protection of historic linguistic minorities.<sup>8</sup> An extended notion of CH, including the 'folk' and 'folklore' and connotative of communities regional or local cultural identities, is found also in the Italian Regional legislation.<sup>9</sup>

The 2004 Code seems to almost set aside this type of heritage. It seems to be in full agreement with that part of the doctrine that would consider them all included in the so-called 'cultural'<sup>10</sup> one, or in the 'intellectual property'. However, the international law does not consider as ICH those which, from the point of view of civil law, are considered objects of intellectual property (Cosi 2008, 161, 166 and ff.).<sup>11</sup>

7 Then there are further specifications for each Region of Spain. In general sorting Portuguese, as well as that of Latin America, are highly influenced by the Iberian (Tarasco 2008, 2261-87; Vaiano 2011, 50).

8 Cf. also Tarasco 2008. For a list of regulations for each Region, refer to Gualdani 2014.

9 Liguria: art. 2(g) of new Statute and L.R. no. 32/1990; Molise: L.R. no. 9/1997 e no. 19/2005 *Patrimonio culturale immateriale: etnologico, sociale, antropologico, produttivo* (ICH: ethnological, social, anthropological, productive); Puglia: art. 2 *Nuovo Statuto/New Statute (tradizioni regionali/ Regional tradition)*; Sardegna: L.R. no. 14 del 2006 (*Patrimonio culturale materiale e immateriale/Material and ICH*), cf. Cosi (2008, 162). Also there have been legislative proposals, such as 123A-IX presented by the Puglia Regional Councilor Sergio Blasi, which later became the R.L. 22 October 2012, no. 30, which governs the 'Regional interventions for the Protection and Enhancement of music and folk dances and oral tradition'. The law's aim is to safeguard the 'musical memory', supporting research and the publication of 'originals', i.e. records of 'performance of older singers', and finally creating 'a network of multimedia archives' where conserve and make the collected materials usable.

10 For the Constitutional Court, the CH activities are a different thing, i.e. "concerning all activities related to the development and dissemination of culture" (*Corte Costituzionale*, sentences 7-9 July 2005, no. 285 and sentences 21 July 2004, no. 255).

11 Gualdani (2014) underlines - through the example of Palio of Siena - also "while the protection of copyright is of the manor, the one designed for the intangibles is kind of public

## 4 Dance as ICH and the Problems of Conservation

The topic of 'intellectual property', copyright, is meaningful when it comes to dance, which is the example that I will bring here with particular attention to the folk area.

There is no doubt that in a dance can be expressed the culture and identity of people, a number of other elements flowing in it, such as social relations, tradition, music etc., not surprisingly different dances were recognised as an ICH of humanity (as flamenco, tango, etc.) for their characteristics of identity. Protecting a dance, however, is even more complex because of its ephemeral nature. Surely every type of dance presents different problems and therefore there are many general considerations to be done (Anzellotti 2016).

Firstly, we must point out that dance is an art of the body - one of the first means of man's expression - whose transmission has been always occurred from Master to student. Until a short time ago no codifications or universal forms of writing as for music existed.

Today there are various resources which can provide valuable assistance to this aim, as notation and in general new technologies, in particular video, but also the 3D or various forms of motion capture.

Certainly the video is an effective tool, but full of subjective viewpoints, from that of the cameraman or the field framing. Not to speak about the 'screening' of emotions that takes place in the following way. Emotions, which can be elicited by dancing and make it special, make the difference. It is certainly one of the main variants so much that the same dancer will not repeat the same exact performance twice. This has earned dance the title of ephemeral art par excellence, but today many scholars are no longer of this idea.

The ephemeral distinguishes increasingly the present century and also other contemporary art expressions that are characterised ever more by this feature. Therefore, the base of new aesthetics and conservative questions are posed. It is not strange to find applications, which are usually applied today in contemporary art, with the same way of thinking and similar conservative solutions in dancing too. For instance, also in this case we recognise the same attempt to give greater voice to the artist, who is involved in interviews, creation of archives or drafts about his 'will' on future works, including a possible 'right to euthanasia'.

If arts are a mirror of their time, which is the reason why it is ephemeral and volatile, nonetheless we must respect its own will by documenting this choice so that a trace of it remains.

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law, because it aims to pursue the public interest that led to pass on and promote awareness of identity traditions of a community".

Another important choice is what is needed to leave aside, rather than distorting it and bringing it against his own nature. Obviously in this field the positions of scholars are different. Someone says that performances are unrepeatable – such as Peggy Phelan – and argues that it is necessary to repeat them, as well as restore them – such as Richard Schechner – (as quoted in Formis 2015, 98).

In my opinion, the most important thing is to prevent arts from being treated as an exclusive good for the market, only related to money.

Like any other ICH, dance is extremely sensitive to the phenomena of globalisation in all its aspects. So there are many fusions and this is certainly a possibility of enrichment and creation (think of, for example, the fusion between flamenco and contemporary dance or flamenco and Indian dance, in this case because you are having affinities and possible ‘kinship’ between the dances). However, if you are not aware of the dances that are subject to fusion, you can create abnormal hybrids and so much confusion that threatens to also lose the ‘genuineness’, to lose the roots. On the contrary, even the ‘freezing’ is dangerous. Some scholars believe that, sometimes, the researchers create ‘anomalies’ excessively schematising dances rather than identifying them as changing and tied to the personal style of each individual. The dance is a living art so some change is normal. You cannot reduce the dance (or any other intangible heritage) to a wreck destined to dusty windows of museums, therefore, no longer corresponding to the changes in society, to which it is subject.

Certainly, it must be assumed that in this body art the main element is the dancer, who is at once the source, the archive and the work, just like many other intangible traditions. That is why there are important interviews, a direct contact with the ‘custodians’ materials’ of this intangible, dancers in this case.

At this point we might be able to understand the complexity of the discussion on how and what to preserve.

Returning specifically to folk dances, like other ICH, they mutate, evolving and are linked to the style of each performer and no schematisations or masters exist. It is said that one should ‘steal’ any dancing step, which will be learned by observing with no technical explanations. It is in fact necessary for dancers to be spontaneous and put talent on their own.

It follows that any form of ‘conservation’ corresponds to freezing; for someone might say that the notation is not applicable to folklore dances.

The same issue is valid for videos, as some scholars believe that their use is risky since it would end up harnessing dancing into a specific person’s style or a group of people who are taken. The beauty and vitality of these dances, however, is often the variety and free interpretation which everyone can apply.

Despite all, choices are necessary and today many types of technologies offer different opportunities. Let us see how all the technological in-

novations and globalisation processes may be poison and medicine at the same time, since they can help to spread the heritage, but also to distort it (Scovazzi 2012, 5).

This is the case of the *pizzica pizzica* and the *Concertone della Notte della Taranta*. Here there are several contaminations and drifts, but thanks to this media and marketing process, *pizzica* has undergone an unprecedented boom.

It is therefore necessary to keep the root in the most scientific and correct way possible, but at the same time to let the 'evolution' take its course.

Interesting, I think, is the approach adopted in Greece for their traditional dances. In Athens, there is a Living Museum Dora Stratou which is a combination of museum, archive and research center. The key aspect is the documentation of the dances in the villages and their spread from person to person, without the establishment of a master. Then there is the entire documentary support made of writings, pictures, video, audio etc. which supports research for maintaining the root.

This example leads to the other issue on where to keep dance (but also any ICH): a museum, an archive, a research center? These sites are subject to the upheavals of this century and the fluid-soaked dichotomies.

## 5 Museum or Archive: How to Preserve an Ephemeral Heritage?

New technologies are dematerialising documents, objects, art and so on. This leads to a disruption of memorial sites, often in crisis because of their 'static connotation'.

Today a new idea of museum is coming, because this place is strongly in crisis, more and more often likened to a cemetery. The initiatives to revive them are multiplying, giving space for action.

The art increasingly comes out of museums, but the museum is transforming into theatres and it accommodates performing arts and dance, increasingly present during opening ceremonies and other events.

Meanwhile, the museum is hybridised. There is talk of White box - Black cube (Foster 2015, 25-6). By this we refer to the different space that should be on the basis of the work of art exposed. It goes from the necessity of a dark space - especially for the video installations - characterised by a classical approach of the public, as if you were in the theatre, in one instead open, where you have a neutral space-time dimension (the MoMa of New York responds to these criteria).

For dance it is possible to think of something situated between these two realities. We should also consider a museum without objects, not just because of the intangibility of the heritage, which is not based on the object itself, but due to the fact that dematerialisation hits also material heritage through new technologies when they are digitised, as well as it is virtualis-

ing exhibition spaces.

These same questions arise in general for other intangible heritage, such as those related to folklore. We have already seen that in these cases the aesthetic norm is subject to extra aesthetic rules, and therefore, ethnographic museums, which are educational in nature, cannot be reduced to mere exhibition for only objects (Assini, Francalacci 2000, 191-3).

Thus, on one hand, it is necessary that the practical element becomes a fundamental ritual, supported by proper scientific documentation that allows studies and maintenance of the original roots. While, on the other hand, it has to keep room for a new evolution which characterises this heritage.

For a long time, the museum was regarded as a place of exhibition, preservation and conservation of cultural materials from the past. In this view, it seems that the museum does not have much to do with the contribution to the safeguarding of ICH, and in fact there were expositions to underline the negatives drifts of musealisation, like the EXPO of 2002 at MEN (Musée d'Ethnographie de Neuchâtel),<sup>12</sup> with an eloquent title *Le musée cannibal* (Bonavita 2004). In reality, all depends on how the problem is approached (Yoshida 2004, 112, 114-15).

Formalisation of the intangibility is given by the more widened definition of museum issued by ICOM with the inclusion of the term 'intangible'. We read that the museum "performs research concerning the tangible and intangible evidence of people and their environment; acquires, preserves, communicates and, above all, the exhibits, for purposes of study, education and enjoyment".<sup>13</sup>

Obviously, new challenges arise for museums to adapt themselves to this dynamism that characterises the intangible.

According to Patrix (2015) an example that responds to the recommendations of Kurin (2004), which can be applied for a good ICH museum, is the Fado Museum in Lisbon because it renews the museum habits and lies in the community bosom as well as actual practices. Moreover, it invites actors to present their art outside of living exhibition.

There is also the delicate issue of the archives. If safeguarding means creating inventories it means to be the need of a stock then. However, how can anything be stored in a living process? Apparently, it is necessary to start from the living thing and to get then to the store.

It is also true that the disappearance of something can leave traces,

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12 <http://www.men.ch/fr/expositions/anciennes-expositions/black-box-depuis-1981/le-musee-cannibale/>.

13 Extract from the Statute of ICOM (art. 2 on definitions), adopted by the 16th General Assembly of ICOM (The Hague, Netherlands, 5 September 1989) and amended by the 18th General Assembly of ICOM (Stavanger, Norway, 7 July 1995) and by the 20th General Assembly (Barcelona, Spain, 6 July 2001).



and on this is based the archive, as said by Derrida (2014): he underlined also the negative aspects of the archive, often linked to political control (Derrida 1995).

## 6 Conclusions

In conclusion, I can say that the memory of the ephemeral involves various problems, from the legal to the more strictly conservative one and that many pitfalls may arise. The greatest paradox is that new technology, although it seems to have offered some solutions, actually gives us new challenges and risks, like the above mentioned 'freezing' - *i.e.* through the video - or oblivion caused by an overabundance of memory - remembering all means to not remember anything - (cf. Borges 1997). Furthermore, technology gives one an ephemeral materiality (virtuality), creating other forms of immateriality.

How to store an intangible heritage? Giving it an intangible/virtual materiality?

But another question may be even when to store it: if the practice is not necessary to safeguard life, if it is not dead safeguard, it is not helpful (Barb eris 2015).

The main risks are of marketing and folklorisation and of contextualisation and reification. However, it seems to be not disregarded by an alteration which in any case would be created. As anthropologists write, also the transcripts of songs are not neutral acts (Goody 2004). In the same way any form of transmission, as it is inherent in the word itself, involves a form of betrayal.

Musealising an object of performance means somehow faking it, because it is decontextualised. There is some sort of reference to "historical instance" mentioned by Cesare Brandi (1963, 34). The authenticity of an object depends on the use and history forming its identity. As previously assessed, a museum of objects makes no sense and the object itself does not have a folkloric value, neither material nor aesthetic, but the difference lies precisely in its use.

Certainly, we cannot remain closed in one subject area, but a dialogue between the various fields of knowledge is fundamental to meet and compare various points of view. It is also important to put at the center of reflection the artist/the person holders of knowledge and to spread interest, culture, starting even from schools.

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# **Directive 2014/60/EU and Good Faith Acquisition of Cultural Goods in Italy**

Geo Magri

(European Legal Studies Institute, Universität Osnabrück, Deutschland)

**Abstract** The international financial crisis seems to have no effect on global art market; as the TEFAF Report demonstrates art market has grown exponentially in the last ten years. The increasing economic value of this market attracts criminal organisations and it happens quite often that cultural property is object of illicit trade. For this reason, it seems interesting to focus the study on the international provisions regulating the duty to return stolen or illicit exported cultural property and their effects (if any) on the Italian rule protecting the *bona fide* purchaser also in case of stolen goods.

**Summary** 1 Cultural Property Protection in a Growing Art Market. – 2 The 1970 UNESCO Convention and 1995 Unidroit Convention. – 3 EU and the Protection of Cultural Property. – 3.1 Directive 2014/60/EU of 15 May 2014. – 4 The Implementation of the Directive in Italy. – 5 Duty to Return and Good Faith Acquisition of Cultural Goods Under Italian Law. – 6 Cultural Heritage as Commons.

**Keywords** International art market. *Bona fide* purchaser. Commons.

## **1 Cultural Property Protection in a Growing Art Market**

The expression *cultural property* was used, for the first time, by the Hague Convention (Zagato 2007). Following what occurred during WWII, the international community deemed it essential to protect cultural property from the devastating effects of war.

If protection of cultural property from armed conflicts could be considered as a primary form of protection, in recent times a new kind of protection is arising: the protection of cultural property from illicit import and from theft. This protection is becoming more and more meaningful on one hand because art market is growing continuously, on the other because this sector is of interest to criminal and/or terrorist-led organisations.<sup>1</sup> For this reason, it is important to adopt suitable rules to fight illicit trade of cultural property on both national and international level (Fiorentini 2013, 103 ff.; 2014a, 189 ff.; 2014b, 589 ff.).

1 See the Resolution 2347 (2017) of the UN SC adopted on 24 March 2017.

One of the easiest ways to appreciate new trends of the international art market is to analyse the TEFAF Art Market Report (Magri 2017), a yearly report issued by one of the world's most well-known art fairs. This fair takes place each year in Maastricht and is considered to be a highly significant annual meeting for art experts, sellers and collectors. Every year the TEFAF drafts a Report that examines global art market trends. The Report also examines specific market sectors, such as the increase in art fairs, online sales and the economic impact of the various segments of the art market. According to the TEFAF Art Market Report 2015,<sup>2</sup> in 2014 the global art market reached its highest ever-recorded level. Post-War and Contemporary art dominate the art market with modern art accounting for 28%. Old Master sales accounted for only 8% of the fine art auction market, even if this field has over 50% of the market share in terms of value. In 2013, the US held the greatest share of fairs (39%), with Europe in second place (38%),<sup>3</sup> and Asia becoming a significant market (12%). The top 22 fairs and sales generated over a million visitors and art fairs accounted for an estimated €9.8 billion in sales. This amount is even higher if we consider that many sales took place after the fair as a result of new contacts between dealers.

The digital art market is also growing rapidly, as the Internet revolutionises this sector too. E-commerce in art objects has attained a significant place; online sales of art and antiques were estimated to have reached around 6% of all sales in terms of value, with the majority of sales being made in the so-called "middle market" (\$1,000-\$50,000).<sup>4</sup>

The 2015 report clearly sets out just how important the art market is from an economic point of view. It contributes to employment and positively influences adjacent industries. According to the TEFAF report,

it is estimated that 2.8 million people are employed globally by around 300,000 companies trading in art and antiques. The global art trade spent €12.9 billion on a range of external support services directly linked to their businesses in 2014.

In the TEFAF Art market report 2015,<sup>5</sup> Dr. McAndrew focuses on the 2015 art market. According to this report, in 2015 the online space added new

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2 The report (written by Dr. Clare McAndrew, a cultural economist specialising in the fine and decorative art market) is available at: <http://www.tefaf.com> (2017-12-15).

3 The US and UK accounted for a combined 62% of all world imports of art and antiques.

4 It should be noted that we should not consider only e-bay; there are websites dedicated to art auctions and sales, such as, for instance, Art.com, Artspace.com, liveauctioneers.com and Gagosian.com.

5 The report is available at: <http://www.tefaf.com> (2017-12-15).

intermediary phases to transactions, some of which are intermediaries to intermediaries in the offline market. The highest-spending top collectors of art do not, however, require any alternative to the old system of auction houses or galleries.<sup>6</sup> Therefore, top purchases via online sales are still rare. However, without a doubt for those art buyers operating below the highest levels the online art space does make art more accessible. The report 2016 marks the first time since 2011 that the art market has decreased in value. This decrease however may be explained by the higher level of sales generated over the last ten years, making it harder to ensure consistent growth, particularly in a supply-limited art market. This has caused an unavoidable slowdown as some sectors have struggled to keep up the pace (Kinsella 2016). In 2015, only the US market enjoyed significant growth, with sales there attaining the best worldwide performance, registering a 4% increase over 2014. Other regions experienced a decline. In particular Chinese market sales dropped 23% and sales in the UK dropped by 9%. The economic context is particularly important for understanding the relevance of the cultural market and the need to regulate it accordingly. In this field, it would be particularly helpful to adopt a law and economics approach in order to better appreciate whether the rules introduced are adequate to regulate the market, or not. The economic value of art makes it evident why this sector is of interest to criminal and/or terrorist-led organisations (Kretschmer 2016, 308 ff.).<sup>7</sup>

The economic analysis also makes it clear that the art market is not confined to national boundaries. This feature of the market has effects on its regulation. As Professor Jayme (2015, 29) has pointed out, "Today art law is in itself an international subject". If someone goes to a local German flea-market and finds a Mozart autograph,<sup>8</sup> he or she may be faced with a recovery claim from the Austrian National Library (Jayme 2015, 29). In countries like Switzerland there are even toll-free warehouses where high-priced art objects are stored, a no-man's-land of international commerce (Jayme 2015, 29).

In order to provide for the protection of cultural property as well as art commerce, the subject of art law as such is in urgent need of further development.

Examples of this development in international law can be found in the 1970 UNESCO Convention or the 1995 Unidroit Convention and, at Euro-

6 See the interview of Dr. McAndrew published on *Artnet News*, 9 March 2016, URL <http://news.artnet.com/market/clare-mcandrew-on-the-tefaf-report-274279> (2017-12-15).

7 See also the article "Culture and jihad, grimly connected through the art market's 'blood antiquities'". *Economist*, 30 November 2015, URL <http://www.economist.com/blogs/prospero/2015/11/antiquities-and-terror> (2017-12-15).

8 See Amtsgerichts AG Coburg, 24.04.1992. *Neue Juristische Wochenschrift*, 1993, 938.

pean level, in the Regulation 3911/92, amended several times and replaced by Regulation 116/2009<sup>9</sup> and in the Directive 93/7/EEC,<sup>10</sup> amended by the Directive 2014/60/EU.<sup>11</sup>

In this paper, I will focus my attention on the duty of restitution of cultural property in case of illicit importation and theft (Magri 2011, *passim*; Stamatoudi 2011, *passim*; Frigo 2007, *passim*; Jayme 2006, 393 ff.). The duty arises from the deeply connection between cultural goods and their environment, there are no doubt that a simple modification of the place in which a cultural object is located could influence (and prejudice) its cultural value (Giannini 1976, 1 ff.; Magri 2011, 118). The duty of restitution has also an interesting implication in case of good faith purchaser, in particular in Italy, where art. 1153 of the Civil Code give a broad protection in case of acquisition *a non domino*.

## **2 The 1970 UNESCO Convention and 1995 Unidroit Convention**

The 1970 UNESCO Convention is the first international instrument dedicated to the fight against illicit trafficking of cultural property. Its aim is to prevent activities threatening the conservation of CH like thefts, illicit excavations of archaeological sites and illicit circulation of cultural property. According to art. 1 of the Convention the term ‘cultural property’ means “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science” and which belongs to one of the categories listed in the same article. The Convention’s principles are generally considered crucial for their importance, however it is not so persuasive in regard to the measures it provides to guarantee their achievement (Frigo 2007, 12 ff.). In other words, the Convention introduces beautiful principles without effectivity, because the principles are not assisted by detailed provisions ensuring their achievement by member States.

To ensure greater effectiveness in the protection of cultural property from illicit trade, in 1995 the Unidroit adopted a Convention on Stolen or Illegally Exported Cultural Objects. The purpose of this Convention was to develop uniform rules regarding the international art trade. The Unidroit Convention contains minimal legal rules on the restitution and return of

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**9** Council Regulation (EC) no. 116/2009 of 18 December 2008 on the export of cultural goods, in OJ L. 39 of 22 February 2009.

**10** Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, in OJ EEC 74 of 27 March 1993.

**11** Directive 2014/60/EU of the EP and the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a member State and amending Regulation (EU) 1024/2012, in OJ L 159 of 28 May 2014.



cultural objects and it regulates one of the most salient problems deriving from the restitution of cultural property: the protection of the *bona fide* purchaser. According to art. 3 of the Convention “the possessor of a cultural object which has been stolen shall return it”. However, if the possessor neither knew (nor ought reasonably to have known) that the object was stolen and he (she) can prove his (her) due diligence when acquiring it, the convention entitles him (her) to payment of a fair and reasonable compensation (art. 4). The same provision applies in case of illegally exported cultural property (art. 6; see also Wantuch-Thole 2015, 213). According to some scholars this duty means that “the States of the civil law tradition, which allow, in their legal traditions, the acquisition *a non domino* of property by the good faith possessor must modify their legislation in the superior interest of restitution of the stolen cultural object” (Borelli, Lenzerini 2012, 18). Such a consequence on the national legislation is maybe too broad, but it is clear that the duty foreseen by the Convention operates even if the national legal system protects the interests of the good faith purchaser.

The 1995 Unidroit Convention restates the same principles of the 1970 UNESCO Convention, but it is more detailed regulating the restitution of cultural property. Such a meticulous approach and the lack of the room for manoeuvre left to the contracting States are indeed the reasons why the 1995 Unidroit Convention is unsuccessful (Frigo 1996, 435 ff.; Jayme, Wagner 1997, 140 ff.; Gardella 1998, 997 ff.). To better understand the reason because States are reluctant to ratify the 1995 Unidroit Convention and its deep impact on the international art market it seems really meaningful to read what Mr. L.A. Lemmens, the Secretary General of TEFAF, wrote in regard to the Convention:

a dealer at a fair in any Unidroit country could be bankrupt by accusation from any visitor claiming that the dealer is handling stolen goods. Under Unidroit regulations, such accusation can lead swiftly to confiscation of paintings and objects even if his innocence is proved.<sup>12</sup>

It is quite obvious that art dealers started a fierce lobbying to ensure that the Convention is not ratified by national Parliaments (Lalive 2009, 324).

### 3 EU and the Protection of Cultural Property

Only in the 1990s did cultural property begin to be considered a subject of regulation by the EC. In fact, in the ECT cultural goods were considered

12 XXI Art Newsletter, no. 15, 19 March 1996.

as only one particular aspect of the common market (Barnard 2016, 163 ff). According to art. 36 of the TFEU (earlier art. 30 of the TEC):

The provisions of articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of [...] protection of national treasures possessing artistic, historic or archaeological value.<sup>13</sup>

In the 1990s, the EC began to promulgate rules defending cultural property against illegal exportation and ensuring its return, such as Regulation 3911/92 or Council Directive 93/7/EEC.

Regulation 3911/92 was amended several times and later replaced by Regulation 116/2009. This Regulation provides uniform control measures on the export of cultural goods outside the European Union. According to Regulation 116/2009, an export licence is required to export a cultural good outside the European Union's customs territory. A person wishing to export such goods must address a licence request to the competent EU member state authority and an issued licence shall be valid throughout the Union. The country authority may reject an export licence only if the goods are protected by legislation covering national treasures of artistic, historical or archaeological value. The export licence foreseen by the Regulation must be presented, together with the export declaration, to the competent customs office when the customs formalities for export are being completed.<sup>14</sup>

In 1993, Council Directive 93/7/EEC was put in place in order to establish a mechanism for the return of cultural objects that had been unlawfully removed from the territory of an EU country. The Directive was aimed at securing the return of cultural objects that had been unlawfully removed from the territory of an EU country after 1 January 1993 and classified as national treasures possessing artistic, historic or archaeological value under national legislation or administrative procedures and fell within one

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**13** Frigo (2017, 75) underlines that the "comparison between the various (equally authentic) language versions of the TFEU (as well as of the former EEC Rome Treaty) shows some significant differences among them as to the scope of art. 36. At first glance, the margin of discretion of Member States appears wider under the Italian, Spanish and Portuguese versions, in that arts. 34 and 35 do not preclude prohibitions or restrictions on imports or exports of goods on the grounds of protecting a Member State's artistic, historic or archaeological heritage. Conversely, the French and English versions".

**14** According to the Regulation 116/2009 there are three types of licence: a *standard licence* (normally used for each export subject to Regulation 116/2009 and valid for one year); a *specific open licence* (particularly useful in the case of an exhibition in a third country and valid for up to five years) and a *general open licence* (issued to museums or other institutions to cover the temporary export of goods belonging to their permanent collection; this licence is valid for up to 5 years).

of the categories listed in the Annex to the Directive or formed an integral part of a public collection (art. 1(1)). Under art. 1(2), unlawful removal was considered as any removal in breach of the legislation in force in the State or in breach of the conditions under which temporary authorisation was granted.

In order to ensure the return of cultural objects, the Directive specified the procedures regarding the return proceedings. According to the Directive these proceedings could not be brought more than one year after the requesting EU country became aware of the location of the cultural object and the identity of its possessor or holder (art. 7(1)). This limitation period was considered one of the most problematic aspects of the Directive and was generally considered too short to guarantee the possibility to bring an action for restitution (Magri 2011, 60 f. and 123 ff.).

In addition, restitution proceedings could not be commenced if more than 30 years had elapsed from the time of unlawful removal of the object from the territory of the requesting Member State. The only exception in this regard was for objects that are part of public collections or ecclesiastical goods, where the time-limit for bringing a restitution action was regulated by national legislation or bilateral agreements between EU countries (art. 7).

It is quite important to note that the Directive was neutral in regard to the ownership of the returned good. Its purpose was exclusively to secure the return of the cultural object to the requesting Member State, not to regulate its ownership after the restitution. According to art. 12, "Ownership of the cultural object after return shall be governed by the law of the requesting Member State". However, the possessor was to be awarded compensation in the event of loss of possession if he or she exercised due care and attention when acquiring such object. The compensation was to be paid by the requesting Member State, which could then claim reimbursement from the persons responsible for the unlawful removal.

For lawyers engaged in private law, the provision for compensation was perhaps the most interesting part of the Directive because of its intrinsic link to the protection of a good faith purchaser. Indeed, as we will see, this topic has been thoroughly discussed, particularly by Italian scholars (Sacco, Caterina 2014, 445 ff.; Comporti 1995, 395 ff.; Magri 2015, 741 ff.).

Council Directive 93/7/EEC was clearly in need of amendment in order to improve its effectiveness (Magri 2011, 115 ff.). According to reports from the EC to the Council, the EP and the Economic and Social Committee, the Directive's problematic areas could be listed as follows:<sup>15</sup>

<sup>15</sup> Fourth Report from the EC to the EP, the Council and the European Economic and Social Committee on the application of Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State. Bruxelles, 30 May 2013; Third Report. Bruxelles, 30 July 2009; Second Report. Bruxelles, 21 December 2005; and

- a. lack of administrative cooperation between Member States (also taking into consideration language barriers);
- b. in the case of archaeological goods taken from illegal excavations it was too difficult to prove the object's provenance and/or the date when it was unlawfully removed;
- c. the Directive alone did not suffice for combating illegal trade in cultural goods;
- d. the Directive was only rarely applied, mainly due to administrative complexities, high costs, and the restrictive limitations and the short time periods for initiating return proceedings;
- e. the Annex needed to be amended to include new categories of goods and/or to modify the financial threshold or the reporting rate.

Even though the Directive had numerous limitations, it cannot be considered to have been useless. Member States started to develop and use administrative cooperation to search for cultural objects and to notify each other of their discovery in another EU Member State's territory. In my opinion, there is no doubt that the most important result was the increase in the number of amicable returns of cultural objects carried out after the Directive entered into force.<sup>16</sup> The second influential result secured by the Directive was to increase awareness between EU countries and international traders concerning the need to improve the protection of cultural goods at the European level.<sup>17</sup>

### 3.1 Directive 2014/60/EU of 15 May 2014

In 2014, the Council Directive 93/7/EEC was recast by Directive 2014/60/EU, which came into force on 19 December 2015. The recast process began back in 2009 and the recast Directive aims at better reconciling the free circulation of cultural objects with the need for more effective protection of CH in light of the TFEU (Frigo 2017, 72).

The purpose of this Directive is to improve the previous one providing a cooperation mechanism and return proceedings securing the restitution of cultural objects unlawfully removed from the territory of a Member State after 31 December 1992. In order to safeguard the achievement of

Report from the EC to the Council, the EP and the Economic and Social Committee of 25 May 2000 on the implementation of Council Regulation (EEC) no. 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State.

<sup>16</sup> See in particular the Third Report on the application of Council Directive 93/7/EEC.

<sup>17</sup> See the Report from the EC to the Council, the EP and the Economic and Social Committee of 25 May 2000.

this goal, a considerable number of innovations are introduced compared to the previous Directive. Among others, they include the elimination of the Annex in Council Directive 93/7/EEC, the extension of the limitation periods, improved cooperation between Member States thanks to the IMI and changes in the allocation of the burden of the proof in cases of compensation to the possessor. The new Directive may be applied to all cultural objects identified as “national treasures possessing artistic, historic or archaeological value under national legislation” (art. 1 and 2(1), Directive 2014/60/EU). This provision expands the range of objects that may become subject to recovery and puts an end to the debate between the so-called importing and exporting Member States. According to Southern European countries (so-called exporting States) the European provisions should protect any cultural good, independent of its economic value. However, according to the Northern European States (so-called importing States) only cultural goods with a significant economic value should be protected (Magri 2011, 21 f.). Council Directive 93/7/EEC opted for a halfway solution and therefore listed in its Annex those goods that could be considered cultural, while the new Directive recognises the identification of goods of cultural value, as classified by a Member State. In other words, to determine whether a good has a cultural value is now the task of each Member State.

In order to improve cooperation between national central authorities, the Directive provides for the possibility to use the IMI.<sup>18</sup> The IMI should simplify the search for a specific cultural object that has been unlawfully removed; aid in identification of its possessor; simplify the notification of discovering a cultural object; enable a check on the cultural object; and act as an intermediary for its return (Roodt 2015, 196 ff.).

Under the new Directive, return proceedings shall be enacted no later than three years after the central authority of the requesting EU Member State became aware of the location of the object and of the identity of its possessor (art. 8). This longer time frame should facilitate the return and discourage the illegal removal and trade in national treasures. Three years, rather than the previous one, may be considered as a sufficient time to file a return proceeding.<sup>19</sup>

**18** Provided by Regulation (EU) no. 1024/2012 of the EP and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (IMI Regulation), in OJ L 316 of 14 November 2012.

**19** It could be interesting to compare the former provision - art. 7 Council Directive 93/7: “Member States shall lay down in their legislation that the return proceedings provided for under this Directive may not be brought more than one year after the requesting Member State has become aware of the location of the cultural object and of the identity of its possessor or holder” - with art. 8 Directive 2014/60: “Member States shall provide in their legislation that return proceedings under this Directive may not be brought more than

The new Directive is of further importance because it clarifies that the possessor of a cultural object who claims compensation, when its return has been made, shall provide proof that he/she acted with due care and attention (art. 10). The former Directive was unclear, and according to art. 9 it was questionable if the possessor had such a duty or not (Magri 2011, 21 ff., Marletta 1997, 98). At the same time however, the precise meaning of the term ‘fair compensation’ remains unclear. Generally, a “fair compensation seems to correspond with the market value” but it is not unrealistic that in some situation the ‘fair compensation’ will be a different value: for instance, the payment of the market value could be an unjust enrichment for the possessor who paid the object a cheaper price (Magri 2011, 65 ff.).

#### 4 The Implementation of the Directive in Italy

Directive 2014/60 has been implemented in Italy under the Leg. D. 7.1.2016, no. 2.<sup>20</sup> The Leg. D. has modified art. 75 ff. of the 2004 Code.<sup>21</sup> The 2004 Code is the main national act on the protection of CH and contains also provisions regarding the international circulation and restitution or return of stolen or illegally exported objects. Its conformity with obligations arising from international and EU law is therefore essential (Frigo 2017, 73).

According to the 2004 Code (art. 76), the central authority foreseen by art. 4 dir. 2014/60 is the MIBAC (since 2013 MIBACT). When a restitution request is filed, the Ministry ensures that the requiring member State receives the administrative cooperation under art. 4 Directive 2014/60. The Ministry shall be called to cooperate and to exchange information relating to unlawfully removed cultural objects or their possessor. The MIBAC must also take the necessary measures to preserve such cultural object and to prevent any action aimed at evading the return procedure, plus it may also act as an intermediary between the possessor and the requesting Member State with regard to return. In particular, the Ministry may facilitate the implementation of an arbitration procedure, without prejudice to the restitution request filed under art. 77 2004 Code.

One of the most relevant consequences of the implementation of the Directive in the Italian legislation is that restitution requests can be submitted for the return of items of paleontological, numismatic and scientific

three years after the competent central authority of the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder”.

20 D. Leg. 7 January 2016, no. 2, Attuazione della direttiva 2014/60/UE relativa alla restituzione dei beni culturali usciti illecitamente dal territorio di uno Stato membro e che modifica il regolamento (UE) no. 1024/2012, in *Gazzetta Ufficiale*, 7, 11 January 2016.

21 D. Leg., 22 January 2004, no. 42, in *Gazzetta Ufficiale*, 45, 24 February 2004.

interest, even if they do not belong to collections listed in inventories of museums, archives, libraries, or ecclesiastical institutions (Frigo 2017, 74).

Art. 77 regulates the restitution request before the court. The filing shall be addressed to the *tribunale ordinario* where the object is located. The procedural act to request the restitution is pretty much a standard writ of summons (*atto di citazione*) and it shall contain, in addition to all requisites foreseen in art. 163 c.p.c., also a description of the object being requested, a certification stating that it is a cultural object and a declaration that the object has been unlawfully removed from its territory. The writ of summons must be notified to the possessor of the good and to the Ministry and listed in a special registry.

If the possessor can demonstrate that he/she purchased the good with due diligence, he/she may file for compensation (art. 79 2004 Code). In such case, the court can award him/her with a fair compensation that shall be paid by the requesting Member State upon return of the object (art. 80).

Directive 2014/60/EU – unlike Directive 93/7/EEC – contains a definition of the elements of due diligence (art. 10). The definition is almost identical in form to art. 4(4) of the 1995 Unidroit Convention. The EU legislator has made the pragmatic choice to give illustrative criteria,<sup>22</sup> instead of drafting a general and abstract definition of due diligence (Frigo 2017, 77). Implementing the Directive, the Italian legislator has reproduced the wording of art. 10 of the Directive. To determine whether the possessor exercised due diligence art. 79(2) of the 2004 Code states that all circumstances of the purchase shall be taken into consideration. In particular, whether documentation on the object's origin is available, if the authorisation for removal (required under the law of the requesting Member State) was given, the nature of the parties (for example if they were professional or not), the price paid, the consultation of any accessible register of stolen cultural objects by the possessor, if the possessor took any relevant information which he/she could reasonably have obtained, or if he/she took any other step which a reasonable person would have taken under the circumstances. It is quite clear that the article, like the directive, entails a heavy burden of proof for the possessor. Even for a diligent purchaser it is quite unrealistic to demonstrate that all these requisites were fulfilled at the moment of acquisition.

<sup>22</sup> The wording of art. 10(2)(3) is: "In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any relevant information which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances. In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by those means".

## 5 Duty to Return and Good Faith Acquisition of Cultural Goods Under Italian Law

Arts. 79 and 80 of the 2004 Code are particularly interesting for lawyers engaged in private law. As opposed to the common law *nemo dat quod non habet* principle, in Italy a good faith purchaser is, in the case of movable property, protected under art. 1153 c.c.

Protection of the *good faith purchaser* has its origin in the Medieval Germanic rule *Hand wahre Hand* (Hübner 2000, 407 ff.) and the purpose of the rule is to protect freedom to trade and the circulation of property: to ensure legal relations, in case of movables, law allows the purchaser to enter into a transaction without complex researches concerning title (Prott 1990, 270).

Art. 1153 Ital. c.c. states that:

He to whom movable property is conveyed by one who is not the owner acquires ownership of it through possession, provided that he be in good faith at the moment of consignment and there be an instrument or transaction capable of transferring ownership. Ownership is acquired free of rights of others in the thing, if they do not appear in the instrument or transaction and the acquirer is in good faith. (Merryman 2007, 5)

Under Italian law, in the triangle between A, who steals from B a cultural good, that C acquires without knowing about the previous theft, C can be protected because he/she acted in good faith.

In case of theft, protection of the good faith purchaser is normally excluded (see para. 935 BGB and art. 2276 French Civil code). Italy is one of the few Countries where the purchaser is protected also in case of purchase of a stolen good. Such a provision could make (and has made) Italy a very attractive country for dealers of stolen cultural goods (Francioni 2017, 384). Art. 1153 of the Italian c.c., together with the *lex rei sitae* rule, may legitimise, through an auction, the circulation of a stolen treasure. This risk is only partially prevented thanks to the strict regulation of the Italian art market, which makes Italy not really attractive for international buyers or dealers (art. 65 ff. 2004 Code; Magri 2015; Rivetti 2015).<sup>23</sup>

In Italy, whether art. 1153 c.c. may also be applied to cultural goods or if their particular features exclude them from being considered as movables, is a subject of intense dispute (Comporti 1995, 395 ff.; Fiorentini 2014c, 249 ff. and Magri 2013, 741 ff.). According to some scholar, cultural goods

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<sup>23</sup> Rivetti, Ermanno (2015). "Are Italy's export laws about to change?". *The art newspaper*, 25 September 2015.



should be considered as registered movables (*beni mobili registrati*) and therefore excluded from good faith purchase (art. 1156 c.c.; Comporti 1995, 395 ff.). This opinion is based on the general duty to register all transactions regarding this kind of property (art. 128 TULPS), but not always dealers comply with such duty and thus it seems quite difficult to invoke art. 1156 c.c. in order to exclude the application of art. 1153 c.c., at least in absence of a registration.

There are cases in which art. 1153 c.c. was applied to cultural goods.<sup>24</sup> In general, according to Italian courts, art. 1153 c.c. is applicable also to cultural property. However, the purchaser's good faith is normally harder to prove than usual when he/she is a professional.<sup>25</sup>

The way the statute works is clearly illustrated in the *Winkworth case*:<sup>26</sup> some Japanese artworks were stolen from a private collection in England and taken to Italy, where they were sold to an Italian collector (the *marchese* Paolo del Pozzo). Later the Italian buyer wanted to sell them again and therefore he sent them to Christie's in London. The old British owner filed an action to claim his property back (Merryman 2007, 5). According to the *lex rei sitae* principle (Favero 2012, 38 ff.), the British court held that the legal effects of the sale in Italy were regulated under Italian law and therefore the Italian good faith purchaser became the owner according to art. 1153 c.c., because he acquired the possession in good faith and through a *titolo idoneo*, i.e. a valid contract (Merryman 2007, 5).

The *Winkworth case* demonstrates how *lex rei sitae* and *bona fide* principles taken together can have "very destructive effect on efforts to protect the cultural heritage" (Prott 1989, 268). It is true that both principles are grounded on the free circulation of goods policy, though the question that has to be answered is: do we need a free circulation of cultural goods or would it be better to protect the cultural interest of such goods rather than their value and circulation? According to international rules and European directives, the answer seems to be that, in the field of cultural property, there is no particular need to protect free circulation of goods.

Art. 1153 c.c. was also applied in the case *Stato francese v. Ministero per i beni culturali ed ambientali e De Contessini* (Cass. 24/11/1995, no.

<sup>24</sup> Cass. 24/11/1995, no. 12166. *Foro italiano*, 1996, 1, c. 907; Cass. 14/09/1999, no. 9782. *Mass. Giust. civ.*, 1999, 1968 and Tribunale Prato, 16/12/2008. *Foro italiano*, 2009, col. 1934 ff.

<sup>25</sup> In the case where ten years had passed since two paintings dating from the second half of the seventeenth century, allegedly drawn by Brugnoli and rather unknown in the art world, had been stolen, by its judgment of 16/12/2008, the Prato Court of First Instance held that the person that had bought the paintings with the aid of a broker (both of them being respected individuals) at a rather high price had acted in good faith and that the existence of bad faith of the buyer could not be inferred from the fact that he was also in possession of a third stolen artwork (Tribunale Prato, 16/12/2008. *Foro italiano*, 2009, col. 1934 ff).

<sup>26</sup> *Winkworth v. Christie Manson and Woods Ltd.*, [1980] All ER 1121.

12166; see Biondi 1997, 1173 ff.; Favero 2012, 46 ff.; Magri 2013, 751 ff.). In this case two tapestries were stolen in the *Palais de Justice* of Riom, in France. Two years later, they were sold in Italy and bought in good faith by the antiquarian De Contessini. The French government claimed for the restitution of the tapestries, but the Italian Corte di Cassazione<sup>27</sup> held that under Italian law (art. 1153 c.c.) the good faith purchaser had become the owner, even though under French law, given their cultural value, the tapestries were classified as *res extra commercium* and therefore inalienable (some remarks in Castronovo, Mazzamuto 2007, 109).

Indeed, the implementation of the Directive 2014/60 by art. 79 of the 2004 Code does have an effect on art. 1153 c.c. In fact, in case of a restitution filing from a Member State, the buyer must return the item even if he/she has acted in good faith and due diligence. According to some Italian scholars, the principle stemming from the Directive should be considered as a reason to reconsider, in a restrictive way, the Italian regulation of a *non domino* purchase (Sacco, Caterina 2014, 445 ff.). The Directive has demonstrated that when cultural goods are concerned, there is no general need to protect the purchaser and there is no need to ensure their circulation. On the contrary, circulation of cultural goods must be limited in consideration of the protection of the cultural interest of the State (Magri 2013, *passim*). The main effect of this principle is that, to avoid discrimination and irrationality of the judicial system, all provisions facilitating cultural goods' circulation must be interpreted cautiously and in a restrictive manner.

Even if courts apply art. 1153 c.c. also to cultural goods, a part of Italian scholars is reluctant. The reason lays in the particular nature of such property. Even when belonging to a private person, cultural goods fall under collective interest. They are tangible items representing the CH of a community or a Nation. It is indeed the existence of this general interest that makes them cultural. This cultural and general interest seems to conflict with the free circulation principle on which art. 1153 Ital. c.c. is founded. On the contrary, if the good is connected with a general interest, the free circulation regime should be replaced by a *sure circulation regime* in which the protected interest is not the interest of the market or of the purchaser, but the general interest of the community to enjoy the good, or, at least, to preserve the good into the national CH.

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<sup>27</sup> See Cassazione 24/11/1995, no. 12166, in Riv. dir. internaz. priv. e proc. 1997, 427; see also Tribunale di Roma, 1987-06-27 and Corte d'Appello di Roma decision no. 2107/92.

## 6 Cultural Heritage as Commons

The particular nature of the cultural good has also influenced the application of other rules of private law. For instance, if a person finds an archaeological object of cultural interest, the object belongs to the State and not to the finder as it would normally be (art. 826 c.c.). If a person wishes to sell a good, which has been declared as *bene culturale*, the Italian State has a right of pre-emption (art. 59 ff. 2004 Code). The same happens if the owner of a cultural good wants to export it to another country. In this case, the State can reject export authorisation and it is also possible to enact compulsory purchase (*acquisto coattivo*), when the good is of particular relevance to national heritage (art. 70 2004 Code).

Such provisions are expressly addressed to ensure a general interest in the conservation and growth of national CH. We can identify at least two consequences of this general interest. The first one is that cultural goods cannot be considered as normal wares (art. 64*bis* 2004 Code). The second is that the application of private law provisions, in relation to CH, are limited by a general public interest.

Unsurprisingly in its project, the Commissione Rodotà, which was appointed to revise book III of the Italian c.c., has introduced cultural property in the commons' category.<sup>28</sup> According to the Oxford Dictionary, 'commons' are "land or resources belonging to or affecting the whole of a community". Commons belong to all of us, so they must be protected and managed in the general interest (Mattei 2011, *passim*).

Even if the Rodotà's project was not approved and the definition of commons or *beni comuni* has not been expressly introduced in the Italian legal system yet, the case of cultural property and its regulations prove that this category does already exist and is operating in our legal system.

The application of private law is deeply limited when considering cultural goods. This limitation has its grounds in art. 9 of the Italian Constitution, according to which: "The Republic shall promote the development of culture" and it "shall safeguard the [...] historical and artistic heritage of the Nation". The limitations of private law, that are expressly foreseen shall also be extended in an analogical way, if such extension is necessary to secure the protection of the cultural interest of the Nation. Furthermore, if there are private law provisions contrasting with the purpose of art. 9 Cost., their effect must be restricted and corrected to adopt a so-called constitutional oriented interpretation (Perlingieri 2006, *passim*).

It is not only in Italy that cultural goods can be considered as commons. This seems to be true also at a European level. The Communication of

<sup>28</sup> See Commissione Rodotà - for the amendment of the provisions of the *Codice Civile* related to public property - "Relazione", art. 1(3) lett. c): "commons are among others goods... archaeological finds, cultural property, landscape".

the EC *Towards an integrated approach to cultural heritage for Europe* (COM 2014, 477), for instance, underlines that heritage resources, independently from their owner, bear a value that is held in common, and are in this sense common goods. The Communication expressly declares that CH “is a shared resource, and a common good”. As commons, the heritage resources require an evolved framework of collective governance, that can (and sometimes must) derogate ordinary provisions of private law.

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# **The Intentional Destruction of Cultural Heritage between International Conventions and Direct Intervention**

Silvia Giulini

(Università degli Studi di Genova, Italia)

**Abstract** Through the analysis of the evolution of the most important juridical instruments, this study aims to analyse the peculiarity of the intentional destruction of CH in the terrorist case. In fact, the Taliban and the IS actions against CH have some similarities that make terrorist's behaviour different from other cases in history. The international reactions to this brutality, however, have not been strong enough and there is a high risk that other historical monuments will be destroyed. For this reason, in this study the possibility of a responsibility to protect for CH is investigated.

**Summary** 1 Introduction. – 2 The International Protection of Cultural Heritage. – 2.1 The 1954 UNESCO Convention. – 2.2 The 1972 UNESCO Convention. – 2.3 The 1999 Hague Protocol. – 3 Terrorism. – 3.1 UN Resolutions and Sanctions against Terrorist Actions toward Cultural Heritage. – 3.2 The International Intervention. Is it Possible a RtoP for CH? – 4 Conclusion.

**Keywords** Intentional destruction. Terrorism. Responsibility to protect.

## **1 Introduction**

This work analyses the deliberate destruction of CH in Iraq and Syria. We start from the most important International instruments concerning the protection of CH; then, we focus on the nowadays terrorist actions. In particular, I will compare the Taliban action in 2001 with that of the IS in 2015. We will also analyse the international reactions to these terrorist actions. Finally, we will face the possibility of a direct international intervention for the protection of CH.

## **2 The International Protection of Cultural Heritage**

Since the end of the WWII, the interest in CH has gradually increased. Before, there were only few instruments that protected marginally cultural property. In particular, there was not a definition of CH but a list of goods, part of the category (Francioni 2007, 9-10).

## 2.1 The 1954 UNESCO Convention

The first international instrument concerning exclusively the protection of cultural property is the 1954 Hague Convention. In this Convention, there is no reference to CH, yet, but there is still a reference to cultural property. Moreover, differently from previous instruments, the cultural property is not limited to a list of goods (Greppi 2007, 81), but, on the contrary, it is underlined the importance of these goods for humanity. For cultural property, the Convention means “movable or immovable property of great importance to the CH of every people” (art. 1(a)), “buildings whose main and effective purpose is to preserve or exhibit the movable cultural property” (art. 1(b)) and “centers containing a large amount of cultural property” (art. 1(c)).

Cultural property is not limited to archaeological sites or works of art, but the notion also includes buildings, such as museums, that contain movable properties, as described in art. 1(a), and to centres that contain movable and immovable properties.

The Convention classifies two kinds of cultural property that benefits of two different kinds of protection: the general protection for cultural property (Chapter 1) and the special protection for a *limited number* of cultural property only (Chapter 2).

General protection has to be guaranteed already in peace time (art. 3) and States have to take measures, not better specified (Greppi 2007, 82), before the beginning of any conflict (art. 3). Moreover, the High Contracting Parties undertake to respect cultural property wherever it is located, avoiding its use for purposes that could bring to its destruction or damage, included acts of hostility against it (art. 4(1)). However, this obligation is not absolute and there are some waivers in case the military necessity imperatively requires them (art. 4(2)). This means that the imperative necessity goes beyond the obligation of avoiding the use of cultural property for military scopes. States Party have to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property (art. 4(3)) and have to avoid reprisals against cultural property (art. 4(4)). In case a Contracting Party does not respect these obligations, the other Contracting Party has anyway to respect CH (art. 5.1). In case of occupation, the State Party has to support the local authorities in safeguarding CH (art. 5.1).

The special protection, instead, is possible only for a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance (art. 8(1)).

Refuges, centres and immovable cultural property of great importance can entry in the “International Register of Cultural Property under Special Protection” (art. 8(6)). To achieve the special protection, some other con-



ditions must be respected. In particular, cultural property has to be “situated at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point” (art. 8(1b)) and have “not [to be] used for military purposes”. However, there are some waivers to these obligations too. A refuge can be placed under special protection “whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs” (art. 8(2)). At the same way, it is possible to place a cultural heritage under special protection, even if it is located near an important military objective, “if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective” (art. 8(5)). A center is used for ‘military purposes’ if it is “used for the movement of military personnel or material, even in transit” or any other activities “directly connected with military operations” (art. 8(3)). At the contrary, the presence of police forces in the nearby of the cultural property, is not to be considered as ‘military purpose’.

States Party have to guarantee the immunity of cultural property under special protection (art. 10) but, also in this case there are some waivers (art. 11). If the State Party violates this obligation, the other Party does not have the obligation to ensure immunity of the cultural property in question, as long as the violation persists (art. 11(1)). The other Party, whenever it is possible, has first to require the cessation of the violation. In case of *unavoidable military necessity* and until the necessity continues, the special protection is not more guaranteed (art. 11(2)). The *unavoidable military necessity* can be established only “by the officer commanding a force the equivalent of a division in size or larger” (art. 11(2)).

The limits of the 1954 Hague Convention have made necessary the development of new international instruments. In fact, the goods can be added to the Register only if the State that has the cultural property on its own territory requires it.<sup>1</sup> At the same way, the State is the only subject that can erase the inscription of the good from the Register (Regulations, art. 16(1)).

Cultural properties under special protection have to be signaled by a symbol, a white and blue shield (1954 Hague Convention, art. 16), repeated three times (art. 17(1)); the symbol, repeated only once, can be used to signal cultural properties under general protection (art. 17(2)). It is also hard to satisfy all the elements required for the special protection (Boylan 1993, 76); in fact, the Register includes only five cultural properties: four refuges and a monumental center, the Vatican State.<sup>2</sup> Moreover, the last

1 Regulations for the Execution of the 1954 Hague Convention, art. 13(1).

2 <http://unesdoc.UNESCO.org/images/0015/001585/158587EB.pdf>.

one cultural property inscribed in the Register had been added in 1978.<sup>3</sup> Finally the Convention does not distinguish properly the general and the special protection (Gioia 2007, 109-11) and it does not include buildings for worship, art, science, education, and charity (Boylan 1993, 49-51). However, it is undeniable the importance of this Convention since it has identified obligations for cultural property category (Greppi 2007, 86).

## 2.2 The 1972 UNESCO Convention

Compared with the 1954 Hague, the 1972 UNESCO Convention concerns both CH, an amplified and more complete notion of cultural property (Abdulqawi, Caraccioli 2007, 65-66) and natural heritage. We are going to analyse only the world CH. Moreover, the Convention protects CH both in an armed conflict and in a peacetime context.

The first important aspect of this Convention is the use of the notion of 'world CH', which underlines the relevance of cultural property for the whole mankind. In fact, para. 4 of the introduction of the WHC Operational Guidelines underlines that

the cultural [...] heritage is among the priceless and irreplaceable assets, not only of each nation, but of humanity as a whole. [This] loss, [...] constitutes an impoverishment of the heritage of all the peoples of the world.

For CH the Convention intends "monuments" (art. 1(1)), "groups of buildings" (art. 1(2)) and "sites" (art. 1(3)) "of outstanding universal value".<sup>4</sup> Differently from the 1954 The Hague Convention, there is not reference to movable cultural property.

States Party have to ensure that

the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. (WHC, art. 4)

even if it is possible an "international assistance and co-operation". Each State, however, shall take measures in order to make them effective (art. 5).

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<sup>3</sup> [http://unesdoc.UNESCO.org/images/0015/001585/158587EB.pdf](http://unesdoc.unesco.org/images/0015/001585/158587EB.pdf); Abdulqawi, Caraccioli (2007, 64).

<sup>4</sup> However, as it has been noticed, there is not a definition of the expression. The outstanding universal value is due to the interest that States and different generations have in these goods: see Scovazzi (2014, 4-5).

The Convention distinguishes two Lists in which the world CH can be classified: the *WHL* for CH with outstanding universal value (art. 11(2)) and the *List of WH in Danger* for the CH that needs assistance (art. 11(4)). In the former, it is possible to enlist only the CH of outstanding universal value in terms of the criteria established (art. 11(2)); in particular the criteria are:

1. to represent a masterpiece of human creative genius;
2. to exhibit an important interchange of human values [...];
3. to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
4. to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;
5. to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment [...];
6. to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (Operational Guidelines for the Implementation of the WHC, para. 77)

To be included among the *WHL*, a cultural property that respects the last one criterion has to respect also at least one of the others. Moreover, States have to submit an inventory of CH located in their own territory (art. 11(1)) to the Committee that decides which of these cultural properties have an outstanding universal value (art. 11(2)). In any case the consent of the State concerned is necessary (art. 11(3)).

In the *List of WH in Danger* (art. 11(4)), instead, the consent of the State is not more a *conditio sine qua non* since it is possible that the State itself is endangering the cultural property. For that reason the Committee “shall [only] consult the State Party in whose territory the cultural or natural property in question is situated” (art. 11(6)). The threats to CH are due mainly to urban or tourists’ development projects, natural disasters and armed conflicts (art. 11(4)). This can be explained by the fact that the 1954 Hague Convention concerns only the protection of cultural property in case of armed conflicts.

Most of the terrorist focused targets are included in the *WHL* or in the Tentative List. Since then, some of these cultural properties of outstanding value are included also in the *List of WH in Danger*.

### 2.3 The 1999 Hague Protocol

The 1999 Hague Protocol<sup>5</sup> tries to overcome the problematic aspects of the previous Conventions.

It reaffirms that the measures to safeguard cultural property have to be taken in a peacetime context, adding, however, how each State has to act (art. 5). The II Protocol includes waivers in the respect of cultural property, that are based on *imperative military necessity* (art. 6) as long as the cultural property is used as a military objective (art. 6(a.i)) and there is not alternative available to obtain such an advantage (art. 6(a.ii)). Moreover, the imperative military necessity can be decided only “by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise” (art. 6(c)) and can be evoked only when and for as long as no other choice is possible for obtaining a similar military advantage (art. 6(b)).

During the conflict, States have also to “verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention” (art. 7(a)), to take precautions “with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Article 4 of the Convention” (art. 7(b)), to refrain attacks “which may be expected to cause incidental damage to cultural property protected” that exceed the military advantage (art. 7(c)), to suspend the attack (art. 7(d)) when the cultural property is protected by the Convention (art. 7(d.i)) or may cause damaged not proportioned to the military advantage (art. 7(d.ii)).

Moreover, States Party have both to “remove movable cultural property from the vicinity of military objectives or provide for adequate *in situ* protection” (art. 8(a)) and “avoid locating military objectives near cultural property” (art. 8(b)).

The most important change, however, concerns the introduction of a new kind of protection: the *enhanced protection*, much more innovative than the special protection of the 1954 Hague Convention (Abdulqawi, Caraccioli 2007, 63). The enhanced protection can be provided if three conditions subsist; in particular cultural property has to be:

1. considered of the greatest importance for humanity (art. 10(a));
2. protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection (art. 10(b));
3. not be used for military purposes (art. 10).

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<sup>5</sup> More about the 1999 Hague Protocol is in Abdulqawi, Caraccioli (2007, 58-71); Greppi (2007, 88-96).

States Party have to submit the list of cultural property they wish to have enhanced protection (art. 11(1)), but some organisations “with relevant expertise” can invite the State to submit to the List a specific cultural property (art. 11(3)). The request can be submitted by the State Party also during the hostilities, in case of emergency (art. 11(9)). Once the cultural property is under enhanced protection States Party have to avoid attacking it, using it and its immediate surroundings (art. 12). However, the enhanced protection can be lost or suspended (art. 13(a)), when the cultural property does not meet anymore the criteria of art. 10, or it is used in support of military action, or its use made it a military objective (art. 13(b)).

Finally, Chapter 4 of the 1999 Protocol concerns the criminal responsibility. In particular, a person violates the Convention if he:

- a. attacks directly cultural property under enhanced protection (art. 15(1a));
- b. uses the surroundings of a CH under enhanced protection in support of military action (art. 15(1b));
- c. destructs extensively cultural property (art. 15(1c));
- d. makes cultural property object of attack (art. 15(1d));
- e. is responsible of acts of theft, pillage, misappropriation or vandalism (art. 15(1e)).

### 3 Terrorism

The action of terrorism has some important features that distinguish it from all the other examples in history. As Francioni and Lenzerini underlined in their work (2003, 619-651) there are some peculiar aspects of Taliban’s action against the two huge Buddha statues in the Bamiyan Valley that makes this terrorist technique “a very dangerous precedent” (619). In the light of the recent IS behaviour toward CH, it is possible to affirm that this worry was well-founded. In fact, there are some features that work also in IS nowadays intentional destruction of WCH in Iraq and Syria. First, it is important to remember shortly some of the most important aspects in both Taliban and IS behaviour.

In 2001, the Taliban decided to destroy the two Buddhas of the Bamiyan Valley in Afghanistan. This action was very well planned and in March 2001 the explosion of the two statues was justified by the decision, taken in February 2001 by Afghan scholars and the Afghan Supreme Court, to destroy the idols, present in the whole country, mostly controlled by Taliban, because of the risk idols could be idolised, also in the future (Francioni, Lenzerini 2003, 622).

In 2015, IS has promoted a true media campaign. IS wants to build Year Zero, erasing the past, that they refuse to recognise, and wants to find consensus among the population, exhausted for the terrible situation in

which it has to live. The first attack was in the Museum of Mosul where the instigators destroyed carefully with drills and picks important testimonies of the past. Other attacks followed: on 5 March the destruction of the archaeological site of Nimrud; on 7 March the destruction of Hatra (registered in the WHL) continued on 12 and 13 April with the complete destruction of the Ashurmasirpal II Palace.

These terrorist behaviours are very peculiar because different from other cases in history. This shows that the analysis made by Francioni and Lenzerini is applicable also to IS. In fact, in the Buddhas of Bamiyan Valley case the Taliban were destroying part of the Afghan CH and not of the enemy one (2003, 620), in the same way in which IS destroys Iraqi and Syrian CH. This means that they are not destroying a culture different from their own: in fact, they destroy their pre-Islamic past, considered as an enemy.

Moreover, the destructions both of Taliban and IS, were not due to military necessity nor the goods were near a military objective but they were focused targets. This can be confirmed by the tools used by terrorists, in particular of picks and drills, that makes this action different from the previous wanton bombardments in history. The purpose is, in fact, the deliberate destruction of cultures that are in contrast with terrorist conception (Francioni, Lenzerini 2003, 620). In fact, the destruction was planned with attention and was very well documented in all phases. Finally, the opinion of the two authors that links the destruction of the two Buddhas statues with the sanctions imposed by UN in 1999 and 2000 seems to be confirmed; in fact, IS destructions have followed the imposition of a UN sanction (Francioni, Lenzerini 2003, 620 ff.).

### 3.1 UN Resolutions and Sanctions against Terrorist Actions toward Cultural Heritage.

In the Res. 1267 of 1999<sup>6</sup> there is a first reference to CH: the *second recital* of the preamble states “its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan’s cultural and historical heritage”.

The Res. 1483 of 2003 concerning the situation in Iraq<sup>7</sup> is particularly important in our study because it underlines the responsibility for all States to

facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific,

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<sup>6</sup> UN Doc. S/RES/1267, 15 October 1999.

<sup>7</sup> UN Doc. S/RES/1483 (2003), 22 May, SC.

and religious importance illegally removed. (para. 7)  
and to prohibit the trade of these items. (para. 7 and para. 10)

With the Res. 2199 of 2015<sup>8</sup> there is a reinforcement of the protection of CH because there is an entire part of the resolution dedicated to CH (paras. 15, 16, 17). It condemns the destruction of, among other things, archaeological sites, museums, libraries, archives trade. Moreover, Member States have to collaborate with other IOs to prevent illegal trade of goods from Iraq and Syria. Part of the resolution is exclusively for CH: in particular, the destruction of CH in Iraq and Syria is condemned both in case of accidentally destruction and in case of deliberate destruction “including targeted destruction of religious sites and objects”. Moreover, all Member States have to take all the necessary measures to prevent the illegal trade of goods of archaeological, historical, cultural, scientific and religious importance, coming from Iraq and Syria. These deliberate destructions of CH have moved the public opinion but, at the end, the international reaction has not born its fruits and terrorists have continued their attacks.

After the destruction of the two Buddhas statues, the Res. 55/243 of the UN GA concerning “the destruction of relics and monuments in Afghanistan”,<sup>9</sup> underlines that this destruction “would be an irreparable loss for humanity as a whole” (Preamble, last recital). Moreover, it demands to the Talibans themselves to prevent the destruction of CH of Afghanistan (para. 3) and to protect it “from all acts of vandalism, damage and theft” (para. 1). Finally, the Member States are demanded to take appropriate measures to safeguard the sculptures (para. 4).

The UN GA Res. 55/254 of 31 May 2001, concerning the “protection of religious sites”,<sup>10</sup> condemns “all acts or threats of violence, destruction, damage or endangerment, directed against religious sites as such” (para. 1). States have also to ensure the respect and protection of religious sites in conformity with international law and to prevent acts or threats of violence (para. 2). NGOs and IGOs have also to promote, together with media, “a culture of tolerance and respect for the diversity of religions and for religious sites, [...] an important aspect of the collective heritage of humankind” (para. 3).

However, the most important international reaction was the Declaration concerning the intentional destruction of CH.<sup>11</sup> It was preceded by a study

8 UN Doc. S/RES/2199 (2015), 12 February, SC.

9 UN Doc. A/RES/55/243, GA, 1 May 2001.

10 UN Doc. A/RES/55/254, GA, 31 May 2001.

11 The 2003 UNESCO Declaration.

commissioned by UNESCO General Director (Lenzerini 2003, 131-132). The Draft, subject to negotiation from a Member State group, reached a compromise, submitted in October 2003 to the General Conference. One of the most important differences between the Draft and the final Declaration is the replacement of 'shall' of the former with the softer 'should' of the latter. As a consequence of the destruction of the two Buddha statues (Preamble, first recital), the Declaration underlines that

CH is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights. (Declaration, fifth recital)

This means that there is a strong link between CH and human rights.

However, compromises have weakened this instrument. Art. 1, for example, does not give contributes to the development of the protection of CH because it recognises the importance of the protection of cultural heritage and reaffirms its commitment to fight against its intentional destruction in any form so that such cultural heritage may be transmitted to the succeeding generations.

In fact, the 2003 UNESCO Declaration should have condemned the destruction of CH in the territory of the State that acts (Lenzerini 2003, 151) rather than recognises the importance of CH in general, already present in the previous international instruments.

The Declaration is applied for CH, independently from its outstanding value. For 'intentional destruction' the Declaration means

an act intended to destroy in whole or in part CH, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience, in the latter case in so far as such acts are not already governed by fundamental principles of international law. (art. 2(1))

Moreover, art. 3 is weakened by the use of 'should' (Scovazzi 2007, 173-174) that, in a declaration of principle, is even more unnecessary (Lenzerini 2003, 141): in that way, a fundamental obligation such as the prevention of the intentional destruction of CH looks less incisive than before (Scovazzi 2007, 171-174). In fact,

States should take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of CH, wherever such heritage is located. (2003 UNESCO Declaration, art. 3(1))

The prevention of intentional destruction of CH is independent from the



place it is located, even in the acting State's territory; however, this case is not explicitly mentioned (Lenzerini 2003, 141). States are also invited (art. 16(3)(4)) to become part of some of the most important international conventions, to promote higher standard of protection of CH in legal instruments and to apply these instruments.

Art. 5 underlines that States, in case of armed conflict, should take all necessary measures to protect CH, as crystallised in general international law (Lenzerini 2003, 141-142).<sup>12</sup>

States are responsible for the destruction of CH "of great importance for humanity whether or not it is inscribed on a list maintained by UNESCO or another IO" (art. 6) or for the lack of appropriate measures taken to avoid it. In the same way, States should also take measures and provide sanctions

against those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization. (art. 7)

A difference between the Declaration and the Draft is that, in the latter, it was also included all goods that are of special relevance for the community, that built and maintained it (Lenzerini 2003, 142). However, the Declaration is an opportunity loss and the result is not sufficiently advanced (Lenzerini 2003, 143).

A first reaction to the Mosul Museum destruction is the Baghdad Museum reopening. In the numerous condemnations of UNESCO General Director it is always underlined that the destruction of CH is a war crime. Decision 196 EX/29 *Culture in conflict areas: a humanitarian concern and a safety issue. UNESCO's role and responsibilities* wants to reinforce the capacity of the Organisation to protect CH during armed conflicts. The idea is to *create protected cultural zones* around sites with recognised historical meaning (para. 3). Moreover, the Executive Council condemns the intentional destruction of CH in Iraq, Syria and Libya (para. 9), calls the UN Members to take all necessary measures to prevent the trafficking of CH (para. 10) and asks the UNESCO General Director to reinforce the intercultural dialogue and to use its role of coordinator to prevent the illicit traffic of CH and to reinforce the UNESCO action (paras. 11-15).

The UE Res. P8 TA(2015)0179 of the 30 April 2015<sup>13</sup> concerns the intentional destruction of cultural heritage by IS. This resolution is important not only because there is awareness that these actions are to be consid-

<sup>12</sup> However, as underlined by Scovazzi (2007, 172), this evolution is not clear.

<sup>13</sup> EP Res. of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh (2015/2649(RSP)), P8\_TA.

ered as part of the cultural cleansing (paras. A-B) and that “artistic and cultural goods are becoming ‘war weapons’” (para. D) but also because it is the third most important illegal traffic after drug and arms (para. H), and even if it is not UE competence, it comes under several EU field of competence (para. I). Moreover, differently from the UNESCO Secretariat declarations, the resolution condemns this behaviour as a crime against humanity and not as a war crime (para. C). It condemns the destruction in Syria and Iraq (para. I) and invites States to avoid the import of goods illegally traded (para. 4).

On 28 May 2015 the Res. A/69/281 *Saving the CH of Iraq*<sup>14</sup> concerns “the destruction and looting carried out by the IS in Iraq [...] [of goods] which are irreparable losses for Iraq and the whole humanity” (fifth recital). The resolution shows concern for the number of attacks and threats to CH and for the looting and trafficking of CH “which occurs on an unprecedented scale today”. Moreover, the resolution underlines that the destruction of CH “erases the collective memories of a nation, destabilises communities and their cultural identity” (ninth recital). Reaffirming that the attack to the CH of a country is an attack against the common heritage of humanity as a whole (eleventh recital), and, for these reasons, it is necessary to safeguard and protect CH (twelfth recital). The resolution condemns the barbaric destruction and looting of CH (para. 1), used as a tactic of war. The resolution asks also for the protection of CH through international humanitarian law underlining that the attack directed against CH may be considered as a war crime.

### 3.2 The International Intervention. Is it Possible a RtoP for CH?

The destruction of CH of great importance has underlined the necessity of protecting it from terrorist’s attacks. One possibility concerns an international intervention through the creation of an international group with the purpose of protecting CH. Article 31 of the 1999 II Protocol to The Hague Convention affirms that

in situations of serious violations<sup>15</sup> of this Protocol, the Parties undertake to act, jointly through the Committee, or individually, in cooperation with UNESCO and the UN and in conformity with the Charter of the UN.

This means that in case of serious violations, it is possible to start an ac-

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<sup>14</sup> GA, Resolution 69/281, *Saving the cultural heritage of Iraq*, 28 May 2015.

<sup>15</sup> As Mainetti (2007, 285) underlines, the notion serious violation is already used in art. 15. This raises some problems in the interpretation.

tion both at individual level and in cooperation with UNESCO (Mainetti 2007, 286-287). States, in case of serious violations, undertake to act. Since only few States are part of the 1999 Hague Protocol, this limits the value of art. 31.<sup>16</sup>

However, with the SC Res. 1483 of 2003, UN can intervene directly, in case of crisis, also for the protection of CH. In particular, the Res. underlines that the SC:

Decides that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally [...], and calls upon the UNESCO [...] to assist in the implementation of this para.<sup>17</sup>

UN have to respect international law rules,<sup>18</sup> and among them it is forbidden the attack to monuments that are part of the cultural and spiritual heritage of peoples (Mucci 2007, 326-327). For that reason, the destruction of cultural property is forbidden.<sup>19</sup> The UN SG's Bulletin, *Observance by UN forces of international humanitarian law* underlines that

the UN force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. [...] the UN force shall not use such cultural property or their immediate surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited. (section 6.6)

Since there are only a limited number of States that are part of the international Conventions and of the additional Protocols, the resolution has the purpose to solve that problem, making the contrast to illicit cultural trade an international obligation (Mucci 2007, 325). The resolution concerns the restitution of movable property illicitly smuggled in Iraq and sold in the whole world. Moreover, it has a universal value: in fact, it has value both for the States acting in Iraq and for all the States Party of the UN (Mucci

16 <http://www.unesco.org/eri/la/convention.asp?K0=15207&language=E&order=alpha>.

17 UN Doc. S/RES/1483 (2003), 22 May 2003, para. 7.

18 UN Secretariat, UN Doc. ST/SGB/1999/13, Secretary-General's Bulletin, *Observance by UN forces of international humanitarian law*, 6 August 1999.

19 UN Secretariat, UN Doc. ST/SGB/1999/13, Secretary-General's Bulletin, *Observance by UN forces of international humanitarian law*, 6 August 1999, section 6.6.

2007, 330). The resolution has given the possibility to make some duties, already present in the international Conventions, international obligations, since the UN includes almost the totality of the countries in the World. The obliged intervention in the illicit traffic of cultural property shows the common nature of the protected interest, defended as *erga omnes* obligation. Base of this resolution is Chapter 7 of the UN Charter, concerning peacekeeping and international security (Mucci 2007, 332). The importance of the protection of CH is underlined by the Preamble that states

the need for respect for the archaeological, historical, cultural, and religious heritage of Iraq, and for the continued protection of archaeological, historical, cultural, and religious sites, museums, libraries, and monuments.<sup>20</sup>

The maintenance of peace, the international security and the protection of human rights are defended by UN. These tasks are linked to the protection of cultural heritage because the protection of cultural goods is to be considered as a human right of third generation (Mucci 2007, 333-336). Moreover, the link between peace and human rights has made the protection of CH fundamental to maintain peace. Since peacekeeping, international security and the protection of international law are defended by UN and since the protection of CH is a human right of third generation that can be considered as fundamental for the maintenance of peace (peacekeeping), the protection of CH has reached a very high level of importance. Moreover, the protection of CH is connected with human dignity. Through this resolution the SC has given the possibility to give application to principles already affirmed in important international Conventions. However, this intervention has been possible because it did not interfere with the sovereignty of the State (Mucci 2007, 340). In the Bamiyan Valley case, the direct intervention could not be possible because the announcement of the will to destroy CH could not bring the SC to the action (Mucci 2007, 341).

The mere announcement of the will to destroy CH does not allow the SC intervention. It can be added that the will of destroying CH shows the disregard for human rights, and a UN action could be possible but only when it is not connected exclusively to the destruction of cultural property, since the violation of human rights of third generation can put into risk also human rights of first and second generation. Moreover, in the last years two customary laws have been formed: the first one considers the CH part of the general interest of international community; the second one, instead, forbids all kinds of violence against CH in case of armed conflict. In the light of these, in case of destruction of cultural property, the RtoP could

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20 UN Doc. S/RES/1483 (2003), 22 May, Preamble (twelfth recital).

be possible because some rules concerning CH has become customs rules and are considered *erga omnes* rules (Francioni, Lenzerini 2003, 633-638).

In the same sense, the Res. 2199,<sup>21</sup> inspired by Res. 1483, strongly condemns the destruction of CH. There is, in fact, a specific part concerning exclusively the destruction of CH. In particular, Res. 2199 strongly condemns the destruction of CH. In fact, it:

Condemns the destruction of cultural heritage in Iraq and Syria [...] incidental or deliberate, including targeted destruction of religious sites and objects;

notes with concern that ISIL, Al Nusra Front [...] are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria;

[...] decides that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed [...] allowing for their eventual safe return to the Iraqi and Syrian people and calls upon the United Nations Educational, Scientific, and Cultural Organization. (Resolution 2199, paras. 15-17)

States have to act, in order to take appropriate steps to prevent the illicit trade. It is not a mere suggestion but it is an obligation (Negri 2015, 6): in that way, States have duties that they did not have before. This resolution goes in the same direction of the previous one and, in that sense, “brings the international protection of CH into the SC’s normative sphere” (Negri 2015, 5) so that it is not more a UNESCO exclusive domain, but the protection of CH becomes a fundamental element for the maintenance of international peace and security.

This resolution goes also beyond the previous one because, at para. 15, condemns the destruction, intentionally or not, of CH.

After these considerations and underlining that the destruction of cultural property has been defined as a war crime and in the past has also been classified as a crime against humanity, an international direct intervention, such as the RtoP, looks to be possible.

## 4 Conclusion

In conclusion, we concentrated on the possible intervention to protect CH. The limits of the 1954 Hague Convention have been partially overcome

21 UN Doc. S/RES/2199 (2015), 12 February.

by the 1999 Protocol. The international reaction has brought to important 'speeches' but it has not been able to stop terrorist action. A possible solution to stop the intentional destruction of CH, taking into account the fact that terrorists carefully act with drills, picks and bulldozer and do not launch bombs, is an international intervention, such as the RtoP. The RtoP<sup>22</sup> seems to be applicable since there are some rules that have reached the level of customary laws and are considered as bases of *erga omnes* obligations. Since the protection of CH is considered as an obligation and since the destruction of CH is considered both as a war crime and as a crime against humanity, it is possible a RtoP. The idea of creating UN peacekeepers for CH seems to be possible since it has been recently presented by Italian delegation and has been positively studied by the UN.

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22 For the limits of the RtoP, cf. Focarelli 2008; Mainetti 2004; Stahn 2007; Zorzi Gustiniani 2009.

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## **II**

# **Cultural Heritage Inspires**



# **Cultural Heritage Misfits**

## **Perspectives from Developing Worlds**

Antonio Arantes  
(Universidade Estadual de Campinas, Brazil)

**Abstract** Considering that the dialectic of affirmation and contestation of hegemonies constantly modifies, reconstructs and shifts identities, and that human creativity incessantly reinvents social life, it can be expected that official protection does not guarantee a safe place in the cultural pantheon for CH. Heritage can be integrated to the local cultures or refused by them. It can be forgotten, re-encountered, remade, reinvented or trigger unexpected symbolic meanings and practices. This is a challenge that is perennially placed before the institutions responsible for the protection and conservation of these officially protected treasures.

**Summary** 1 Preliminaries. – 2 Misfit Senses. – 3 Whose Heritage? – 4 Misfit and Exclusion. – 5 Finalizing.

**Keywords** Cultural heritage. Social memory. Politics of place. Appropriation. Dialogue. Exclusion.

### **1 Preliminaries**

Academic researchers have given increasing attention in recent years to the relationship between preservation and daily life at heritage sites. Important developments in this line of research have taken place in France and Italy, for example.<sup>1</sup> The issue has also received attention in South America, as it did at the symposium *Habitar el Patrimonio* (Inhabit the Heritage), held in Quito for the 35th anniversary of that city's inclusion on the WHL. In this essay, I return to the general lines of my presentation at that meeting, seeking to deepen understanding of this problematic, and to stimulate the dialog between residents of protected sites, holders of ICH), public administrators and preservation professionals. My reflections are based on the following presumptions.<sup>2</sup>

1 I refer in particular to the seminars promoted by the Mission Ethnologie, Ministry of Culture and Communication, France, among which stand out the colloquium held in 2000, entitled *Vivre le temps. Anthropologie, histoire et patrimoine*. Works presented at this symposium were published in Fabre, Iuso 2009.

2 About these interpretive parameters see, among others, Arantes 2007, 2009b, 2010; Durham 2013; Rodrigues 1996; Velho 2007.

The first - which nowadays seems quite evident, but was not in the early '80s when the so called 'anthropological turn' in heritage studies was beginning - is that CH, tangible or intangible, is not a residual reality or legacy that endures persistently at the margins of social transformations. Rather, it is *the result of specific social practices* that take shape in the realm of the public sphere and involve confrontations and negotiations between government institutions, civil society organizations, academics, economic agents and those who are in possession of protected cultural elements.

The second parameter, which stems from the first, is that once the heroic phase of preservation was overcome, this public policy became increasingly bureaucratized. I refer here not only to the period in which institutions, instruments and basic procedures were formed, but also, and mainly to the construction of their legitimacy in the eyes of society. In Brazil, for example, this process extended from the mid-1930s to the late '60s. During this period, both institutional organization and the implementation of policies and programs gradually became dependent on complex norms and procedures, requiring a high degree of specialization of their agents, as well as a consistent and constantly revised legal, theoretical and methodological framework.

The third parameter refers to the enrooting of these policies in the ways of life of the affected populations. In this perspective, the relations between heritage, memory and place stand out. This triad - memory, heritage and place - allows anchoring my present reflections on the idea of heritage site, which I understand to be the physical space, as well as the corresponding social milieu, where heritage practices take place, in a quite literal sense.

Places are spaces appropriated by human agency. They are realities of a simultaneously tangible and intangible nature, both material and symbolic, which can be interpreted as aggregates of space-time references. They are the where and when of economic transactions, religious worship, civic celebrations and political demonstrations.

As Bosi argued (1979), social memory, like personal memory, has 'anchorage points', *i.e.*, shared references to which various generations lash the memories of the places where they live, and that are inseparable from that which occurs in them. These anchorage points are key elements in the formation and nourishment of senses of localization and belonging; and are essential as concrete references of awareness of self, as well as of difference in relation to others.

The importance of recognizing the anchorage of heritage in social memory and place, is strengthened when its specialization is referred to the triple dimensions encompassed by the concept of 'urban environmental heritage', which articulates its condition as artefact, field of social forces and aggregate of symbolic representations (Bezerra de Meneses 2006, 36-39). This concept

favors a holistic understanding of heritage sites, associating the preserved cultural elements to the social fabric and to the territory where they are inserted. It also helps to incorporate its psychosocial dimension since it involves the processes by which social agents construct the senses of place that nurture and guide the experience of living at a heritage site. This perspective helps to question preservation, when it is conducted – as occurs in developing regions, if not countries – in disarticulated technical actions, some directed towards the artefactual dimension of a site and others to the intangible realities embedded in their inhabitants' social practices and present lives.

The fourth aspect to be considered in these preliminary remarks is that the actions triggered by preservation produce reflexive effects. When searching for the continuity and strengthening of the tangible and intangible manifestations of culture to which heritage value and memory are attributed, preservation and safeguarding<sup>3</sup> actively participate in cultural dynamics by aggregating heritage-related socio-political agendas and symbolic meanings to 'ordinary' artefacts and practices and, consequently, by affecting their use and exchange-values.

From an anthropological point of view, reflexivity is one of the most sensitive points of heritage preservation. The ideal of *shared management*, for example, – which presupposes dialog and a good understanding between public agents and civil society – is frequently shaken by disagreements related to the identification and delimitation of what should be preserved, how and why, as these decisions directly affect social life at heritage sites. Questions related to the appropriation of preserved cultural goods by society also come into play in this reflexive game. In the case of ICH – which is officially understood as living heritage – the transformative character of such appropriation is usually recognized in legal instruments used for safeguarding, since this heritage is recognized as part of cultural dynamics, and can be discontinued at the discretion of its practitioners, even after *heritagization*. In the case of tangible goods, however, the reverse situation occurs, as there are impediments to interventions and uses that affect their conservation and the continuity of officially attributed values (historic, aesthetic, scenic etc.). The transformative dimension of the use and transmission of heritage goods, which, in the first case, is understood as being inherent to the preserved reality is, in the second, interpreted as destructive, and therefore undesirable.

Finally, the fifth presumption is that the mentioned conflicts and tensions make explicit differences in values, worldviews and aspirations, found among the *various social and political agents involved in preservation*. The depth and complexity of these differences can trigger processes

3 I adopt the distinction between 'safeguarding' and 'preserving', and the definition of the latter, given by Article 2(3) of UNESCO's 2003 Convention.

that, in certain contexts, are more radically intercultural than in others. By involving indigenous, aborigine or emigrant populations, for example, they can signify important confrontations between institutional legal systems and customary law.

## 2 Misfit Senses

To live at a heritage site, particularly in developing countries, as well as regions or localities of developed ones, involves being inserted in a web of values and regulations concerning the protection of natural or built spaces, without necessarily knowing the reasons that guide and justify this protection, agreeing with them or being benefitted by the investments made in the name of their safeguarding.

I am not suggesting that the average citizen is indifferent to the emblematic marks of the inhabited space, to the historic testimonies that are territorialized in it or to the festivals and celebrations that take place there. The drawing presented in figure 1 (São Paulo City Center by Jackson, 16 years old) as well as countless studies show that human groups attribute meanings to the spaces where they live and develop forms of practical or symbolic appropriation of their territory, through ordinary or ritual activities. As I have already suggested, lived space and the meanings that are enrooted in it are, in fact, inseparable realities; they are faces of the same coin, whose value is historically transformed. These values may be of a referential, testimonial, aesthetic, political, religious or cosmological nature. They are formed in social life and fed by it, and transform physical spaces and structures into places, that is, into inhabited, worked and experienced territories, into concrete supports of feelings of shared social belonging. Nevertheless, what can be denominated as CH *stricto sensu* is not the same as the symbolic constructions that are inherent to social life (Arantes 2009a, 11). Nor does the idea of preservation make sense if applied to the totality of the cultural references socially shared by any social group or cultural community. This would be a conservative fiction, necessarily antagonistic to the inevitable emergence of the future in the present.

Patrimony is selective; it can be described as a second-level cultural phenomenon, which results from the aggregation of coded meanings and regulations to the use, conservation and transmission of pre-existing cultural realities, tangible or not; strictly speaking it is a 'metacultural' fact. I am referring not only to rituals and ceremonies, to sacred and curing practices, or to musical and choreographic performances that may become registered as ICH. I am also thinking of works of art, spaces and buildings, vernacular or monumental, that can become protected because the historic or aesthetic values attributed to them. Both tangible and intangible culture can become



Figure 1. São Paulo city center. Drawing by Jackson de Oliveira, homeless teenager, 1992. Project: Building democracy. UNICAMP/Rockefeller Foundation

metacultural – and sometimes hyperreal – artefacts through heritagization (Arantes 2010; Kirshenblatt-Gimblett 2004; Urban 2001). I insist on this distinction because it tends to become invisible in preservationist discourse and practice. Both tend to naturalize this symbolic construction, as if heritage value was an attribute inherent to the preserved objects, something that need only be pointed out to be automatically recognized and accepted. Even educational actions in the field of heritage at times do not sufficiently or seriously consider these differences. Nevertheless, it is crucial to make them explicit not only to understand preservation as a complex social process, but also to evaluate its consequences, both in relation to cultural dynamics, and in relation to heritage management. It is known, for example, that access to sacred knowledge and places is frequently regulated by moral interdictions and by the notion of secrecy, which conflicts with the preservationist ideal of making the heritage of some, virtually accessible to many. However, commodification often pervades the safeguarding system, and can sometimes make the contact with the ‘other world’ of mythical experience available for a low price and questionable beliefs.

It is noteworthy that meanings and senses attributed by custom to tan-

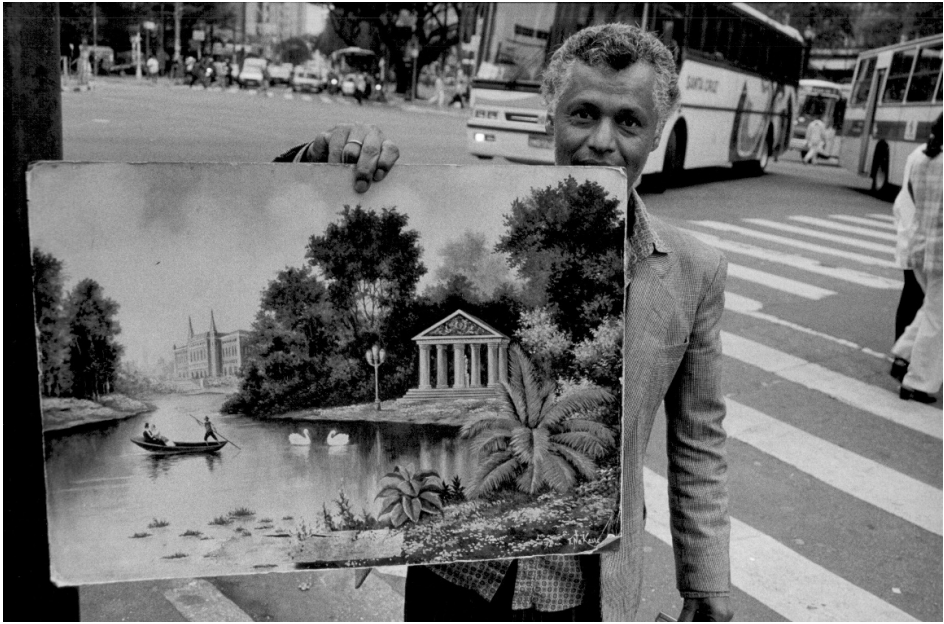


Figure 2. Idyllic representation of place. São Paulo. Photo by Paolo Gasparini, 1997.  
Project: Building Democracy. UNICAMP/Rockefeller Foundation

gible and intangible aspects of cultural artefacts and practices have no equivalent in the instruments and procedures used for safeguarding. This can be exemplified by the inadequacy of the concept of IP, as defined by Western law, when applied to TK and TCEs (Arantes 2013b). On the other hand, officially preserved objects tend to be reinterpreted and gain new uses and meanings according to the cultural logic and dynamics of the social milieu in which they occur (Arantes 2007), often challenging CH regulations. It is this ambivalent phenomenon of disjunction and convergence of values belonging to different worldviews about the same objects, that I call 'misfit'.

It is known that the production of heritage is fundamentally a question of attribution of value and of construction of meaning. But to understand the symbolic effectiveness of this practice, which necessarily goes beyond intercultural borders, it is necessary to have a nuanced understanding of its effects. This is so because, although preservation can legitimate and strengthen emblematic representations of identity and power, it does not do so automatically, nor without consequences.

This problem has not gone unnoticed by heritage administrators, but frequently has been poorly interpreted. In fact, preservation agencies have undertaken educational and promotional actions to make less discrepant





Figure 3. Fortune-teller in São Paulo city center. Photo by Paolo Gasparini, 1997.  
Project: Building Democracy. UNICAMP/Rockefeller Foundation

and less conflictive the interface between daily life at heritage sites and the innovations created by the heritage expertise, contradictorily in name of a continuity of tradition. By means of such programs, the arguments and values that justify the listing of artefacts and practices can become comprehensible to the public in general through educational actions. Moreover, the criteria of choice adopted for the formation of these lists can also come to be validated by public opinion. But some problems remain unresolved (Arantes 2013a). However, considering that the dialectics of affirmation and contestation of hegemonies constantly modifies, reconstructs and shifts identities, and that human creativity incessantly reinvents social life, it can be expected that official protection does not guarantee a safe place in the cultural pantheon for CH. Heritage can be integrated to the local cultures or refused by them. It can be forgotten, re-encountered, remade, reinvented or trigger unexpected symbolic meanings and practices. This is a challenge that is perennially placed before the institutions responsible for the protection and conservation of these officially protected treasures.



Figure 4. Wajãpi researchers at a workshop about cultural translation of the Western concept of ‘intellectual property’ in terms of their own language and culture. Wajãpi Indigenous Land (Aramirã Post). Photo by Antonio A. Arantes, 2008 (See Arantes 2013b)

### 3 Whose Heritage?

Preservation, as is known, is a selective action, which is based on criteria typically guided by hegemonic ideologies and validated by academic knowledge (Rubino 1992). For this reason, it is not surprising that there is space for polemics within the field. Take for example, what some Brazilian architectural historians qualify as a mistake of the country’s National Historic and Artistic Heritage Institute, which in a country of immigrants of various origins as is Brazil, interprets the word national as Brazilian and thus contributes to overlooking the eclectic architecture of Italian origin that strongly marked the urban landscape of the city of São Paulo, in the turn from the nineteenth to the twentieth century.

Until at least the ‘80s, social scientists – and particularly anthropologists – contributed relatively little to the development of the reflection about heritage, particularly concerning confronting practical questions raised by the preservationist activity. Until then, important contributions were produced for the understanding – and criticism – of the political conservatism found in these institutional practices, and their role in the



Figure 5. “I jarã omarã kuwa rupi te oinõ momae’ko”, which translates as “the owner is the one who makes things with knowledge, in the route of experience”. Approximate definition of ‘intellectual property’ in Tupi language by Wajãpi researchers. Wajãpi Indigenous Land (Aramirã Post). Photo by Antonio A. Arantes, 2008 (See Arantes 2013b)

construction of nations, nationalities and nationalisms. This critical outlook allowed understanding that preservation has served the construction of national symbols that are compromised to the interests of the dominant classes and with the rituals associated to them (Hobsbawn, Ranger 1983); and it has also problematized the simplistic, prejudiced and widely promoted correlation between heritage conservation and conservative politics.

CH institutions in Brazil and internationally have gradually incorporate – even if at times timidly and counter to the majority opinions – the perspectives of the subjects for whom – or with whom – preservation is implemented. The adoption of the idea of ‘cultural significance’ in the Venice Charter of 1964, and of ‘social value’ in the Australian Charter of Burra of 1999, was not part of a consistent trend. Nevertheless, they suggest that this sociological concern has been present among the preservation ideals and ideas for several decades. This trend is also corroborated by the thematic fields addressed by the ICOMOS commissions, particularly with the inclusion, in their activities, of the themes related to ICH, an object that by its nature involves the recognition of the heritage value attributed by so called *cultural communities*.



Figure 6. Sheik (on the left) commenting on the recommendations for the safeguarding of the ICH of the Makuwa Nahara. To the right, Shehe Hafiz Jamu serving as an interpreter at a public hearing on the Island of Moçambique. Photo: Ernesto Matzinhe, 2012

The conceptual changes that have favored a still timid incorporation of new social agents in the key issues of preservation feed, and have been fed, by the formation and strengthening of civil society organizations, particularly in Brazil. The mobilization around the elaboration and implementation of the 2003 UNESCO Convention, for example, and in defense of intellectual rights associated to TK and TCEs before the WIPO, indicate quite consistent changes in this direction.

In relation to this topic, it is also relevant to recognize the expansion, in more recent times, of the range of types of objects that can be declared heritage, as with the inclusion of intangible cultural elements in the group of protected properties. One should also consider the awareness raising about cultural diversity among these changes, powered by the prompt and effective support of a significant number of countries of Central and South America, Africa, the Pacific and Asia to the 2003 Convention. The valorization of dances, songs and other cultural expressions of explicitly ethnic connotation as emblematic representations of nations also deserves highlighting. And, finally, encouragement to the adoption of participatory methods of identification and inventory of cultural goods, which inevitably places in contact institutional agents, owners or residents of heritage and professionals from various fields, can also not be ignored.

It is worth mentioning that these changes presuppose that the institutional agents of preservation are intellectually prepared for the intercultural dialogs resulting from the confrontation of the theoretical and practical questions about what I call here a misfit of meanings. It is known, however, that this rarely occurs.

The above-mentioned transformations in the trajectory of cultural preservation lead the institutional agents to the recognition of an undeniable fact: that CH elements are part of the ways of life of specific human groups – ethnic, artistic, artisan, religious or others – before they may become symbols of generalized national, regional or global interest. This recognition necessarily leads to the admission that, as supports for social identities undergoing mutation, heritage goods are psychosocial realities and their history – whether it involved conservation, transformation or abandonment – gains strength and complete meaning when interpreted in relation to the aspirations and future projects of those who own or possess them. That is, the heritage finally becomes an object with a subject, whether it is explicit or hidden; and the question: ‘Whose heritage?’ little by little no longer sounds like an obtuse question that is out of place in the technical and intellectual environments that feed public policies in this field.

#### 4 Misfit and Exclusion

Exclusions of a political and economic nature underlie the legal and ideological issues focused on the present reflections. In fact, the investment in the rehabilitation of buildings and sites preserved in less developed localities, regions or countries, are not sufficiently accompanied by social policies for mediating cultural differences and material inequities among the resident populations. They tend to promote their dislocation and subsidize the substitution of the economic activities on which they depend for their livelihood. Moreover, it induces the formation of exclusionary social networks, which are associated to the development of lifestyles and consumption patterns practiced by usually wealthier new residents and developers (Zukin 1991; Rubino 2009; Leite 2004). Ironically, at times, efforts are made to add effects of authenticity to these new goods and services by including in the projects some local people, who can give an exotic color and flavor to a business that usually strives for a mass and globalized appeal.

The social problems generated by the re-qualification of tangible heritage goods have a counterpart in the intangible sphere. In this domain, there are also growing investments in the *reinvention of cultural diversity*, especially by the so-called creative industries, which ‘requalify’ and showcase, as it were, knowledge and aesthetic expressions specific to the traditional religions, arts and trades, according to global standards of taste

and indicators of authenticity.

It is necessary to emphasize that heritage, as an economic resource, is not necessarily linked to speculation. Some income generation programs, by reinforcing the public culture and access to citizenship, have successfully strengthened what the populations living at heritage sites in less affluent regions can do with the knowledge and material and immaterial resources available and accumulated in the places where they live.<sup>4</sup>

The use of tangible and intangible heritage resources can be positive for the sustainable development of cities and can also generate good business – and why not? The challenge that is raised is the well-known motto ‘to preserve with sustainability’. Much has been written about the sustainable management of heritage sites. But what does the sustainability of ICH involve? In this case it involves developing policies that consider the symbolic, economic and socio-environmental aspects of what is being safeguarded in an integrated manner, and which strengthen the ties of the heritage with the social environment where it occurs and to which it belongs. *Sustainability* refers in this case to the conservation of resources (tangible and intangible) needed for the reproduction of this cultural element or practice, which can include the territory where it is practiced. Among these resources stand out both the knowledge enrooted in these practices and which preside over their execution, and the access of successive generations to this knowledge.

Poverty is one of the biggest threats to ICH; the integration of safeguarding policies to social, political and economic life is a necessary condition for their viability. There is no way to safeguard heritage without improving the living conditions of those who own or who live alongside it or have, historically, kept it throughout generations.

This challenge is also raised inversely, because there is no sustainable development if there is no integration with the cultural dimension, in particular with heritage. In this regard, it is helpful to recall the affirmation of the current UNESCO director general about the need to expand the conceptual framework of the Millennium Development Goals after 2015, so as to include culture in the agenda:

development must be about human potential and capacity [...]. culture is an enabler and a driver for sustainable development. It has also an inherent, unquantifiable, value as a source of strength and creativity essential for every individual and every society. (Bukova 2013, 3).

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4 Practical examples are provided by the projects developed in Brazil by ArteSol - Solidary Crafts; <http://www.artesol.org.br>.

## 5 Finalizing

Specialists in social policies have proven to be receptive to the thesis that the protection of CH can contribute to innovation and to human development. The step forward that becomes necessary includes facing theoretical and political challenges such as those presented in this essay; and seeing that the current national and international legal instruments are put in practice. This may be more important than creating new ones. It involves making the decision to act, and proceeding with caution because it is the manner that heritage administration is conducted that makes it viable, or not, to live in heritage sites and undertake sustainable projects at them. In public policies concerning culture the question of how is usually much more important than that of what is done.

In this second decade of the twenty-first century, when we ask ourselves about what is feeding the conflicts and debates raised by the problematics of heritage, we approximate an irreducible core of feelings, sensibilities and passions; the substrate that feeds the mutable and mutant senses of localization, belonging and identity inherent to the human condition and that have been dramatically revealed by the increasingly frequent forced population shifts.

The development of safeguarding policies depends to a large degree on the improvement of the relations between academic research, management practices and aspirations of the so-called 'cultural' or 'patrimonial communities' (HC). Professional expertise can offer instruments and parameters that allow resolving problems, proposing solutions and conducting interventions in the protected properties, but their implementation only becomes efficient if anchored in the experience of those who effectively inhabit the heritage site.

Therefore, I understand that the transformation of artefacts, spaces and even practices into monuments that count, that make a difference and that are dear to the population, depends on the validation by society at large, as well as on perspectives from the outside which are technically informed and that identify universal values in them. These must be perspectives that strive to make what Pietro Clemente (2010) calls 'someone's places' into places for everyone, without transforming them into 'non-places'.

These reflections seek to suggest routes for understanding – and if possible – to face this reality. But the question that remains is: are we, authors of intellectual work that in the past served the authoritarian or romantic idealization of nations, presently providing justifications for the transformation of unlivable tenements into business opportunities, at the expense of former residents and for the profit, pleasure and renewed emotions of satiated global upper and middle classes?

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## **II.1**

### Heritagization and Communities



# **Italian ‘Intangible Communities’ Procedures, Tactics, and New Key Actors**

Alessandra Broccolini  
(Sapienza Università di Roma, Italia)

**Abstract** Heritage communities, patrimonialization processes and participation in ICH are key concepts that belong to a new landscape arisen in the wake of the 2003 UNESCO Convention. With its emphasis on participatory processes, this Convention has produced a great deal of debate and complex repercussions for local and national cultural policies. The essay will examine several Italian areas that have been affected by the UNESCO scenario in an effort to develop an initial understanding of the complex relationships between participation and ‘heritage communities’. These cases include the emergence of new intangible heritage networks and the new leading role played by historical intangible heritage holders such as confraternities, which have traditionally been an important voice in civil life and the sphere of religiously based festivities.

**Summary** 1 UNESCO-Scapes and Communities. – 2 Native *Returns* and ‘Communities of Tactics’. – 3 Procedures and Inventories. – 4 Case Studies. – 5 Alone or Together: Forms of Exclusivity and Pro-UNESCO Networks. – 6 The Last who Shall Remain the Last.

**Keywords** Intangible Cultural Heritage. Participation. Heritage politics.

## **1 UNESCO-scapes and Communities**

Although the 2003 UNESCO Convention is still not very well known in Italy, in recent years it has been producing interesting effects at the local level, mainly due to the way public debate has taken up the notion of ICH and the success of the Representative List program.<sup>1</sup> Indeed, the opportunity to have one’s cultural specificity inscribed in a list and thereby consecrated in the eyes of the entire world has proved capable of mobilizing a variety of collective subjects, both new and historically rooted, driven by the need to gain political-cultural recognition. More generally, this new international legal instrument introduced two fundamental ethical and political ele-

1 See <http://www.unesco.org/culture/ich/en/convention>. The Lists program includes a complex procedure aimed at the enrolment of an element in one of the two lists, the Representative List of ICH and the List of ICH in Need of Urgent Safeguarding: <http://www.unesco.org/culture/ich/en/directives>.

ments that have since spread throughout the global imaginary. The first is the concept of ‘cultural diversity’ and human creativity understood as elements of global value (heritage) within the sphere of human rights. The second is the practice of ‘safeguarding’, which indicates collective actions aimed at ensuring the transmission of cultural diversity as a means of fostering inclusion, dialogue, and exercising democracy.<sup>2</sup>

Following the ratification of the 2003 Convention in 2007, the Lists program gave rise to new forms of activism and local-level change in Italy, which are variously involving both institutions and various groups, with the emergence of political and economic interests and new enthusiasm for CH (Broccolini 2012). It is therefore worthwhile to ask ourselves what effect the UNESCO imaginary is having on what we have come to term *heritage communities*,<sup>3</sup> by which I mean the new form taken by existing entities who are increasingly aware of the global value of their heritage resources, but also the new subjects we might call “new heritage communities”, actors who are undergoing a process of change as yet largely unexplored. Indeed, the 2003 UNESCO Convention presents an intentionally broad idea of community and groups<sup>4</sup> but referring to a sense of continuity with the past.<sup>5</sup> But many of these new actors actually express new ways of thinking of themselves as collective subjects and new ways of *making community*.

## 2 Native Returns and ‘Communities of Tactics’

I would like to begin with Pietro Clemente’s observation that interprets the UNESCO-scape in the framework of civil society growth. In his words, “the use of increasingly popular UNESCO procedures represents a new factor of competition for social subjects who used to be marginalised by cultural choices; at the same time, however, it represents a chance to participate in an international civil society that involves more and more factors of recognition and fewer and fewer factors of conflict” (Clemente 2011).

Anthropologists tend to view the relationship between the Convention and these collective subjects in multiple different ways; they are divided

2 There is a vast literature on ICH and the 2003 UNESCO Convention. See Bortolotto 2008; Zagato 2008; Smith, Akagawa 2009; Skounti 2011; Lourdes, Amescua 2013; Mariotti 2013; Lapicciarella Zingari 2015.

3 The term HC derives from the CoE Faro Convention which, in art. 2, states that such a community “consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations”.

4 In the preparatory work leading up to the Convention, the experts tasked with developing a glossary of terms defined the community as “people who share a self-ascribed sense of connectness” (as quoted in Blake 2009, 51).

5 What Maguet refers to as “communauté originaire” (original community) (Maguet 2011, 57).

between those who see it as a new tool for emancipation and participation (through new forms of identification), and critics, who instead see it as a hegemonic instrument for commodifying cultural expressions and essentializing identities. Scholars working on these issues have summarized some of the strongest criticisms that anthropologists levelled at the Convention when it was first developed (Bortolotto 2008, 79); one of these critiques is based on the concern that the Lists risk politicizing or bureaucratizing expressive practices rather than having the positive effect of fostering participation in civil society.

In anthropological terms, this issue can be traced back to the broad, foundational debate on identity politics in the twentieth century, in which the idea of community was broken down by race, class, ethnicity, status, gender, etc. James Clifford has suggested that we take these identity politics seriously, detaching them from a purely exclusivist perspective and recognizing the constitutive role that cultural, ethnic and racial forms of identification play in contemporary politics. Following Hall, Clifford asserted the importance of this 'in-situ' positioning (the politics of identity), arguing that it is crucial in allowing people to express their agentive capacity and take action, including political action:

Communities need to make 'room' for themselves (Turner 1992, 14) in a crowded world. "If in the late twentieth century they have done this through cultural processes of ethnic, regional, tribal (etc.) identification (in tactical combination), this is not something we have the luxury, or the privilege, to lament" (Clifford 2000, 96-7).

And yet, what the new millennium mainly appears to have produced within the broad constellation of identity politics is an acceleration of 'returns' to local worlds, moves that can be read as a contemporary way of acting in the complex world of post-modernity for both indigenous communities, which hold increasingly well-defined positions in the contemporary political-cultural scene (Clifford 2013), and other forms of cultural identification. In relation to the most widely debated identity politics of the twentieth century, the notion of ICH constitutes a next-generation identity variable - a 2.0 idea - in which the local sphere is connected to a variably-configured idea of community that involves local revitalized historical formations as well as new inventions defining new collective movements, where these intersect with local, national and supranational levels in highly divergent ways.

Moreover, this global tool (the 2003 Convention) that refers to standardized international procedures (the Lists) represents a further 'double-edged' variable in the new politics of intangible heritage. This variable threatens to potentially 'reduce' cultural diversity within the structure of international standards; at the same time, it also functions as a new site of legitimacy for both old and new groups in the collective arena of *humanity*, in a plural dimension. From this point of view, both the procedures for seeking inclusion in the List, which are generating veritable communities

of *tactics* associated with intangible heritage (instead of communities of 'practice' as scholars usually find), and Clifford-style *returns* to native dimensions (Clifford 2013) are two sides of the same coin and the same positioning of groups and communities in the world of heritage.

In particular, the notion of *tactics* might prove the most useful for reading the mobile landscape in which individuals and groups maneuver within the procedural structures produced by international bodies and filtered down through the variable geometry of national policies. To borrow de Certeau's well-known distinction between strategy and tactics and frame the former as top-down institutional procedures and the second as the spaces of action subjects produce within and between the strands of global procedural webs (De Certeau 2010, 69 ff.), it becomes clear that the UNESCO scenario produces spaces of action in which subjects tactically maneuver in various ways in search of spaces, possibilities, meaning, advantages and visibility. This takes place within different forms of 'cultural intimacy' characterized by interesting and unprecedented tactical forms that play out between local entities and institutions in relation to the various procedural scenarios (that of UNESCO, at the national level, etc.). However, unlike de Certeau's consumers, in this case the primary element is achievement of the goal (being inscribed in the List?), and this generates a space of action in ways that are instrumental rather than subversive.

### 3 Procedures and Inventories

Has the world of UNESCO procedures for ICH ever been studied anthropologically? To begin to observe it in a way that sheds light on its relationship with 'UNESCO-directed' communities, there are multiple levels to consider: 1) the international level of procedures; 2) the national level, in which procedures are applied by the State, which entails filters, validations, adaptations and relationships with local stakeholders; and 3) the local level, in which the communities involved take action. While the first level already involves complex procedures of negotiation as part of the work that characterizes the Convention and its implementation, the second and third tiers in particular call into question the notion of 'tactics'. At the same time, however, we must keep in mind that these local articulations more frequently host a space of action that gives rise to initiatives, creative projects, new ways of relating and competing for visibility that go beyond exclusively goal-oriented effects (achieving inscription in the List).

The 'UNESCO-directed' communities are required to relate with two procedural universes. The first is the application file for obtaining inclusion in the list, the second is the inventory which, although part of the form (specifically, it is criterion R.5 of the file), tends to develop a life of its own, as I will show.



In Italy, the procedure for the ICH file, which is regulated by the Operational Guidelines,<sup>6</sup> is applied by means of an additional *sub-procedure* established through an agreement between the Italian National Commission for UNESCO (CNIU) and other institutions involved in this field.<sup>7</sup> This sub-procedure constitutes the Italian State's field of action and, as described on the Italian UNESCO site, involves the following steps: to begin, nomination proposals are forwarded to CNIU, which evaluates each proposal and forwards it to one of the appointed ministries MiBACT or MIPAAF; these Ministries then contact the applicant and assess the proposal within 180 days from the time the file is submitted. The second step involves the Ministry informing the CNIU of the results of its examination. The CNIU then makes a judgment of its own and communicates this judgment to the Ministry of Foreign Affairs, which forwards the decisions to the Italian representative of UNESCO. The Italian representative in turn forwards the file to the UNESCO Secretariat of the Convention. These convoluted dynamics are the context in which all the intricacy of the negotiations among the multiple stakeholders involved in the different phases of file presentation takes place: the bureaucratic phase of procedures, the political phase of relationships, and 'scientific' discourse. Furthermore, although according to the 'spirit' of the Convention inscription in the List should not represent an award 'bestowed' by UNESCO but rather a starting point for safeguard policies, in reality the complexity of the operations means that List inclusion is perceived as a highly competitive and therefore award-oriented process by both local people and institutions.<sup>8</sup> This fact exacerbates participants' tendency to act instrumentally and tactically ('beating the competition'),<sup>9</sup> but it also fosters more creative and agentive aspects in terms of relationships and practices.

The matter of the inventory issue is likewise quite complex because, as I have explained elsewhere (Broccolini 2011, 2016), Italy has a lengthy tradition of technical-scientific cataloguing of CH, including forms of ethnographic heritage (*beni demo-etno-antropologici*); in Italy, however, the

6 <http://www.unesco.org/culture/ich/en/directives>.

7 <http://www.unesco.it/it/PatrociniCandidature/Detail/206> and <http://unesco.blob.core.windows.net/pdf/UploadCKEditor/Procedura%20invio%20candidature%20nelle%20liste%20UNESCO1.pdf> (2017-12-15).

8 Indeed, local rhetoric (and local media outlets) often refers to these applications as if they were real competitions, with expressions such as: "we have to win the UNESCO prize"; "we did it"; "we made it into the final round"; "we have been defeated", "the race to UNESCO has begun...", "we have passed the feast of..." etc.

9 In the course of the Intergovernmental Committee held in Bali in 2011, due to the high number of applications submitted by the states, it was decided that each state would submit only one application per year for the Representative List. This decision has increased the level of competitiveness inside each state (Mariotti 2013, 90).

purpose of such cataloguing has historically been scientific (involving disciplinary expertise) rather than 'social' as suggested by the Convention. As a result, on the basis of the current Code (*Codice dei Beni Culturali e del Paesaggio*, 2004), cataloguing in Italy has been carried out through a procedure that does not encompass community participation as intended by the Convention; rather, it is connected exclusively to measures for protecting the heritage in question. Even when the institutions involved have introduced simplified inventorying procedures<sup>10</sup> to facilitate applications for inscription on the List, these procedures have been perceived as challenging for individuals to use. In practice, local actors are not free to produce the inventory of their choice for the nominations; they are obliged to follow ministerial procedures that require experts be brought in. In this context, local actors have trouble understanding the purpose of the cataloguing forms. They often fail to grasp the 'social' purposes of the inventory process and instead experience it as a bureaucratic hurdle that must be overcome as quickly as possible in order to 'move the nomination along'. This field is also home to a complex constellation of negotiations, practices and 'sub-procedures' involving various central bodies who sometimes appear to be on the 'side' of local interlocutors and at other times do not.

#### 4 Case Studies

At this point, having outlined the 2003 Convention's universe of procedures, it might be said that the Convention embodies an implicit *aporia* that can be seen in its oscillation between self-recognition by the participating subject and validation by state actors. In view of this oscillation, it makes sense to ask what effect the establishment of the Lists is having on both traditional spaces of participation and the emergence of new collective heritage actors. Can it be argued that the 2003 Convention has rendered the expressive forms related to ICH more institutional and political? There are many possibilities, ranging from greater institutional rigidity (with the creation of new offices and regulations), the emergence of new lobbying interests, including private actors (e.g. Foundations, Agencies and Consortiums) and, on the opposite end of the spectrum, new creative examples of participation.

There is also another factor to consider, namely the new relationship being created between collective subjects and a new idea of global public space triggered by UNESCO procedures (Maguet 2011, 60). Through their

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10 From ICCD ministerial form (the BDI sheet) which has long been used for UNESCO nomination inventories, procedures have now adopted the simplified MODI sheet; available at [http://www.iccd.beniculturali.it/index.php?it/459/micromanuali/micromanuali\\_533a7d77d3bc7/16](http://www.iccd.beniculturali.it/index.php?it/459/micromanuali/micromanuali_533a7d77d3bc7/16).

engagement with the Convention, social subjects are required to step out onto a global public stage.<sup>11</sup> It has been argued that this process involves groups devoid of political status or economic power (Maguet 2011, 49), but more often this emergence seems to foster the political dynamism and formation of pro-UNESCO list interest groups or ‘communities of tactics’, with the 2003 Convention used as a tool to promote spheres of interest and power that go beyond its apparent goal. In the short term, it is hard to discern how positive or negative this might be; some cases exemplify a model of pluralism involving many local voices while others instead suggest an instrumental or self-serving use of the concept of ICH.

Anthropology can move beyond unconditionally critical or generically enthusiastic positions and instead contribute to a critical reading of these processes and ‘tactical’ forms through the fundamental role of critical ethnography, which can aid us in interpreting local cases and processes that would otherwise be represented one-dimensionally by local or institutional actors. By now, there are a good number of cases involved in UNESCO nomination processes in Italy, but very few ethnographic investigations.<sup>12</sup> These cases are extremely heterogeneous and it is only through an ethnographic gaze that they can be understood in their complexity; nonetheless, these cases can help us, even temporarily and partially, to gain an initial overview of the different forms of activism emerging in local pro-UNESCO politics and their different interpretations of the notion of community.

At first glance, the two main variables that impact collective subjects seem to be, firstly, the *top-down* or *bottom-up* nature of applications and, secondly, their local dimension, with a difference between applications exclusively focused on specific local ‘elements’ and network nominations involving multiple different areas, with the areal factor (nominations covering an even larger geographical area) still in an experimental phase.

The variety and, at times, creativity that fuels these applications suggests that the notion of ICH increasingly transcends the ‘demo-ethno-anthropological’ field of so-called ‘traditions’; rather, for good or ill, this notion is extending to encompass extremely broad visions, some of which are interesting in terms of their social and imaginative repercussions, others of which are motivated by purely economic interests.

<sup>11</sup> Provided, however, that they not enter into competition with local state bodies and that they ensure the ‘domestication’ of the elements, which must not contradict supposedly universal principles and the aesthetic sensibilities of the global public (Maguet 2011, 66, 68).

<sup>12</sup> In terms of ethnographic investigation, the work Palumbo carried out on eastern Sicily in relation to WH was seminal from the 90s to 2000 (2002, 2003, 2006).

## 5 Alone or Together: Forms of Exclusivity and Pro-UNESCO Networks

Within the UNESCO nominations the notion of *community* seems to be taking on a wholly institutional and political character. In most cases, local institutions are the ones to launch the application, and they are then joined by other collective subjects; in other cases, autonomous 'scientific committee' are supported by institutions; in yet other cases, historically entrenched collective actors such as confraternities or pre-existing local committees act to bring in institutions and scholars. Another interesting development is the way consortia and associations originally created to promote commercial products sometimes 're-orient' themselves to focus on UNESCO recognition.

Of the approximately 40 Representative List nominations submitted to the CNIU in recent years,<sup>13</sup> the most successful Italian ones at the local level have been single applications for specific local elements, especially festive events, which have involved decisive action by their respective municipal institutions as well as the mobilization of old and new forms of community. These include several religious feasts: the Fracchie of San Marco in Lamis (the sacred fires lit in the province of Foggia for Good Friday),<sup>14</sup> the feast of San Eufisio in Cagliari,<sup>15</sup> the Misteri of Campobasso for Corpus Domini, the Luminaria in Pisa<sup>16</sup> and the Ardia of San Costantino.<sup>17</sup> However, to date none of these has been selected by the Italian govern-

13 This data are hypothetical rather than official, as neither the CNIU nor the two ministries in conjunction (MiBACT and MIPAAF) have provided precise data regarding the nominations. See Mariotti 2013.

14 The Fracchie application was prepared by two scholars, Gabriele Tardio, a local historian from Gargano, and the architect Nicola Maria Spagnoli, an official at MiBACT, and supported by the Province of Foggia and Region of Apulia with a more controversial contribution from the city, as well. Over time, this application has engaged with an international network of similar practices related to sacred fires, and recently it gave rise to an association whose aims include the promotion of the candidacy.

15 The applications for the Scioglimento del Voto rite and the feast of St. Eufisio were intensely promoted by the Municipality of Cagliari with the involvement of 4 other municipalities involved in the pilgrimage as well as the Archdiocese and the archconfraternity Gonfalone della Madonna del Riscatto.

16 The nominations of the Luminaria of Pisa and Misteri of Campobasso likewise enjoyed strong support from the municipalities of Pisa and Campobasso respectively; in the latter case, the application also involved assistance from the University of Molise and the anthropologist Letizia Bindi.

17 The horseback procession in honour of the Roman emperor Constantine in Sedilo, Sardinia. This case also involves an initiative by the City of Sedilo in the province of Oristano, with the establishment of a scientific committee made up of former officials from local agencies and universities as well as scholars.

ment for submission to the UNESCO Convention Secretariat. Historical re-enactments, often associated with religious figures and events, have also enjoyed some success in the UNESCO imaginary and several have been nominated, including the Perdonanza in L'Aquila,<sup>18</sup> the Parata dei Turchi in honour of San Gerardo, the Giostra del Saracino in Arezzo, Calendimaggio in Assisi, and the Giostra della Quintana in Foligno.<sup>19</sup> The Palio of Siena is a case all its own, having been embroiled in conflicts stemming from opposition by animal rights groups that ended with the application being withdrawn (Broccolini 2011, 2015). About carnivals instead, so far, only the Viareggio Carnival presented a nomination, sponsored by its dedicated Foundation and local town council.

Other lesser-known projects are surprising in terms of their interpretive ability and the economic implications associated with the commercial promotion of their products. These include the intangible heritage nomination of the historical families of the Medici Grand Duke Aristocracy, promoted by the Civic Order of the de' Medici and Prince Don Ottaviano de' Medici of Tuscany;<sup>20</sup> the candidacy of Torre del Greco coral artefacts and cameos promoted by Assocoral (the national association of coral producers and traders); and the cultural activities of Salerno's Scuola Medica Salernitana, sponsored by the City of Salerno together with a group of scholars appointed by the city. Most of these applications are still in their infancy, but some are already in the preparatory stage while the three elements already in-

18 The application of the Perdonanza celestiniana from L'Aquila was promoted in 2010 in the aftermath of the severe earthquake that struck the city. It was initiated by the Abruzzi Deputation of National History (Deputazione di Storia Patria negli Abruzzi) and carried forward by a committee chaired by Francesco Sabatini, honorary president of the Accademia della Crusca. In the course of the 2015 Intergovernmental Committee of UNESCO, where it had been submitted, the application was postponed due to some missing elements in the compilation of the file. The internet is full of news about the controversy triggered by this 'rejection'; e.g. <http://news-town.it/cronaca/10418-perdonanza-patrimonio-unesco,-ecco-perch%C3%A9-la-candidatura-%C3%A8-stata-bocciata.html>.

19 In Italy, historical re-enactments have been intensely re-invented and patrimonialized over the years by local institutions, and these practices often have specific bodies with dedicated scientific committees (Dei 2017). In fact, all of these cases involve candidacies promoted by municipalities with the involvement of specially appointed organizations and scientific committees. The *Parata dei Turchi* application was sponsored by the City of Poppenza with the support of a Scientific and Technical Committee set up in 2011 just before the application was submitted, together with the Italian Geographic Society. The Giostra del Saracino application was sponsored by the city of Arezzo with the involvement of the 4 districts involved in the Giostra, whereas in the case of the Calendimaggio of Assisi, the application was supported by the Municipality of Assisi together with the Calendimaggio Organization. For the Giostra della Quintana of Foligno, the candidacy was initiated by the City and the Giostra Organization, with its scientific committee.

20 For more information, see <http://www.de-medici.com/la-storia-della-dinastia-medicea-e-della-toscana-rinascimentale-sono-patrimonio-culturale-immateriale-dellumanita> (2017-12-15).

scribed in the List have each had their own trajectories. The inclusion of the Sicilian Opera dei Pupi, the first Italian intangible element to be submitted to UNESCO, resulted from the work of the Antonio Pasqualino International Puppet Museum in Palermo (Museo Internazionale delle Marionette),<sup>21</sup> the sole proponent of the nomination; the Canto a Tenore of Sardinian pastoralism achieved inclusion thanks not only to its cultural value but also to the decisive intervention of the Province of Nuoro, while in the case of the Traditional Violin Craftsmanship in Cremona, the nomination was actively promoted by the Antonio Stradivari Violin Makers consortium and the Italian Luthiery Association, with support from the City of Cremona.

Against the current of locally-focused initiatives, there are some 'areal' applications that appear to favour cooperation across entire areas; in these cases, however, UNESCO is sometimes 'used' as a tool of commercial promotion. For example, the nomination of Chianti Classico is promoted by the Chianti Classico Consortium; the Ligurian *pesto* application is promoted by the City of Genoa Chamber of Commerce in the Liguria Region and by Palatifini (a food and wine association); there is also the candidacy of the Fascia Olivicola (The Olive-growing area) between Assisi and Spoleto involving the Umbria Region and the Villa Fabri Foundation from Treviso and, lastly, the recent cross-border initiative to list the Alpine Diet, promoted by the Lombardy Region and Valposchiavo in Switzerland. Other examples of area applications have also been proposed in recent years that do not contain a commercial element; specifically the work of the Madonnari in Lombardy, promoted by the municipality of Curtatone in Mantua; the *Comunità Alpina del Trentino* (Alpine Choral arts of Trentino), a regional area application presented by the Trentino Choir Federation with the support of several choir group presidents, and *Musica e Danza in Val Resia* (the Music and Dance heritage of Val Resia), a valley in the province of Udine that has retained a Slavic cultural and language. This last nomination has been promoted by the municipality of Resia and supported by the Friuli region.

The trend of creating networks among actors spread across multiple territories represents a quite different phenomenon, however. Rather than being developed from the bottom-up through 'dialogue among people', these networks often appear to derive from strategic efforts of promotion. Several new groupings have formed thanks to a boost from above, such as the Mediterranean Diet, a transnational network application that has received powerful ministerial backing in Italy<sup>22</sup> and been framed as a

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21 Both the Sicilian Opera dei Pupi and Sardinian Canto a Tenore were proclaimed in 2001 and 2005 in the *Masterpieces of the Oral and Intangible Heritage* program, and only later inscribed in the Representative List. For an exploration of the effects of such proclamations on local areas, see Bortolotto 2008.

22 The nomination of the Mediterranean Diet involved four countries bordering the Mediterranean: Italy, Spain, Greece and Morocco, recently extended to also include Portugal,

medical-nutritional issue. In this case, the model of community employed is that of the scientific community, while local area practices and forms have received little attention. It is hard to make out the role played by local *heritage 'bearers'* or everyday consumption practices in this application, but it might nonetheless produce interesting effects. Indeed, in southern Italy the listing of the Diet in 2010 has begun to produce new scientific-nutritionist collective forms, such as associations, academies, movements, foundations etc.<sup>23</sup>

The networks being created among municipalities, established ad hoc for the purposes of drafting UNESCO applications, have somewhat similar connotations but to a different degree. For instance, the Rete delle Grandi Macchine a spalla italiane (Network of Celebrations of big shoulder-borne processional structures) was formed especially to apply for recognition and, in 2013, it achieved the inclusion of the four feasts of Viterbo, Nola, Palmi and Sassari; many saw this as a virtuous model of networking and dialogue between communities. Before the UNESCO era, these communities had little to do with each other but, thanks to a third subject created ad hoc for the application, they have now begun to develop new neighbourly relations between groups of heritage-bearers; this process will need to be monitored over time, given that the current field of local policies is characterized by heated competition among municipalities as well as a serious risk that expressive cultural forms might be rendered more fixed and rigid.<sup>24</sup>

A second type of cases involve networks established before UNESCO as economic interest groups that have since come to view UNESCO nomination as an opportunity to promote their products. An example of this is the truffle culture nomination pursued since 2011 by a national association, the Associazione Città del Tartufo (Truffle Cities Association). This is a powerful initiative made up of approximately 50 actors including municipalities and other local authorities spread across 11 regions; it also has a specific organisational structure, with a steering committee of mayors, and is supported by testimonials from prominent entertainment and political figures.<sup>25</sup> In the wake of Turkish coffee's listing, Espresso Italian coffee has

Croatia and Cyprus. The application has been proposed for Italy by the Ministry of Agriculture intercepting a request from Spain (Scepi, Petrillo 2012; see Broccolini 2012b).

23 For example <http://www.associazionedietaediterranea.it> (from Pioppi); <http://www.fondazioneediterranea.it> (in Ostuni); <http://www.dietamediterraneanicontera.it> (in Nicotera); <http://www.movimentodietamediterranea.it> (in Cosenza). See also Broccolini 2011, 45; 2015, 185-186; Moro 2015; Scepi, Petrillo 2012.

24 Giving rise to foundations, for instance, as in the case of Gigli Foundation in Nola (Ballacchino 2012).

25 See for instance <http://www.massimodalema.it/doc/19051/tartufo-patrimonio-unesco-dalema-sosterro-candidatura.htm>.

also applied for inclusion. This application, promoted by the National Italian Espresso Institute and the Consortium for Protecting Traditional Italian Espresso Coffee, definitely appears to be an example of cultural promotion in the interests of an economic-commercial 'product'. The network project *Europassione per l'Italia*, in contrast, was developed by a cultural association with the aim of networking the communities that engage in rituals associated with the Holy Representation and Death of Christ. Since 2012 this association has been pursuing UNESCO List inclusion for the 35 local collective actors involved in the network.

There are other interesting and surprising proposals we might examine, as well, such as the candidacy of Women's Intangible Labor (*Lavoro Immateriale delle donne*) promoted by the *Stati Generali delle Donne* and *Enterprising Girls*, a thought-provoking 'gendered' example in which the idea of ICH is extended to include a highly significant economic-labor issue. The final example I wanted to mention is evocative rather than associated with specific 'element' or collective subjects: in Western Sicily, some high school students have proposed the transnational nomination of the *Rotta dei Fenici* (Route of the Phoenicians) as a site of dialogue between the two shores of the Mediterranean.

On the other hand, some historical 'bearers' of intangible heritage have begun to play a more central and public role, although much less institutional or economic-commercial than the previous network applications. These 'networks' from below include the Italian Lace (*Merletto italiano*) nomination, which brings together 16 lace-making communities led by the community of Bolsena (Lazio). In addition, it is worth noting the role played by confraternities, who have come to represent a significant presence in political and civic life in many local areas. For instance, the association SIMBDEA<sup>26</sup> is carrying out interesting work in Mussomeli, a village in the province of Caltanissetta in central Sicily that is known for an important form of confraternal polyphonic singing.<sup>27</sup> In this case, the *historical heritage communities* themselves developed a desire to dialogue with the world of scholars and make their 'debut' on the public stage of UNESCO recognition.<sup>28</sup> Though still in its initial stages, this process is already giving rise to new and unprecedented networks, in this case activated directly by

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26 SIMBDEA is a professional association of demo-ethno-anthropologists who deal with ethnographic museums and ICH (<https://www.facebook.com/simbdea/?fref=nf>).

27 These songs, called 'laments', are performed by five confraternities in association with the Holy Week rites. This form of singing was registered with the REIS, (*Registro delle Eredità Immateriali della Sicilia*) in 2014.

28 See for instance *Il Patrimonio Culturale Immateriale: una risorsa per la Comunità*, organized by the archconfraternity SS. Sacramento della Madrice di Mussomeli in October of 2014. Pietro Clemente, Katia Ballacchino and I participated in this event on behalf of SIMBDEA.



the players themselves (over the past few months, a European network has been developed bringing together actors who practice traditional forms of polyphonic singing in the Mediterranean area), thereby providing a clear example of the newly leading role played by traditional subjects. This is a bottom-up process that is deeply rooted in the local political and cultural scene. As a last example, there is an application that is thematic and detached from specific local areas rather than networked, specifically the nomination of Opera Lirica, developed by the Cantori Professionisti d'Italia Association, subjects who are directly involved in the preservation of Opera singing.<sup>29</sup>

## 6 The Last who Shall Remain the Last

In this scenario that has become increasingly articulated and complex over the years, I would like to conclude by considering the last category of actors, specifically marginal groups who speak neither English nor French and have not had their heritage visibility legitimized by anthropological research; groups that do not have agencies, foundations, consortia or academies scholars to support them and do not enjoy enough political-cultural or economic weight to make their weak voices heard in the public sphere. These groups do not attract the heritage-related imaginations of groups and institutions to their local areas and sometimes have not even collectively developed a consciousness of their heritage documented and translated into written knowledge. Consequently, their practices, which are actually highly interesting and 'valuable' (for whom?), slowly disappear, swallowed up by broader transformations. These are fragile cultural expressions, which suggests that the Convention might actually have originally been designed specifically for them; in the 'race' to achieve UNESCO recognition, however, they will probably never have the power to take their place in an increasingly crowded public scene made up of subjects stronger than they are who join forces to prepare plans and 'tactics' higher and higher up the institutional or political ladder. In this scenario, we should consider the power of resilience displayed by actors who hang onto a sphere of autonomy and powerful cultural creativity that escapes *patrimonialization* but which, in hindsight, might actually have been the main motivation for safeguarding. As this example illustrates, it is becoming ever clearer that UNESCO intangible heritage at the local level represents a new framework for twenty-first century political action, a framework that is broad and inclusive enough to encompass both old and new forms of aggregation we might label communities in keeping with today's UNESCO terminology.

29 <http://www.cantoriproitalia.it/wp-content/uploads/2015/12/0pera-Unesco.pdf>.

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## **Public Grants to Implement Public Folklore for Tourists?**

Lia Giancristofaro

(Università degli Studi “G. d’Annunzio” Chieti-Pescara, Italia)

**Abstract** In the last twenty years, a policy of institutional sponsorship in Abruzzo (Central Italy) has been financing new bombastic and commercial displays of public folklore, without clear principles regarding folklore in Abruzzo as a whole. In fact, institutions do not promote sponsorships with specific objectives such as ethical or environmental protection or social inclusion. As a result, sponsorships are awarded without any consistency, but simply because local tradition and public entertainment attract tourists. Of course, this local and institutional public folklore experience has now encouraged folk tradition’s old romantic metaphor of being an unchangeable, organic and inviolable body, which has become a defence mechanism against cultural creativity and diversity. Therefore, in 2015 the author, together with other scholars, requested an ICH regional law with a regional ICH register and ethical guidelines for communities and operators. To date (2017) the law is not yet in force and local communities are still left with uncoordinated public folklore experiences, which in some cases is of course ethical and sustainable. This feedback from the region demonstrates that policy-makers should not hesitate to finalize grants and awards that enable the alignment of public folklore with ICH ethics. Today, more than ever, scholars, stake-holders, cultural brokers and institutions should work together to facilitate the social use of ethnography, which is the primary objective of scientific reflection on cultural diversity and folklore.

**Summary** 1 Cultural Change in Abruzzo and the Scientific Inquiry on the Misfit Heritage. – 2 Cocullo as a Good Safeguard: Its Reflexive Attitude Regarding Public Folklore. – 3 Far from the Educational Aims: Spectacularization and Commercialization in Public Folklore. – 4 The Dilemmas about an ICH Regional Law.

**Keywords** Folklore. Local communities. ICH. Regional law.

### **1 Cultural Change in Abruzzo and the Scientific Inquiry on the *Misfit Heritage***

Abruzzo is a mountainous and hilly region: the plain is only a narrow coastal strip. From the Middle Ages to the nineteenth century, hundreds of mountain villages thrived on agriculture, sheep-farming, hunting and gathering. It took only a century, the twentieth century, to drastically decrease the population in the mountain villages which have now returned to the wilderness, because of a dramatic local economic crisis and the mas-

sive, resultant migration.<sup>1</sup> Also in Abruzzo, National Plans for Development of the South (Cassa per il Mezzogiorno) created great industries in the lowlands, huge urbanization of the coastal areas and loss of economies in mountainous areas. Economies based on reciprocity and on local solidarity rapidly turned into advanced capitalist economies. It was economic colonialism that created social and cultural problems.<sup>2</sup>

Being a native anthropologist, I have observed this cultural change in Abruzzo, where I live and work. In the early '70s, the villages were still a type of cultural production and consumer unit. Later on, social pressures from industrialization on the one hand, and migration to metropolitan areas on the other hand, definitively changed cultural patterns and the circulation of money. This economic phenomenon reduced solidarity and unleashed conflict in villages. In other words, the working class accepted the convenience of modernization, without openly letting go of its prejudices, superstitions, cultural dependency or subordination (Gramsci 1966).

The rural mechanisms of solidarity and reciprocity survived but only in symbolic form through public expressions of folklore (E. Giancristofaro 1978). The transition from an autocratic economy of subsistence, to an artificial economy was so quick that the working class was easily trapped into new forms of cultural dependency. The comfortable adoption of cultural forms inspired by the recent past (like the nostalgic image of a picturesque and genuine 'village life') expanded across new urban classes like a 'sense of guilt' because of this unexpected economic growth. The adoption of laical rituals inspired by the distant past (like the prestigious image of the 'medieval history' of local towns) expanded across new urban classes like the new 'popular identity'.

In the '60s, '70s and early '80s, several scholars led by Alfonso Di Nola and Alberto Cirese thoroughly inventoried oral heritage in Abruzzo villages. These surveys interpreted the popular trend of keeping the "misfit and magic expressions" as a popular tactic to combat the alienation brought on by new patterns of money and migration (De Martino 1959, 1978; Cirese 1973; Di Nola 1976). This approach was unpopular; that means it has involved only the villages, and did not receive an endorsement from the political level, who was eager to erase the peasant memories. Anyway,

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1 Since 1861 (date of the unification of Italy), more than 1,300,000 residents left the region, because of their poverty and exploitation by the owners of the lands. This loss created a cultural shock in villages (Spedicato, L. Giancristofaro 2010).

2 After WWII, workers moved especially to the coastal towns of Abruzzo, and a new coastal city, Pescara, in few years exceeded 100,000 inhabitants. Several coastal cities increased to 50,000 inhabitants (Montesilvano, Chieti, Vasto); to 30,000 inhabitants (Lanciano, Roseto, Francavilla, Giulianova); to 25,000 inhabitants (Ortona, San Salvo, Spoltore). Conversely, tens of villages in the mountains went from 3,000 inhabitants each, to 100 people mostly old and retired, therefore many villages today do not have basic community facilities (a grocery, a pharmacy, a primary school, a bakery, a fuel supplier).

public inventories were encouraged by scholars and recorded by local and collective participants (publishers, local committees,<sup>3</sup> district authorities, amateur historians). In several villages, the local ethnographers utilized a sort of participatory research process, a grassroots reflection of their own 'misfit status' in a rapidly changing world. The ethnography analysed local events that were essentially the old religious festivals. In public and passionate talks, scholars suggested to the communities that they should not be ashamed but should consider their folklore as an important survivor of economic production. The scholars also recommended that they should not replace folklore with consumerism or with the new trend of a popular disguise inspired by a frustrated nostalgia of the past. Scholars thus invited the communities to recognize their 'misfit heritage' as the social consciousness of sustainability and local solidarity that were overcome by capitalism and by its new culture of material comfort (Di Nola 1976; E. Giancristofaro 1978). In addition, from the '70s to 2010, wide-ranging institutional collections of audiovisual documentation took place in the area. Many ethnological items were recorded by the ICCD, Rome, as a primary collection of cultural items. The institutional inventories are professional and not participative, which means they have no public educational goals (Arantes 2009; Clemente 2014). The selected documents are still stored in paper format in databanks in national and regional record libraries, for professional use. In 2009-2010, the ethnographic data were digitalized into a database managed by the regional government of Abruzzo (Department of Planning, Human Financial and Instrumental Resources), whose search engine was called CADRA. Unfortunately, these search engines are yet to be made available to the public. To confirm, the 'misfit elements' became the public symbol of local resistance in the face of capitalism, consumerism and other elements of mass culture. In any case, this challenging reading of folklore was shared by a limited number of interested persons, and the institutional inventories did not provide a public education for the CH.

In the economic and cultural crisis, the festivals inspired by local memory have increased their function as a magical resource. Since the '90s, the peasant festivals have become a 'symbol of life', because for one day a year, they mean that there are visitors and social life in the mountain villages, a sort of enchantment. The festivals that, in the past, were economical and religious structures, are now the super-structural elements of social memory, less religious than opulent and spectacular, a symbolic function that is implemented through the mass media, *i.e.* the festivals are 'public folklore'. Of course, also in the coastal towns, at the start of the twenty-first century, the festivals mean 'life', because the societies are

3 *I.e.* the Pro Loco, in Latin 'to favour the local place', are associations of volunteers, with aims of local promotion and cultural education

led by the technological race but consumed by a lack of prospects in the 'liquid society' (Appadurai 1996; Bauman 2007).

## 2 Cocollo as a Good Safeguard: Its Reflexive Attitude Regarding Public Folklore

Despite the large celebrations for San Domenico Abate in Cocollo, it is important to note that the current size of the village is only 300 inhabitants.<sup>4</sup> This CH is the main resource for the village, because no other festival in Abruzzo nowadays records this high level of attendance, and the "Cocollo phenomenon" has gone on like this for decades, thanks to the cooperation of devotional communities and of cultural anthropologists. The ritual is truly antique. Since the seventeenth century, the ritual has been based on the coexistence between local people and wild animals that the villagers utilise in the name of San Domenico Abate, on a day dedicated to him during springtime.<sup>5</sup> During the twenty-first century, Domenico lived in Cocollo for many years, helping the local people and performing many miracles (Di Nola 1976). It is said that he could control wolves and snakes, therefore he was recorded as a forerunner of St. Francis of Assisi and he is still beloved also in Pretoro, Villalago, Anversa, Sora, Foligno and other villages on the Appennini mountains. The religious ritual, for educational purposes, acts as a drama to illustrate this kind of 'miracle', *i.e.* the possibility of human salvation also if living through the wildlife. The villagers capture several local non-venomous snakes, and during the festival they put them on the holy statue. After the ritual, the snakes are released into the fields. This ritual is very successful because the snakes seem dangerous but their contact does no harm to anyone, and all this positivity is attributed to the Saint and to the devotion, as a 'religious fiction' (Di Nola 1976, 1982). Year after year, the ritual was thus reproduced because it worked as a public mechanism of reassurance for pastoral and rural populations who inhabited mountains in which one easily comes across poisonous snakes among stones, weeds or stacks of firewood (Di Nola 1976). This cult has a similarity with the Marcopoulos festival of the Virgin of the Snakes (*Panagia Fidoussa*), on the island of Kefalonia (Greece): here, innocuous snakes are taken to the church in bags or jars and deposited in the church near the silver icon

4 Cocollo (AQ) is a little village near to the National Park of Abruzzo. The villagers act out a symbolic ritual with snakes that attracts twenty thousand visitors, on the day dedicated to San Domenico, the 1st of May.

5 The basic elements of the ritual, which are the statue of San Domenico Abate and the snakes, have been documented since the seventeenth century, not before. The hypothesis that the ritual of San Domenico descends directly from the local pagan worship of the Goddess Angitia (III-I century b.C.) is quite unreliable.





Figure 1. 1989. Discussion held by Di Nola and his students with the Cocullo Pro Loco about the meaning of their ritual in the modern world. Cocullo. © Photos by Ireneo Bellotta

of the Virgin, on 14 and 15 August.<sup>6</sup> Therefore, those two festivals could be the remnants of an archaic cult of innocuous snakes in the Mediterranean area, due maybe to the snake's ability to eliminate rats. The use of keeping the innocuous *grass snakes* in the houses is documented in Greek and Roman civilization and a positive idea of snakes still circulates in the peripheral areas of the Mediterranean (Andrianopoulou 2008). The popular traditions such as Marcopoulos and Cocullo are therefore resistant to the Jewish and Christian bias about the snake as the "official body of the devil" (Di Nola 1976).

In modern times, the villagers offer the snakes to the Saint but also to the visitors, giving them the chance to touch the wildlife and to overcome their prejudices around snakes, the historical symbol of the devil and of course the innocent symbol of the human ambitions. So the ritual takes also an ecological and naturalistic significance. The collective overcoming of the 'taboo' is framed by the holiness of the event, which is far from being bigoted and provincial but, rather, is transcultural (Di Nola 1976, 1982; L. Giancristofaro 2015). While in rural society the snake was real and its bite could be fatal, in artificial society the snakes have a symbolic meaning (human suffering in general) and the ritual significance has developed into a sort of ecological protection of snakes and wildlife.

Since the '80s, because of the pre-roman archaeological site not far from Cocullo, some tour operators and travel agents have asked the community

<sup>6</sup> In Cocullo the practice of taking the snakes into the church was stopped in the 1955 because of the bishop's command. Thereafter, the snakes have been put on the San Domenico statue outside the church.

to adapt the annual ritual, wearing new roman historical costumes and replacing the San Domenico Abate statue with the symbols of 'Angitia Goddess of snakes'. With increasing the marketing and the use of the festivals for tourists, the tour operators have even proposed to the Pro Loco and to the city council a "spectacularisation project with folk costumes and folk dance". This would involve selling tickets to touch the snakes and to see the performances, like a "Disneyland of strange traditions". Of course, the Cocullo community refused the 'commercialization' of its festival and intuitively understood the fragility of its heritage in a capitalistic society. Thanks to their friendships with anthropologists such as Alfonso Di Nola, the stake-holders were aware of the meanings of a neoliberal approach into local traditions, commercial sponsorship, and the tourist's impact on heritage. They were aware that the popular need to enjoy the religious festivals 'like a movie' would compromise their values, and have chosen to control the risks of laical drift in popular devotion.

The stake-holders in Cocullo have developed a loyal and open relationship with their heritage: therefore, despite demands to produce a touristic attraction, they did not let the historical suggestions irrationally affect the present. Instead, to satisfy the tour operators, the community expanded the ethical principles of the ritual: simplicity, gratuitousness, inclusive participation and the conservation of nature. The stake-holders refused to be involved in the capitalistic framework, with its deception and advertising to maximize profits. The community wants to keep its cultural expression to be that of freedom, coherency and poverty, based on respect for people and the local environment. The cult is considered as a local resource to 'be human' (Di Nola 1982). Of course, this does not mean purism, because over time the ritual has changed, a new naturalistic tourism is growing around the village and the ritual is broadcast on national and international television, without consumerism or a cheapening of the event.

Once a year, on the 1st of May, this festival in Cocullo celebrates balance and gathers together under the local memory of Domenico, the one who still displays his old know-how about how to solve human problems. Today the 'evil' is the dissolution of societies and local economies, unemployment, cultural addictions, the end of human labour and relationships, ecological catastrophes, earthquakes, but San Domenico Abate taught the Cocullo people to face their problems with passion and courage, and they continue to do so. After the death of Di Nola (1997), the Cocullo people founded the 'Alfonso Di Nola Study Centre on Popular Traditions' and asked the scholars to continue to research how to safeguard the deep meanings of the ritual. Over the past twenty years, 1997 to 2017, the Study Centre has organized many congresses and publications together with Universities, SIMBDEA and UNPLI, collecting local resources, aiming to diffuse ICH ethics and to support the claim that sustainable development must be spread by innovative enterprises in agriculture and crafts.



Figure 2. The *Serpari*, and the devotional medal attesting San Domenico with snakes since the seventeenth century. © Photos by Paolo Gizi

As a result, a strong sense of social responsibility has developed in Cocullo over the years. Since 1998, the community only uses renewable energy, has banned pesticides and invests many resources in environmental activities, honouring its position on the edge of the regional parks. Last but not least, because of the risk of extinction of local reptiles, the *serpari*, together with zoologists, are engaged in a project that safeguards the local snakes. The local *serpari* (snake breeders) share their traditional know-how about the wilderness with the general public, coordinating with wildlife protection laws. In recent decades, climate change, overuse of pesticides and unjustified persecution for symbolic reasons, have dramatically reduced the number of snakes and their biodiversity in the region. Conversely, the number of rats has increased. Therefore, when snakes are captured for the ritual, there is a routine veterinary examination and the information is captured in a census. After the check-up and ritual, the snakes are released into the wild, in exactly in the same place in which they were captured.

In Cocullo, the safeguard process was widely conducted bottom-up, aiming to increase the altruistic sense of responsibility towards the local heritage, mirroring the UNESCO 2003 Convention, in the spirit of the ethical, social, economic and environmental guidelines, but before the

Convention was even conceived. Despite this enlightened commitment, the demographic crisis and the aging of the local population are a huge risk for this CH. Therefore in 2010, after the L'Aquila earthquake, the community asked the Study Center for a 'safeguard plan' based on increasing the sustainable enterprises. In 2015, the stake-holders formalized their network and included several mountain villages (Pretoro, Villalago, Anversa, Sora, Foligno etc.) in a general protection plan of their "religious and environmental know-how", with the objective of their inclusion in the UNESCO USL. However, to realize a protection plan according to the 2003 Convention spirit and ethical guidelines requires much intellectual and relational energy (Lapicciarella 2015). Even if Cocullo is one of the best educational practices in Abruzzo, there are notable difficulties in financing a 'plan for the future' and both stake-holders and professionals are struggling with the scarcity of resources. On the other hand, many big re-enactment and popular festivals in the metropolitan areas are richly financed under the political label of "cultural activities for tourist entertainment", without needing to align with any specific ethical and environmental principles, simply in accordance with the entertainment function of public folklore.

### **3 Far from the Educational Aims: Spectacularization and Commercialization in Public Folklore**

Ethical and environmental issues are considered a priority in the safeguarding of ICH and to new inscriptions and maintenance of the Lists. The operational guidelines on environmental, economic and social issues talk about an "inclusive economic development" but suggest monitoring the impact of tourism, which could have disastrous effects on ICH.<sup>7</sup>

Conversely, today in Abruzzo the popular idea of valorizing the traditions is a key element in the construction of local identity (public folklore) and reads the traditions as a commercial factor to attract tourists. As in most of Southern and Central Italy, the traditions are considered a resource "to boost tourism" (Palumbo 2003; Ciminelli 2008; Bortolotto 2010). Except for several communities like Cocullo, the general trend has been not to understand and not to digest the misfit element but has been to defuse the misfit element and to transform it into a comfortable instrument of visual pleasure and laical entertainment. The official policies and media have educated the stake-holders on 'marketability' and pushed the communities "to take a shortcut hoping to get tourists, and the shortcut is to invent some picturesque and opulent costume to give body to the misunderstood local memory" (E. Giancristofaro 1978; Spedicato 2010).

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<sup>7</sup> See the Twelve Ethical Principles for safeguarding ICH (ICSICH, Decision 10.COM 15.a).

This need to be 'ethnically marketable' through the act of opulent rituals related to the past started in the main cities, during the '80s, when several historical parades were founded to celebrate demographic success, to consecrate commercial leadership and to provide summertime entertainment for residents and visitors. So the policy of laical and historical parades (or re-enactments) started as "the main cultural policy" but required a large amount of funding, even €200,000 per year for each historical parade. Over several decades, this cultural policy has produced a 'new cultural industry' in Abruzzo (L. Giancristofaro 2017). Today, the communities perform around 60 annual laical parades in historical dress. These events take place mainly in the summer, often collocated near the old religious festivals to revitalize or replace them. These parades have a ritual format and refer to different historical periods (the Roman era, the Middle Ages, the Renaissance, the Catholic Counter-Reformation, the Baroque, the Reign of the two Sicily).<sup>8</sup> This 'virtual past' flows through tools that do not coincide with the region's oral memory and do not stimulate a creative and sustainable interpretation of the past.<sup>9</sup> Horse-drawn luxury carriages, robes with ermine garniture, feudal dresses with long trains and crinoline, huge skirts, are rented in every annual parade in need of huge organization to perform in few hours the aesthetic scenes that are standardized in the popular imagination through historical movies.<sup>10</sup> Probably the historical parades aim to formalize the cultural hegemony of the historical residents in front of the newcomers. The parades are run by local associations, which engage the popular actors according to criteria that are useful to the top local families. The notable families of today enact the imaginary notable families of yesterday and through the symbols they legitimize the current hierarchies. So, the notable families act in the parade, while the non-notable families must be only spectators, to better embody this representation of present society. The parades relegate the popular actresses to a decorative role and expel the poverty out from this aesthetic imagination aimed to perform the "beautiful wives of the Middle Ages no-

8 The most important and expensive events are designed to relive the glory of the Middle Ages but a new trend is growing, inspired by the period when the Abruzzi were governed by the Bourbons (before the Unification of Italy). The institutional websites present these new historical re-enactments as "the regional excellence".

9 The first international opening of the various expressions of oral memory transmission was in the UNESCO *Recommendation on the Safeguarding of Traditional Culture and Folklore* (1989). This recommendation was soon superseded by the much more comprehensive and effective tool, which is the ICH paradigm.

10 This new 'catholic imagination' about the past, has created a new kind of multiple identity in local actors. Many of them now feel compelled to prove that they are the true descendants of the nobles of the city or they pretend that their family presence in the town dates back to the Middle Ages, or they even boast of keeping in their wardrobe many historical costumes as their personal 'time machine' (L. Giancristofaro 2017).

tables” and “the honorable wives of the rich shepherds in the nineteenth century”. This could encourage gender, class and citizenship inequality; however, the agency of these events aims to preserve local power. The parades exclude the newcomers and relegate the participants to the role of passive spectators through the radical differentiation between actors and spectators that is expressed by the new costumes. However, the thrilling rhythm (drums, trumpets, sound of horses, folk dance and music) creates a festive effervescence and the population likes these urban parades (L. Giancristofaro 2006). Of course, this subject should be accompanied by a deeper ethnography on the creative forms of mass consumption that anthropology has wrongly considered non-authentic and anti-cultural, because it is undeniable that the parades and the folk revivals can be heritage (Miller 2008; Heinich 2012), because each community has its own way to produce a public entertainment. The public folklore has today an industrial organization: thanks to considerable finances and political sponsorship, the associations have been transformed into powerful networks and into twinning of parades, to reinforce the sumptuousness of events. However, no resource is committed to a thoughtful and critical path, because the popular entertainment is focused on the visual power and beauty of the show. Indeed, the main aim is to strengthen a political representation at the top of the institutions. The educational, ethic and environmental aims are quite neglected.<sup>11</sup>

At the start of the twenty-first century, the policy of laical and historical parades (or re-enactments) in major cities conditioned and implemented the foundation of new laical re-enactments even in the villages. This quick contamination was enabled by social media, which is a tool through which the smaller communities can control what they do in other villages. Compared to the secular, well organized and lavish parades, the “old and simple religious festivals” seem to be household activities which in the end will disappear altogether from the villages. For example, in villages it has quickly reduced religious festivals and communal meals based on the principle of a fair exchange, and the today’s ‘sagre’ and ‘panarde’ are a merely commercial entertainment for the tourists who pay for the meals and enjoy of waiters in medieval dress (L. Giancristofaro 2017). The local re-enactments using theatrical costumes have increased and need public sponsors to pay for the professionals to implement the ‘marketability’ of the festival, in the “global sell of the ethnicity” (Comaroff 2009).

So, the regional pattern is more and more directed towards a public folklore aimed at making entertainment a weapon of mass distraction. The festivals inspired by the past are now a sort of ‘brand item’ of capi-

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<sup>11</sup> The stake-holders, the local politicians and the communicators often describe these element as UNESCO Living Human Treasures or claim for their candidature in the List of the Masterpieces, even if they do not participate in the ICH programs.

talistic culture. They absorb many public resources, amongst whom are the volunteers in historical research who are considered very important to ensure that performance is 'pure' and adherent to an imaginary past model. The local historical research should instead work for education, for the social awareness and consciousness, but now it aims mostly to reassure the community around "their cultural authenticity"; to sew the magnificent and historical costumes; to explore the possibility of getting some vague 'UNESCO label' to increase the prestige of the local leaders.

Observing both the historical parades and the new folk-revivals, which are a product of industrial mass culture meets local culture, I conclude that the situation will be exacerbated by digital technology. Digital technology is based on the ability to reproduce the temporal spaces in a virtual way, so today a large set of heterogeneous and historical data are also available on screen, maintaining the users in an eternal 'present time'. The users easily lose their diachronic dimension and historical perspective, and even the sense and the meanings of their CH (L. Giancristofaro 2017). Thus, it is not surprising that the communities overthrow their old devotions and obtain public finance for new historical parades. Rather, we should be asking why the institutional funding is so readily available without a pursuit of ethical or environmental aims, and why the institutions do not draw up some rules to apply the paradigm of ICH.

Of course, here it is impossible to give an exhaustive framework of the regional public practices. Anyway, I critically examined the legitimations process through new media and the authorities to represent folk culture, and I see how the ideologies informing these representations are often motivated by a cultural exclusivism (L. Giancristofaro 2017). Except few initiatives, the relationship between public practice and the academy is tenuous, and the cultural operators still lack a basic education in ICH policies and responsibilities. Once the communities become informed and educated, they are quite upset by the institutional and popular interpretation of 'excellence', wrongly excited by magic items that border identity, confining 'ethnicity' into a framework of 'cultural authenticity'. The Abruzzo communities urgently need to be supported on the ICH guidelines and face their future in a responsible, honest and realistic way, hopefully so they become a symbol of sustainability and a pacific vehicle between cultures. Therefore, the Forum of the ICH Conventions should realistically consider what the public folklore could become within a local sphere that misses the right information and rules.

#### **4 The Dilemmas about an ICH Regional Law**

To be an anthropologist today increasingly means to study contradictions, *i.e.* the basic aspect of cultural studies and human life. The cultural an-

thropologist can help with singular safeguard practices but can also help with the evaluation of the application of laws at institutional level. With this new professional sense, I am going to conclude this essay.

Since 2003, international legal instruments have configured a legal category which is extraordinary but 'impure' and in order to be applied requires much public training, that in Abruzzo is still lacking. Here, the situation around the ICH lacks institutional coordination, considering that several elements are competing to be enrolled in the UNESCO ICH List label, having started out individually and without regional consultation. So, an ICH Regional Law is the only way to apply to local communities (for example, the Pro Loco and the Cultural Associations) the precious ethical guidelines issued by the ICSICH, as I publically declared in 2015 after the Ethical Principles publication.<sup>12</sup> An ICH Regional Law means in fact to create an Inventory, to move the communities towards a reflexive attitude and to hopefully regulate the funds distribution in a fairer direction. So, the Chief of the Regional Department for Environment, Land, Parks and Popular Traditions asked a group of 'volunteer consultants' to write the ICH Regional law. I was the sole representative of academia and I noted the absence of the law scholars and also of the UNPLI, which in my opinion would have been essential to develop an inclusive Law. Since many members of the assembly lacked the ICH know-how, the work of elaboration has been participative but difficult and contradictory.

In my reading of the Abruzzo ICH, inclusion and equality are basic factors of empowerment: these policies are important in an area where cultural colonialism has stimulated fragmentation, parochialism, conflict and envies, described in detailed studies (Spedicato 2010; L. Giancristofaro 2017). Therefore, I propose to write an ICH Law aimed to promote inclusivity and cooperation at local, national and international level, suggesting that more than ever associations for historical re-enactment should take part according to ICH guidelines, because of their strong legitimacy in the territory. I also suggest that it is necessary to promote a clear ICH international cooperation strategy to reinforce social boundaries, because the associations for tradition often work like a patronal power. Unfortunately, in regulating the regional intangible domain (definition, identification, safeguard), an unexpected problem has emerged: the operators were not too familiar with Ethical Principles and either with the sense of the safeguard. Many operators mistook the ICH paradigm with the ethno-anthropological documents that in Abruzzo are professionally inventoried in the CADRA, which excludes the modernity items. Of course, a festival like San Domenico in Cocullo is deeply inventoried in the CADRA,

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<sup>12</sup> The Twelve Ethical Principles for safeguarding intangible cultural heritage (Decision 10.COM 15.a).



besides the customs that are no longer practiced. So, when I proposed the creation of a regional inventory ICH “inclusive and open also to new items (I mean the historical re-enactments), to implement an educational aim”, many operators protested, claiming that the Abruzzo ICH inventory should be reserved for the living heritage over 75 years of age. So, the final project could be affected by this ‘self-defence’ of the operators who are devoted to the marginal micro-communities, without know actually the ICH inclusive and pedagogical approach. Someone should finally explain to the operators that the ICH safeguard is not a simple documentation of ethnological items.

And there is more. The majority of the consultant assembly requested a motion to set up an ICH Study Centre working as an evaluating competent authority in the management and distribution of funds. Personally, I would rather follow the guidelines of the “integration Proposals for the Safeguarding of the ICH” that in 2013 were developed by a team of academics for the purpose of drawing up the Draft Law on the Culture of the Veneto Region (Picchio Forlati 2014). According to the Veneto guidelines, in fact, to ensure the concentration of economic resources on the most deserving initiatives, the region established a partnership with NGOs, universities and research centers, avoiding the creation of a new and expensive structure within the public administration. A new regional structure designed to safeguard the ICH, in fact, could be the reason for the difficulties in the implementation of the Abruzzan ICH law, which the Regional Council has not yet approved. In the meantime, the fact that several big festivals are still institutionally financed whilst the smaller communities are left to themselves, is increasing the internal competition to be enrolled in the UNESCO ICH List label and while no reflexive path seems to be put in place nothing changes.

Of course, the Regional Law will be institutionally reviewed and I trust after many reviews the Law will be aligned with the standards. Anyway, this sample is only a small part of a general frame of deficiencies in the application of the ICH 2003 Convention. In Italy, the MiBACT is still unable even to ‘think’ through an idea of an ICH. Indeed, in the Urbani’s 2004 Code, art. 7bis (2008), provides mere protection (not a safeguard action) only for the intangible expressions that are “represented by material evidence”. It is therefore no surprise when the cultural stake-holders involved in old and new festivals cannot even ‘think’ about the ICH and its wider educational goals, because they are drawn by popular goals such as the marketing is (Khaznadar 2014).

The 2003 UNESCO Convention’s requirement for a safeguard activity will continue to fail to be implemented in Italy if the cultural stake-holders and the Pro Loco do not receive a professional training about the ICH. The Italian and European ICH institutions should reflect upon what the State now risks becoming within society and should resolve the inconsistencies

and delays of the institutions on the territory. Institutional inconsistencies and delays increase the lack of an intangible heritage education, whereas institutions should have the duty to decrease this gap. Institutional inconsistencies and delays are unfortunately intertwined with the resurrection of old romantic metaphors for folk tradition as a static, organic and inviolable body, with defence mechanisms against cultural diversity and creativity, with the attitude of exclusivity and closure that stimulates conflict and blocks any kind of sustainable development. Therefore, today more than ever, scholars should work with stake-holders, institutions and cultural brokers, to realize a change of perspective through the “social use of cultural anthropology” that, from Boas to Gramsci, was indicated as the primary objective for the reflection on cultural diversity and folklore.

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# **The Faro Convention, the Legal European Environment and the Challenge of Commons in Cultural Heritage**

Simona Pinton

(Università Ca' Foscari Venezia, Italia)

**Abstract** The paper aims at investigating the role of CH, both tangible and intangible, from the perspective of 'why' it means for individuals and societies and whether, and eventually 'how', this approach has been incorporated into the international legal framework, also through the concept of commons. The analysis thus will focus on: a) the Faro Convention in its more interesting and innovative aspects; b) the extent that the Faro Convention exercises in a pan-European environment; c) the relationship among the concepts of CH and commons, common goods, common heritage of humankind in international law. At this stage, the reflection raises more questions than solutions; but this is a good starting to introduce an investigation that involves so relevant issues for the lives of individuals and collectivities.

**Summary** 1 Introduction. – 2 The Faro Convention. – 3 The Role of the Faro Convention in a Pan-European Environment. – 4 Cultural Heritage and the Common Heritage of Humankind in International Law. – 5 Cultural Heritage and Commons.

**Keywords** Commons. Cultural heritage. Europe.

## **1 Introduction**

In the last decades, the international community has been caught up in a 'heritage fever' as manifested by the adoption, at both universal and regional level, of several international instruments, policies and initiatives on the safeguard of CH. The most recently adopted instruments, additionally, view a shift in the notion of CH for which CH should not be protected and preserved solely for its intrinsic or scientific value, or because it contributes to cultural diversity, but also by reason of its capacity to contribute to the human development and a better social cohesion within and among States. Indeed, the promotion of cultural diversity, the improvement of the quality of life and of the living environments where citizens wish to prosper, as well as the enhancement of the civil society's democratic participation may favour human and social development in all its aspects (CoE Explanatory Report to the Council of Europe Framework Convention on

the Value of Cultural Heritage for Society, 27 October 2005; Fojut 2009).

The Faro Convention is the most far-reaching example of the latter type of international agreements. It recognizes that CH is a basic dimension of people's lives and their identity, an essential component of 'place', and a driver for sustainable development of the whole society, at environmental, economic and social level (Carmosino 2013).

The idea behind seems to be a concept of *commonness* that stems from the values connected to CH and to dynamic HCs committed to safeguard and transmit CH to present and future generations.

Against this background, the paper will examine the most interesting features of the Faro Convention and the authority it exercises in a pan-European environment. It will then provide for some initial considerations on the relationship between the CH and notions of common heritage of humankind and commons in the international-law frame.

## 2 The Faro Convention

The Faro Convention on the value of CH for society, in force since 1 June 2011, is an open treaty: CoE non-members States may ratify it if invited by. This Convention - assessed as a highly innovative treaty (Lixinski 2013, 79) - sets clearly contemporary approaches towards the safeguarding of CH in the European context: potentially, as the most far-reaching in terms of its influence (Blake 2015, 325, 327). It will be thus significant to briefly clarify the nature and extent of this influence.

The Faro Convention complements previous CoE Conventions related to CH:<sup>1</sup> but, where that generation of European instruments was concerned with the *fabric of heritage*, the Faro Convention, in line with the Florence one, considers heritage from the viewpoint of the living people who construct, make, use and celebrate, or *oppose* it. CH and the human right to have such a heritage recognized are the key aspects (Wolferstan, Fairclough 2013, 43).

This "focus on values, rather than constitutive elements of heritage" is also a way of avoiding commodification of heritage, because all references to heritage or culture, as "concrete entities", are avoided (Lixinski 2013, 79, 80). Rather, the definition of CH in art. 2(a) highlights particularly the idea of "constantly evolving values", which indicates a living culture:

the main frontier that Faro urges us to cross is therefore to change heritage from being treated as a limited number of assets to be kept

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1 The European cultural Convention (1954), the Convention on the architectural heritage (1985), the Convention on the archaeological heritage (1992) and the ELC (2000).

from harm, to being something universal and ubiquitous. This is about the use of the past in the present and its renewal into the future. A living heritage is a changing heritage. (Wolferstan, Fairclough 2013, 43)

Through the consideration of “all aspects of the environment that are the result of interaction between the human beings and the places over time”, Faro also introduces a concept of heritage that goes beyond the single monument to include the “places around which people gather together”. Therefore, people create heritage both in the conventional physical sense and in the sense of meaning and significance (*i.e. values*) to things that do not intrinsically have such value.

Thanks to this holistic approach, the ‘ordinary’, vernacular, local heritage is retrieved, departing, for example, from the vision of the 1972 UNESCO Convention.

The Faro Convention makes a *unicum* also in the perspective of human rights.

Although human rights have gradually come to the centre stage of heritage conventions, the Faro Convention goes beyond “any earlier international agreement toward making the relationship between people and cultural materials and sites a human rights issue” (Zagato 2012b, 2016).

In speaking of a right to CH as an inherent aspect of the right to participate to cultural life, as proclaimed in the UDHR,<sup>2</sup> Faro is innovative.<sup>3</sup> The connection among the right of everyone to take part in cultural life, in all its components, and all other human rights has been stated also by the CoE Parliamentary Assembly Rec. 1990(2012), according to which that right

is pivotal to the system of human rights. To forget this is to endanger that entire system, by depriving human beings of the opportunity to responsibly exercise their other rights, through lack of awareness of the fullest of their identity.

The human-rights approach is to be valued also for the *responsibility dimension* that the right to CH calls into play: it does not build only on States’ obligation to ensure the implementation and enforcement of the said right in their domestic legal systems, but also on the responsibility of even

2 Art. 1 and preamble (4): “Every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right freely to participate in cultural life enshrined in the United Nations Universal Declaration of Human Rights (1948) and guaranteed by the International Covenant on Economic, Social and Cultural Rights (1966)”.

3 Relevant is also art. 4(c): “the exercise of the right to CH may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others”.

individuals and communities to respect and take care of other people's heritage, on one side, and thus to avoid conflicts or to promote cultural solutions to conflicts, post-conflict reconstruction and development, on the other (Wolferstan, Fairclough 2013, 45). Indeed, the Faro Convention aims at contributing to the achievement of the broader CoE's political and social objectives: respect of human rights, rule of law and democracy.<sup>4</sup>

This innovative way of conceptualizing CH is not, however, unproblematic.

The definition of CH in the Faro Convention is extremely wide and near to the dissolution of the distinction line between what is heritage and what is not, since everything could, in theory, fall under the umbrella of CH as defined in art. 2(a). Faced with such an extensive notion, the functions of protection, management and valorization of CH to be ensured by Member States have to be concretely detailed.<sup>5</sup>

Issues concern also the innovative notion of a HC, that

consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations. (Faro Convention, art. 2(b))

Also this notion has been criticized for being too wide and of an ambivalent nature (De Marinis 2011, 25-6). A push on communities to participate in the definition and safeguarding of CH would tend to reveal the potential of civil society's actions, by favouring the empowerment of these communities and the development of democratic processes. However, it could constitute a trap set by the supporters of the subsidiary character of State's intervention in view to further reduce social expenditures (see Zagato, Pinton 2017 for a criticism). Besides, the reallocation of roles and responsibilities between public authorities and heritage communities in the process of defining CH, its value and the most representative elements of the CH to be transmitted to future generations, is blurred by the weight played by a potential plurality of values that do not necessarily coincide with the scientific criteria developed by experts. This issue is particularly true where the process of CH's definition and identification is centralized in governmental hands.

Undeniably, the Faro Convention recognizes to HCs an innovative role since it helps to democratize the valuing process of CH: that is

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<sup>4</sup> CoE, *Action Plan for the Promotion of the Faro Framework Convention on the Value of Cultural Heritage for Society 2013-15*, 25 November 2014. Indeed, CH is a precious resource: in the integration of the cultural, ecological, economic, social and political dimensions of development; for the protection of cultural diversity and sense of place in the face of growing standardization; on which to develop dialogue, democratic debate and openness between cultures.

<sup>5</sup> The new heritage paradigms do not 'solve' the heritage problem but reformulate it, by asking different questions, not least 'so what' and what (and whom) for?



expert, official or orthodox ways of seeing or valuing heritage remain valid but they are now set increasingly against all the other plural ways of seeing and acting. (Wolferstan, Fairclough 2013, 45)

It is still true that the same concept and role of a HC require some clarifications. First, we need to understand which aspects of the CH might or should be sustained and transmitted. Secondly, the reference to the HC's wish to transmit to future generations aspects of CH within the framework of a *public action* raises the issue of what is a public action and which are the forms that the communities' participation to cultural policies decided at institutional level, both nationally and locally, could take. The Faro Convention encourages reflection about the role of citizens in the process of defining, deciding and managing the cultural environment in which they live, but the provisions are vague. Possibly, the drafters wanted to 'intentionally' remain generic on these themes.

Finally, from a general perspective, Faro is a 'framework' Convention that sets out principles and suggests broad areas for action as agreed between States Parties, encouraging them to undertake the legislative and administrative steps necessary to implement consistent specific actions. The right to CH itself is not an enforceable right.

The Convention is also very flexible in terms of follow-up, indicating a voluntary best-practice sharing and development process based on State Parties' commitment to build up cooperation networks to exchange, share experiences and launch new projects jointly. In this spirit, Faro *does create* for States obligations for action, where it imposes the obligation

to establish a monitoring body through the CoE, to cover legislations, policies and practices concerning CH, consistent with the principles established by the Convention; and to maintain, develop and contribute data to a shared information system, accessible to the public, which facilitates assessment of how each Party fulfils its commitments under [the] Convention. (art. 15)

Repertoires of best practices as systematized by the SCCHL would significantly explain how the participation of HCs is taking place in the territory of States Parties.<sup>6</sup> HEREIN is the shared database for States Parties to

<sup>6</sup> The SCCHL oversees the implementation of the Faro Convention and currently manages the information system on the national implementation. Further action should strengthen the effective protection of CH, not only through preventive protection via educational programs and awareness raising, but also through the establishment of an enforceable right to heritage within the national legal systems (Lixinski 2013, 80).

enter information.<sup>7</sup> This system marks a significant departure from the *typical control mechanism* established by human rights treaties based on reports that States Parties have periodically to submit. HEREIN may then contribute to democratize the cooperation also because individuals and communities may insert data, projects and situations about CH.

### 3 The Role of the Faro Convention in a Pan-European Environment

The Faro Convention is a regional treaty that pays attention to the idea of *commonness in Europe*, in the attempt to seek an enriched understanding of what it means to be European, and of what Europe means. This understanding is advocated by the concept of ‘common heritage of Europe’ (art. 3), on one side, and by recognizing “the importance of creating a Pan-European framework for co-operation in the dynamic process of putting the principles of the Faro Convention into effect” (Preamble, recital 8), on the other.

According to art. 3, the *common heritage of Europe* includes

all forms of CH in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity and the ideals, principles, values derived from the experience gained through progress and past conflicts, which foster the development of a peaceful and stable society.

The ‘common heritage of Europe’ thus embraces two inseparable elements: the CH as a source of collective memory for people in Europe (Preamble 1) and a resource for the exercise of freedoms (Preamble 3 and art. 2); and the shared intellectual heritage coming from an agreed set of social values, rooted in history, which form the *European ideal* of how a society should operate (2005 Explanatory Report). The mutually-supporting interaction of these two elements constitutes a unifying theme of the Convention, developing on the principles already set forth in the Opatija Declaration that calls for respect and fair treatment of

7 HEREIN - the *European Cultural Heritage Information Network* - is common to all CoE heritage conventions. It provides: a network of 46 national coordinators appointed by relevant Ministries that ensures the definition of themes and areas of work depending on the current challenges and issues to be addressed; a database, with input from the coordinators, providing a regularly updated inventory of European heritage policies, a program for sharing, exchanging and analysing information and a monitoring function for conventions, legislation, policies and practices relating to CH; a thesaurus with more than 500 cultural and natural heritage terms in 14 European languages, see <http://www.herein-system.eu/> (2017-12-15).

cultural identities and practices and the expression of the corresponding forms of heritage, provided that these comply with the principles upheld by the Council of Europe.

States Parties thus attempt to create a European perspective on CH as one based on the values in society, trying to leave aside the political weight that may be attributed to CH.

Whether it is interpreted as cross-border heritage, the right to express culture, a shared responsibility for heritage or a troubled past of dissonant and difficult memories, it should be managed as a whole rather than in terms of parallel aggressive competing nationalisms. (Wolfershan, Fairclough 2013, 46)

The conceptualization of the ‘common heritage of Europe’ in terms of both a shared experience and the commitment to fundamental respect for human rights and democracy thus feeds the *European ideal* of social organization and “instead of preserving difference, cultural heritage here is used to create commonality” (Lixinski 2013, 78).

As for the notion of CH, central to the notion of ‘common heritage of Europe’ is the idea of the *ordinary*: the concern is to move away from monumental and outstanding (universal) worth, once CH arises also locally, from the grassroots. The European common heritage is thus connected to a sort of a ‘truly international’ attitude based on the mutual respect for diverse cultural heritages. Even though a person, a people, might not share the same heritage values as mine, his/her respect for them should be a right for me across Europe: CH offers reminders of Europe’s often troubled history, during which lessons have been learned towards the current consensus on specific shared values in different societies (2005 Explanatory Report).

In conclusion, the European common heritage is a primary resource for democratic engagement in support of cultural diversity and sustainable economic development, while at the same time it advances the common European identity based on respect for human rights (Ferracuti 2011), namely on the right for the diversity of CH.

The reach of the Faro Convention beyond the borders of the CoE Member States is then emerging from the unique influence that Faro has played and plays on the EU internal and external policies on CH, contributing to form a *pan-European* legal environment dealing with CH.

Interestingly, art. 167(3) of the TFEU states:

The Union and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe.

According to art. 3(3) of the TEU, then, the EU “shall ensure the preservation and development of the European cultural heritage”,<sup>8</sup> and

shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. [art. 167(4) TFEU]

The remaining paras. of art. 167 state:

The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

The acts of the EU shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

1. improvement of the knowledge and dissemination of the culture and history of the European peoples, 2. conservation and safeguarding of CH of European significance, 3. non-commercial cultural exchanges, 4. artistic and literary creation, including in the audiovisual sector.

Thus, in the recent EU approach to culture and CH we can find an *echo* of the Faro Convention’s arts. 2 and 3, and this should be welcomed, especially by those scholars who argue that the EU should adopt a more aggressive bearing towards the protection and safeguarding of CH (Lixinski 2013, 87).

The year 2014 has been particularly significant in EU policy on CH. The Council of Ministers on Culture adopted the Conclusions on “cultural heritage as a strategic resource for a sustainable Europe”,<sup>9</sup> and on “participatory governance of CH”.<sup>10</sup> CH has been also the object of the EC Communication “towards an integrated approach to cultural heritage for Europe”.<sup>11</sup> CH has been then identified by the Ministers of Culture as one of four priorities of the new cycle of intergovernmental cooperation,

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**8** On the relation between the Faro Convention and the Lisbon Treaty, in a perspective of contamination among international instruments see Zagato 2015.

**9** EU Council Conclusions on *Cultural heritage as a strategic resource for a sustainable Europe* (2014/C 183/08) GUCE no. C 183/36, 14.6.2014.

**10** EU Council Conclusions on *Participatory governance of cultural heritage* (2014/C 463/01) GUCE no. C 463/1, 23.12.2014.

**11** Communication from the EC to the EP, The Council, The European Economic and Social Committee and the Committee of the Regions, *Towards an integrated approach to cultural heritage for Europe*, COM(2014)477 final, 22.7. 2014.

launched by the Work Plan for Culture 2015-19 (Schiacchitano 2015).<sup>12</sup>

These acts witness an increasing recognition of the CH's value as a common wealth for Europe, of the structuring role of culture for sustainable development, of participatory approaches to the CH management, and of the CH's significance for EU external relations. Let's propose few more details on these aspects.

1. At EU institutional level, a debate started on how to bring more attention to CH in the construction of the European political processes, considering that often CH cuts across several other policies (as those related to regional development, social cohesion, agriculture, maritime affairs, environment, tourism, education, the digital agenda, research and innovation) and offers a strong potential for the achievement of the relative objectives. The Declaration of Intent on "Cultural Heritage. A resource for Europe. The interaction benefits"<sup>13</sup> is the launching pillar thanks to which Member States have then created a voluntary and informal coordination platform through the Reflection Group on 'EU and CH' that gathers more and more national institutions from different EU States. The Declaration underlines the *subsidiarity approach* for which

The EU only plays a facilitating role in culture. Indeed, while it can further support the exchange of competencies and knowledge, its regulating powers are limited. The day-to-day management and preservation of CH is organized on a national and/or regional level. [...] The broad CH field does contribute to the implementation of the policy of the European institutions, but could organize itself so as to better serve its interests and concerns at EU level.

2. The structuring role of culture for sustainable development,<sup>14</sup> and the importance of a focus on people and communities,<sup>15</sup> emerges also from the 2012 EU Council Conclusions "on cultural governance".<sup>16</sup> These Con-

<sup>12</sup> Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a *Work Plan for Culture (2015-18)* (2014/C 463/02) GUCE no. C 463/4, 23.12.2014.

<sup>13</sup> Promoted by the Belgian Presidency in 2010, at <http://www.europanostra.org/UPLOADS/FILS/Declaration-of-Bruges2010-eng.pdf> (2017-12-15).

<sup>14</sup> UN Conference on *The future we want* (Rio de Janeiro, 2012); UNESCO International Congress on *Placing Culture at the Heart of Sustainable Development Policies* (Hangzhou 2013).

<sup>15</sup> UNESCO Forum on *Culture, Creativity and Sustainable Development. Research, Innovation, Opportunities* (Florence, 2014).

<sup>16</sup> EU Council Conclusions on *Cultural Governance*, GUCE 393, 19.12.2012, 8-10.

clusions stress the importance of a more open, participatory, informed, effective and transparent cultural governance, and call on Member States to promote participation in the definition of cultural policies. The adoption of a more locally rooted, and more people-centered, approach to CH is indeed increasingly present in EU programs – Horizon 2020, Cultural Heritage and Global Change<sup>17</sup> – and in the Structural Funds on support to local development. European institutions seem more aware that sustainable valorization goes not only through the discovery, classification and analytical passive defence of heritage values, but through their *reinvention*, by means of participatory processes that are both re-appropriation by the local communities and a *co-design process*, creating new opportunities thanks to which a community can plan future progress starting from the cultural resources of the territory. This approach echoes the notion and role of heritage communities introduced by the Faro Convention.

3. Culture and CH are recognized as an essential asset of Europe’s diplomacy. This asset plays an important role in the EU’s external policy, because it is often around this important ‘aggregator’ that a favourable environment for diplomatic relations can be built, so as to promote the circulation and exchange of ideas and values and to contribute to mutual understanding, sustainable development, social cohesion and peaceful relations. The EU, as a matter of external policy, deals with CH in terms of development aid. By fostering programs in its partner countries for the protection of heritage the EU attempts to build an appropriate environment for responsible and sustainable development, respecting cultural diversity and creating opportunities for *cultural tourism* in those regions. Nevertheless, in so doing, the EU has been criticized for imposing a determined set of values in the selection of heritage ‘worth protecting’ (*i.e.* by selecting the programs it will support and also by exercising some interference in the management of the programs it has selected) (Lixinski 2013, 236).

All that said, the EU organs re-affirmed, in line with the Faro’s spirit, how the European ideal of social organization springs not only from the appreciation of the uniqueness of one’s own heritage but also from *the interest in and respect for the others’ CH*.

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<sup>17</sup> EC Recommendation on the research joint programming initiative *Cultural Heritage and Global Change: a New Challenge for Europe*, 26 April 2010, C(2010)2535 final.

## 4 Cultural Heritage and the Common Heritage of Humankind in International Law

In March 2001, the Taliban forces destroyed the Buddhist statues of Bamiyan and other cultural goods in Afghanistan, a destruction then condemned as crime against the common heritage of humanity.<sup>18</sup>

On 27 September 2016, the ICC (Trial Chamber VIII) convicted Mr. Al Mahdi for the war crime of attacking protected objects as a co-perpetrator under Articles 8(2)(e)(iv) and 25(3)(a) of the ICC Statute and sentenced him to 9 years of imprisonment.<sup>19</sup> The Chamber qualified the crimes of attacking building of religious and historical relevance as a grave crime, not only for the people of Timbuktu, but also for the international community as a whole.

In the 2014 Communication, the EC defined CH as a shared resource and a *common good*. Like other similar goods, CH can be vulnerable to over-exploitation and under-funding, which can result in neglect, decay, and in some cases oblivion.<sup>20</sup> As seen, according to the Explanatory Report to the Faro Convention, CH, understood as a common good, justifies the widest possible democratic participation of people in the process of defining and managing CH.<sup>21</sup>

These references in normative instruments to *common heritage of humankind*, on one side, and to *commons*, on the other, need some investigation *from the legal point of view*, to understand the conceptual meaning they convey and their implications for States and individuals.

Since time international law knows the *principle on common heritage of humankind*. The principle has been shaped in the '60s and since then has been accepted as an essential element of the law of the sea - from where it found its way into the national legislation relating to sea-bed activities - but was extended to the outer space regime too and, to a lesser degree, to the legal framework for the protection of the Antarctic environment (Wolfrum 2009). In the '70s the notion of *cultural common heritage of mankind* entered into the scenario and was legally accepted (Goy 1973, 117; Zagato 2007). Nevertheless, the idea that a range of other

18 See WHC.01/CONF.208/23 at <http://whc.unesco.org/en/documents/1268> (2016-1-10).

19 ICC, *Situation in the Republic of Mali in the Case of the Prosecutor v. Ahmad Al Faqi Al Mahdi*, No. ICC-01/12-01/15.

20 COM(2014) 477 final, 2.

21 In the Faro Action Plan 2014-15, the SCCHL introduced the notion of *common asset* around which the community can be structured and projected into the future. A common asset is, first, what sustains co-existence between persons, *i.e.* the surety for everyone to be able to enjoy relational well-being, and to lead a peaceable co-existence with the other. It is then all kind of places, unique practices and traditions that HC rediscover or reveal and turn to account, see CDCPP(2015)12, 5.

non-common space resources that are essential to humans and of widely shared interest should be governed under a common heritage regime remained controversial.<sup>22</sup> For some authors, to reconnect the concept of common heritage of humankind to the milieu of CH is more an ideal than a concrete development, namely

la possibilità di una prossima evoluzione nel senso della creazione di un concreto patrimonio culturale internazionale basato su un nuovo tipo di proprietà internazionale dei beni di cui sia titolare la comunità internazionale e la cui amministrazione sia affidata ad una competente organizzazione (e cioè all'UNESCO) che renda possibile a tutti l'effettivo godimento di tale patrimonio... è una ipotesi da scartare. (Frigo 1986, 303)

Nonetheless, in the last decades States and IOs have more and more cherished, in their normative practice,<sup>23</sup> the notion of a cultural common heritage of humankind to consider its safeguarding as a concern of the whole humankind.<sup>24</sup>

But what are the legal implications of these developments?<sup>25</sup> Do inter-

**22** In 1945 Brazil proposed to include in the UN Charter a clause recognizing the role of culture and common heritage of humankind, and creating an international organ to maintain the cooperation in the preservation of the CH. This proposal was not accepted but the theory behind became the basis for the formation of UNESCO, see Wolfrum 2009. The 1954 Hague Convention then introduced the notion for which a “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind since each people makes its contribution to the culture of the world”, 249 UNTS 215.

**23** The WHC is based on the premise that “parts of the cultural and natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole” (preamble 6); “the destruction or deterioration of the CH constitutes a harmful impoverishment of the heritage of all the nations of the world” (preamble 2). Art. 6 declares that “State Parties [...] recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate”. The 2001 UNESCO Convention refers to underwater cultural heritage as “an integral part of the cultural heritage of humanity” and a “particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage”. The 1972 Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage regards the CH as constituting “an essential feature of mankind’s heritage”. Similarly, the 1976 Recommendation Concerning the International Exchange of Cultural Property contains the statement: “bearing in mind that all cultural property forms part of the common heritage of mankind”. The 1966 Declaration of the Principles of International Cultural Co-operation states that “in their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind”.

**24** An example is the 2005 UNESCO Convention Preamble: “Conscious that cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all”.

**25** Principles at the core of the notion at stake include: the non-appropriation of the resource, the establishment of an international regime to manage the activity connected to



national obligations upon States and IOs to safeguard CH, in general, exist and, in the affirmative, are they *erga omnes obligations*? Are States and IOs legally entitled, as a result, to invoke the responsibility of international subjects for failing to safeguard the CH placed in their, let alone any, territory?

The answer to these questions might clarify the possible normative nature of the concept of common heritage of mankind, its applicability to CH and thus the possible legal consequences of its emersion and crystallization, if any, in legal norms.

In general terms, when the notion of common heritage of humankind is applied to specific goods such as cultural or natural goods, it may gain a different significance than when it is referred to specific spaces and resources; for example, in the first case the element of 'appropriability' does not exist (Scovazzi 1984, 258).

Still, although the innovative features of the CH notion as proposed by Faro is quite widely accepted, the qualification of CH as a common heritage is rather vague: is it a universal common heritage? For whom and in which spatial context does it extend?

It is unlikely and almost impossible for States to conceive to set up a common heritage authority that would manage the common CH, and UNESCO does not, or even cannot, represent such an authority. Moreover, the characterization of the concept in terms of ownership of the area where both tangible and intangible resources are found may not work in international law.

Rather, at this stage of international law, the notion of CH of humankind should be grounded in the idea of *commonness* intended as a concern over elements that are of significance to all States, and the people living under their jurisdiction. This common interest of States opens to the idea of a 'functional conception' of the common heritage of humankind, that then may be translated into a *functional indicator* for States on *how* to regulate the safeguard of the cultural and natural heritage in their territory. That is, States should regulate the conservation, safeguard and valorization of cultural goods being aware of the fact that they may benefit the humankind.

Some authors give content to this idea as that of a *trusteeship* according to which States in whose territory the CH is located or finds expression are called to act as trustees on behalf of a wider beneficiary, *i.e.* humankind (Forrest 2007, 134). Weiss (1992), for example, argued that since States are long-lasting entities, they represent past, present and future generations and, as such, are required to act as trustees for these different generations of persons. The recognition of this would lead States to act in the interest of all humankind, and not simply in the interests of

the resource, the peaceful use of the area where the resource is located, and the equitable sharing of benefits derived from the resource.

their own citizens. So envisioned, the application of the concept of the common heritage of humankind is a 'unifying principle' for CH, wherever found, and imposes on States the obligation of trusteeship. The principle of trusteeship is evident, for example, in the Declaration of Santo Domingo according to which "underwater cultural resources is the property of the State in which it is found and through this it is heritage of humanity".<sup>26</sup> According to us, the practice is still not conclusive on the acceptance in international law of an obligation of trusteeship as more than an ethical principle and, therefore, a State should not require that organs within its jurisdiction, also *de facto* organs such as heritage communities, act in compliance with the duties of a trusteeship.

The endorsement in international instruments of CH as common heritage of humankind is at any rate positive evidence that the international community has recognized its essential interest in the safeguard of CH and wants to be engaged in its management and promotion, as the Faro Convention provides for.

This endorsement, however, has not been translated yet into a right under general international law to compel a State to protect the CH in its territory, or in other States' duty to invoke the responsibility of that State if the CH is in danger or 'attacked' in some way or other. We will see if the international practice will favour more the formation of an international customary rule envisaging an obligation *erga omnes* to safeguard CH as it is present in the entire world.

## 5 Cultural Heritage and Commons

As seen, CH has been characterized also as a common good (Blake 2015, 327). The notion of common goods is not very deeply explored in international law and has a complex relationship with CH; a more extensive debate about commons/common goods exists in domestic legal systems.<sup>27</sup> To us this notion recalls features of the common heritage of humankind concept, and of collective/common interests in international law.

There is no space here to critically reason on the qualification of CH as commons, but it is the author's interest to suggest some issues for future analysis.

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<sup>26</sup> See 10th Forum of Ministers and Officials Responsible for Cultural Policies of Latin America and the Caribbean (Barbados, 4-5 December 1998).

<sup>27</sup> In Italy, for example, the commons movement started in 2008 when the Rodotà Commission proposed to the Minister of Justice an Enabling Law Bill which contained the first legal official definition of commons. The Bill provided for *Delegated Legislation to Reform the Civil Code Articles Concerning Public Property*, at [http://iuccommonsproject.wikispaces.com/file/view/Rodota+Commission+Bill\\_+EN.pdf](http://iuccommonsproject.wikispaces.com/file/view/Rodota+Commission+Bill_+EN.pdf) (2017-12-15).

As seen, by serving the well-being of both present and future generations CH owns a value that goes beyond its current occurrence in the world. Hence, a legal system driven by a logic focusing on the 'here and now' needs to be re-considered through a vision of the law as an institutional asset able to take care of the interests of both present and future generations. This vision is made possible by regaining from the past the meaningful elements for the development of policies and of a normative framework that ensure a *sustainable safeguarding* of CH for societies.

It is on the interests of present and future generations that the critique to the distinction between the public and private notion of commons finds roots (Marella 2012; Mattei 2014). The principle upheld by the notion of commons is the following: the community – inclusive of those who are not born yet – has received the CH from the past and has the responsibility to live and safeguard its elements and meaning for transmission to future generations.

From a political-legal point of view, the idea of commons may represent a correction against the institutional and constitutional unbalance imposed by the western traditional structure of power. This tradition, indeed, is very much built around the protection of individual private property against the State; but it does not recognize a similar protection when the goods belong and are representative of the heritage of a larger society. These goods uphold interests of longer period which are the interests also of future generations. By means of the notion of commons, the attempt is then to shape a legal category that will ensure protection against both market's dynamics and the short-term action of States. This category embodies its own 'apparatus of values' (Mattei 2014).

According to this approach, the notion of commons becomes a *driver* in elaborating efficient policies and a normative framework to deal with the safeguarding and valorisation of CH. Following this approach, the notion of commons adopted in 2009 by the Italian Rodotà Commission is useful. Commons are

such goods whose utility is *functional to the pursuit of fundamental rights and free development of the person*. Commons must be upheld and safeguarded by law also for the benefit of future generations. The legal title to the commons can be held by private individuals, legal persons or by public entities. No matter their title, their *collective fruition must be safeguarded*, within the limits of and according to the process of law. When the holders are public juridical persons the common properties are managed by public entities and are considered out of commerce; their concession to privates is admitted only in cases allowed by law and for a limited time, without the possibility of extension. [...] The commons legal regime must be coordinated with that of civic uses. Anyone may have access to the jurisdictional protection of the rights connected

to the safeguard and use of commons. (Mattei, Reviglio, Rodotà 2010)

In this perspective, commons, unlike private goods and public goods, are not commodities and cannot be reduced to the language of ownership. They express *a qualitative and functional relation*, in light of a conception that links individuals, communities, and the natural and cultural ecosystems.

Commons must be promoted to an institutional structure that genuinely questions the domains of private property (and its ideological apparatuses such as self-determination and 'the market') and that of the State: not a third way but an ecologically legitimized foe of the alliance between private property and the State. (Mattei s.d.)

The shift now politically, not only theoretically, to be accomplished is to adjust the current dominant wisdom from the absolute domination of the subject (as owner or State) over the object (tangible and intangible cultural and natural elements) to a focus on the relationship of the two, and on an active participation in the recognition and management of cultural goods. A new common sense is needed that recognizes how each individual's survival depends on its relationship with others, with the community, with the natural and cultural environment. This idea certainly evokes the Faro Convention's spirit.

A legal system that recognizes and promotes commons values the community of individuals and/or social groups who are linked by a horizontal mutual connection; it values a network where a participatory and collaborative model is developed, that is a model that puts community interests at the centre and tries to balance the concentration of power and individualistic views. In this perspective, the State should take up the interests which are of a more general nature. Undoubtedly, the demanding challenge is to find a legal mechanism able to regulate the way of being of the commons. For now, the notion of commons, as also applied to CH, serves the cause to drive the attention of States to safeguard CH for the well-being and wealth of all peoples and societies, by means of promoting a further path in the legal texture, and pushing, by so doing, their conduct towards the *protection and promotion of common and collective interests*.

As a consequence, we can reason on the role that international law may play. Being international law a legal system that regulates the relations first among States, but also among other international subjects, it may regulate a conduct that should be aimed at safeguarding CH in the interests of human beings in general too. This perspective appeals, at the same time, to the collective dimension of the right to CH, namely a collective good of humanity to be enjoyed by present and future generations of the group directly interested by CH and (then) by humanity itself (Zagato 2017).

It is thus by its nature and structure that international law may limit the free will and potential abuse of a State also regarding CH: international law, through the explicit or implied consent of States, may actively choose to preserve the interests of future generations as those surely enclosed in the safeguarding of CH and of other commons.

In redirecting States' actions towards the respect of present and future generations, the international community may rely upon the *theory of intergenerational equity*, a theory that has been normally applied to the natural environment, but according to us it may well apply to the cultural environment, too. This theory states that the human species holds the natural environment of the planet in common with other species, and with past, present and future generations. As members of the present generation, we are both responsible for the robustness and integrity of our planet, and beneficiaries, with the right to use and benefit from it for ourselves and the future human beings (Weiss 1992, 20).

It is from this line of reasoning that a most fascinating challenge comes to current international law as to CH.

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## **The Commons, European Heritage of the Local Collective Action**

Nevenka Bogataj  
(Andragoški center Slovenije, Ljubljana)

**Abstract** A major recent transition of Western society we face is characterised by denying the existence of common values, in favour of immanence of narcissism and self-realization. Commons represent not only one of bottom up evolved historical institutions all over Europe, to which a role of institutional infrastructure for socio-political change is attributed, but also a living practice of common values. A brief overview on the European situation evidence is presented with the accent on Slovenia. The future of commons is seen in promotion and support of the local critical reflexive dialogue in the frame of (intentional) learning. As environmental change (e.g. in terms of climate changes) and society change (e.g. in terms of migrations) are not 'linear process of predictable causality but a complex of choices in the life-long learning', their practices all over Europe inspire further functioning, innovative responses and transmission of their tradition into the future.

**Summary** 1 Introduction. – 2 Conceptual Framing. – 3 A General Overview of the Origins, Development and Changes with the Emphasis on Slovenia. – 4 Framing the Commons into the Heritage Discourse. – 5 Conclusions.

**Keywords** Commons. Local collective action.

### **1 Introduction**

A major transition of Western society that we have been observing for decades is, according to one of its analysts characterised by denying the existence of common values, immanence of narcissism and self-realization (Bahovec 2015 as quoted in Gallagher 2003). Indeed, a profound social change occurred in Europe right after the processes of urbanization and industrialization after WWII, when further political and technological development brought about also demographical changes, raised mobility and material welfare, and last but not least, privatization in ECE (Stark 2015). A possibility to develop individual abilities and preferences has led to heterogeneous individual developmental pathways. Consequently, difficulties in the common goal setting and its passionate (also socially controlled) realization are thus not unexpected.

Traditional self-organized *local communities* do share a goal and by definition this is primarily self-preserving while all the other goals may change

according to the moment of observation. Local communities root in times of survival from natural resources only. Their later organisational level rose (e.g. to municipality) and production mode at least partly changed (e.g. to services provision). Evolution of welfare States and market-based exchange was paralleled with decline of Commons but past traditions have remained and confronted with new circumstances e.g. multi-level policy arenas and the globalization of economy. This also means that past focus on the subsistence and primary resources has diversified while internal community processes eventually remained aligned with cultural tradition.

We present an institution of the *commons*, once present all over Europe, characterised by the local use of the *common land-ownership* and a joint management of the land and its resources. They are still active today, continuing the past activities of the common goal setting. Our perspective refers to their role in the common goal setting as an element of heritage worth to preserving.

We argue for the framing of the commons into the heritage discourse due to their longevity and survival, despite being marginalised for a long time in the public spheres. A link with CH is established through the definitions of the Faro Convention. Understanding the commons thus means entering a variety of regional and local situations, including colourful terminology, which includes slight, yet important differences in meanings that should be taken into consideration (De Moor 2012). To illustrate, Slovenian official term (an agrarian common) refers in terms of etymology to the production regime but field work revealed at least seven other terms (Bogataj, Krč 2014), reflecting historical contexts of the territory and its environmental characteristics.

The aim of this article is to argue why the commons are understood as heritage and to make a general overview on the European situation with the emphasis on Slovenia. The fundamental message is found in considering a common also as a community, able and willing of active transfer of past models and norms to the future. As environmental changes (e.g. climate changes) and social change (e.g. migrations) are not a “linear process of predictable causality but a complex of choices in the life-long learning” (Del Gobbo 2015), we also consider capacity dilemmas of the future. Methodologically, we base the claims, not only on the literature, but also on the (personal) field observations of the commons which have taken place (at intervals) during the last three decades in Slovenia with the emphasis on interviewing the leaders of Slovenian commons in the period 2010-2014.

## 2 Conceptual Framing

The commons are defined as groups who collectively own and manage resources. DeMoor (2012) distinguishes between a territorial type and its 'stretch' to open-access goods (oceans, air). Therefore, the priority is given to the groups of people linked to natural resources, particularly known from a research of Ostrom (1990, 2005).

In the literature, commons are considered from a sociological, an ecological and an economic point of view, representing not only different perspectives but also diverse interpretations (De Moor 2012, 270). The positive ones consider commons to be a vital element of agricultural production, a model of distribution, fulfilling the criteria of democracy and equality or a case of longevity due to the ability to adapt. The negative interpretations, on the other hand, underline their weak economy, creating and maintaining poverty. What is more, also their role is interpreted differently, varying from the institutional infrastructure for socio-political change (De Moor 2015) to the examination of a particular type of (private) ownership (Živojinović et al. 2015) and a model of adaptation close to the basic functioning of the local community (Gatto, Bogataj 2015).

However, even if we speak of the groups owning and managing land together, the meaning of the community broadens the meaning of the group. The construction of a relationship, network and corresponding commitment seems crucial for the development of feelings of attachment and embeddedness. Indeed, a community is more than only a sum of individual personalities, linked with an interest (e.g. into a chain) or a short-term team. It is particular entity with own identity, aim(s), empathy to members' needs and responsiveness to the internal and external factors, functioning as a self-defined unit, inclined to self-sustenance (Bahovec 2005). The use of the internal (social) rules and their change (*i.e.* adjustment) is needed due to the external unstable ecological, economic or socio-political world. Authoritarian undemocratic entities are excluded from the definition or the 'real community', as only those who respect the needs of all members (not only the needs of one segment) are understood as real communities (Bahovec 2005; cfr. Etzioni 1996). Regular communication is crucial for the development of shared values, common norms and identity intentionally transmitted to future generations. This also includes the ability to set a *common goal*, even if we are aware that the ideal situations are rare or even absent. A famous Italian personality, one of earliest juridical analysts of the commons, has just recently referred to the commons in terms of a community by claiming that

they are people with a very personal relationship with land, [...] practising traditions [...] just out of their souls [...] so their essence is spiritual community. (Grossi 2016)

A community is a dynamic entity, capable of an active response to internal or external challenges, but consisting of active and inactive members (Czerny 2014, Premrl et al. 2015). In (some) Slovenian commons active participation of members was obligatory (e.g. Ogrin 1989) at regular operational meetings and a yearly meeting. The participation rules have transformed through the centuries into practices implemented by the State authorities, sometimes by turning a membership into a citizenship of a municipality, or by being institutionalized into, for example, cooperatives. Even the commons themselves have changed their interests and, consequently, the participation. That is poorly examined and would call for a comparative European analysis. The challenge of rational (economic) interest, not independent from the social embeddedness (Granovetter 1985), is addressed with collective action studies and design principles (Ostrom 1990). However, we will not list these characteristics, nor will we dig deeper into the economy of the commons, but we will only warn of the differentiation between a stakeholder and a shareholder's conception, now dichotomizing once integrated ownership and management.

The conceptual categorization of the commons into heritage discourse calls for an extended recognition of a resource, interpreting the resource not only in terms of natural amenities, but also in terms of intangible characteristics of communities related to these amenities: values, beliefs, knowledge and traditions, rooting in history, and independent ownership. We argue that the commons are heritage. Furthermore, the same Faro Convention in its second article defines a *heritage community* as

consisting of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations (art. 2(b)).

According to this definition community is a wider and looser concept than a Common, which is linked with ties among shareholders, and ties with their land (formally owned or not) enriched with the ties (e.g. positive valuing) to the past and the future. And indeed, commons are one of the oldest institutionalized social structures, an example of long-term specific functioning, and transmitted orally through generations. This can only be possible when juridical interpretation of (full) ownership of a person over an object is, generally speaking, considered improper because it may endanger existence of an object. In case of commons the nature of an object (subordinated to the laws of nature and not to human laws) limits eventual destruction, collective rules limit damages. Indeed rules-in-use were identified which limit individuals from overuse but provide also limitations to resources marketing.

### 3 A General Overview of the Origins, Development and Changes with the Emphasis on Slovenia

We cannot assign the origin of the commons to the one reason only, as not only were geographical conditions diverse, but also different production modes took place throughout time. What is common is their original dependence on the natural environment. Therefore, the origin of the Alpine commons is attributed to prehistoric collective management (Merlo 1995, Vilfan 1980), while German authors link the origin of the commons to the migration wave responses between the third and the sixth century, with the establishment of five to ten farms on the territory and the organizing rotation of three field zones (Brandl 2011). DeMoor 2015 attributes their establishment in Low Countries to the risk avoidance. The Scandinavian commons (Holmgren, Lidestav 2016; Holmgren et al. 2010) were established in the nineteenth century top-down, with the aim to aid the farmers, living in the limited northern conditions, while origins and practice of the Italian commons differ on the axis North-South (Bassi 2012). The Slovenian commons root in prehistory (Vilfan 1980).

In general, these examples acknowledge a high variety of regional and local practices in the past, as well as today. However, if originally the size of a common was defined by land productivity, recently this has not been the main criteria. Differences do not only come from the differences in the nature of the land, but also lie in the historical development. Inheritance rules are an example of these differences and changes. For instance, local members were initially mostly men, recently women have been granted a membership as well. Another example of historical change refers to the importance of their roles: the Alpine commons had a strategic position in the Venice period, but later usually became marginalised and poorly recognised (even absent) from the official state statistics. Examples show a synchrony in developmental processes (Gatto, Bogataj 2015). The production regime, once agrarian, which mostly represented pastures or forests in mountain areas, or wetlands in England or Lowlands, may have turned into services (recreation, tourism) or intensification/other production mode on privatized lands. Few perspectives from a relatively good evidence of case studies only partly address, the issue of the common goal setting. An insight into this aspect of Slovenian practice (Czerny 2014; Premrl et al. 2015) shows an evidence of constant balances of conflicts but survival of commons as an institution. For example, Czerny (2014) cites a case of a shared standpoint to the environmental issues, but a divergence participate regularly in terms of management decisions (but 18% of shareholders do not live in the local community, seldom attend meetings, but would be able and willing to invest, contrary to the local members, who regularly participate, but are not able or willing to invest). However, investments

or management decisions are only part of goals to be defined in common. The most demanding is distribution of benefits (e.g. income). Premrl (et al. 2015) finds regionally specific patterns of income distribution.

Many commons dissolved. The dissolution of the commons in Western Europe occurred due to the structural factors and internal causes (Brandl 2011; DeMoor 2012), however, poor examination of the countries who were faced with a revival after their nationalist or class based nationalization and abolition (e.g. Vasile, 2015) do not allow us to overgeneralize this for the whole Europe. To exemplify, in Slovenia, generally speaking, 2,000 commons, owning circa 30% of the territory, declined to approximately 600, owning 3% of the territory (Bogataj, Krč 2014). The restitution processes at the end of the twentieth century stimulated the remaining commons to revive. However, this also meant opening up to market forces and thus creating further tensions among members. Some commons have found the property again a high potential, while others are unwilling to intensify the production due to a variety of reasons (eventual irreversible changes of natural resources or unconsolidated internal ties, e.g. due to the past experience or immigrants). But the concepts of individualization, fragmentation and suppression of common management are not new. Particularly strong in the period of physiocracy (DeMoor 2012), for the case of Slovenia described by Smrdel (1988) amongst others, seems enforced in the twentieth century. Some European countries supported commons with diverse arguments: consolidation of fragmented forest ownership in Germany (Schraml, Selter 2013), recognition of the sustainable practices in Veneto, Italy (Gatto, Bogataj 2015; Grossi 2016). Slovenian new legislation recognized and supported functioning and consolidation of commons (Act 2015) with the argument of fostering active management of natural resources, predominantly forests. Arguments for consolidation of commons thus differ another important tension, hidden in the process of amending legislation to the new interests, is concerned with distributive rules: original egalitarian principles of the traditional community at the survival edge dissolve in the frame of economic (and other) liberalization.

Aged internal members' structure in Slovenia is usually reluctant to changes according to field observations (Šprajcar 2012; Deisinger 2012, own interviews of Čezsoča agrarian common in June 2010, May 2011, July 2014 and Kamnik urban civic corporation in October 2014, for example). These tensions limit both, the intensification of production and the consolidation of the common goal. The latter have already been damaged during the decades of the ill democracy (cf. Stark 1991). However, the anthropological interpretation of autonomous small democratic social entities (so called *us-groups* or *small living worlds*) expects further balance of production and conservation of resources with (at least) a need for communities' internal equity.

## 4 Framing the Commons into the Heritage Discourse

In line with the previous literature examination and definitions we argue not only that the commons are heritage but also that they may be object of a declaration for a HC. With this wording we, above all, refer to their intangible cultural characteristics: 1) the ties among the members of the commons, 2) the ties with historical norms and traditional procedures, values and beliefs, and 3) the ties with the land, symbolically and in terms of practicing joint work and decision making. These ties, poorly studied and, indeed, difficult to quantify or measure qualitatively, are explicitly cited in arguments for keeping their practice (e.g. passing on the traditional activities to future generations, see Rodela 2012). They represent a symbolic world of those involved, more than economy does (Bassi 2012), by linking the past and the future through representing certain identity (Grossi 2016). The commons, therefore, represent CH with the emphasis on its non-individual base. But there is also natural heritage, the land of the commoners, which we do not consider and analyse here. We only stress the importance of the transmittance of the interpretation of nature in terms of its valuing and conceptualisation of their limits (Keršič Svetel 2010).

Regardless of the official situation (for instance, due to the nationalist or class based past regimes), the remaining (and revived) commons keep the rules-in-use in the new circumstances of the market globalization and the State based organisational principles. Socially shared practice, now entitled heritage and based on household and vertical nesting, is particularly alive in (micro)local communities of the rural areas (Bogataj, Krč 2014; Vasile 2015; Kluwankova, Gežik 2016). However, in Slovenia, there is an urban case, still dealing with the unfinished denationalization process. Its challenge is above aligning urban dimensions and a lifestyle with traditional norms, having been erased from the public life. This Commons' fights for recognition for decades but provide public roles by their property, now denationalized and step by step publicly recognized again (Deisinger 2012). However, even if a will, competence and active behaviour have some background motives, an active behaviour and a common goal cannot be granted. According to our understanding this will, competence and activity are based on local living, high human capital, and reasons to continue socializing. In case of urban common its members managed to promote their property in terms of recognition of the conservation of the territory and its nature without denying recent (urban) developments. Revival of the public recognition of commons in general, their land planning and property use seem to be main challenges for the future together with further preservation of natural and CH.

Some cases (generally) presented show that regular and modernized continuity of the past practices is possible. If the pre-nineteenth century provided some legislative autonomy and flexible adjustments of formal

(landlords') ownership this would not be possible today (De Moor 2012 amongst others, own observations). Heterogeneous urban societies, organized on a large scale, are far from direct democracy practised in the commons. Setting a common goal is, therefore, exposed to mediators, the absence of land and history attachment, but still capable of arriving at consensus, engaging in a dialogue and thus providing a long-term benefit for all. We argue that the cut of ties with the territory (of members left the territory or commute daily but also of distant decision makers), among members (due to the past conflicts or poor motivation for economic benefits) may be overcome. The issue of participation might be addressed to empower an intermediary role of the commons, for example, to mediate between personal and public benefits. This means that the commons are not only concerned with the private interest of their members, but also sustain an interest of the general public as they provide ecological services (which are the common good). In this sense, they provide an example of departure from profit driven motives to mixture of motives and multifunctional uses/roles of land/property.

Contextual empowerment (or its absence) affects further longevity of commons, their heritage and adaptation to the changes (of nature, politics, and economy). Considering the commons for heritage encourages learning, and this refers to all, communities, public administrators, local land owners, professionals of diverse branches (for instance, historians, foresters, urban planners) and the wider public.

## 5 Conclusions

The commons are a long-lasting practice (the history itself, an element of identity, Grossi 2009, 2016), theoretically supported, but marginalised and poorly known European heritage, dominant in the mountain territories (e.g. the Alps, the Tatra mountains, the Scandic shield). In these areas only cooperation enabled the physical strength needed for the extraction of goods (e.g. wood) from the land (e.g. forests). They keep functioning despite pressures of the historical processes. Recently these pressures above all mean exposure to inflexible interpretations of the property and impact of global market forces. Personal and intangible ties seem to be crucial for survival of commons and their heritage of intergenerational transmission of norms. Regular exposure of commons to tensions is reflected in wisdom in addressing and adjusting to complex realities. Obviously some managed to survive, revive and practice their heritage also today. Their recognition, support and use are essential; their setting into heritage discourse promote their existence and role. It also calls for additional learning (for them, as well as from them). They inspire our response to social change with a deeper understanding of their functioning, and not only regarding their



economic outcomes. Their existence has only recently been investigated with case studies, but not yet based on comprehensive State statistics and a comparative analysis. Non-formal adult learning seem to be one of supportive frames for their further evolution. The branch of non-formal learning, called community learning, seem to be most proper frame and practice in this respect. The argument for this lays in anchoring learning in local innovative responses to developmental challenges. To achieve this, we suggest not only improving our understanding of the commons but above all provision of the learning infrastructure which enables setting a common goal. An example of such learning infrastructure might be study circles.

The commons are not based in overruling but on the process of common goal setting, so they challenge functioning of recent European society. Characteristics of collective action are based in communication as a balancing strategy, cooperation mechanisms and governance rather than governing (Ostrom 1990). Constellations of internal motives of community, such as risk avoidance, the advantage of scale or consideration of transaction costs, as well as external conditions like the freedom to organise, a tolerant/weak state, formal recognition of commons and their drivers (population growth, market) (De Moor 2015) have, therefore, crucial role in transmission of cultural tradition of commons into the future. Public recognition of the *commons as heritage*, seem to be important per se, but also a crystalline core for the re-generation of atomized communities and avoiding the previous mistakes of the top-down driven ideologies.

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# **A Possible Heritage**

## **Street Performances**

### **as a Participative Cultural Heritage**

Achille Zoni

(MagdaClan, Cestudir, Università Ca' Foscari Venezia, Italia)

**Abstract** Street performances can be interpreted as process of participation to a form of CH. We would like to interpret the provisions of the Faro Convention from the perspective of street performances as a form of participatory cultural experience, as along with considering the street performers as an actual heritage community. Given that the Convention confers a remarkable importance to individuals – as they are part of the communities – we will focus on the passage from the cultural object itself – the street performance – to the actors and beneficiaries of the heritage which this object constitutes: the street performers and the audience at the moment of the show.

**Summary** 1 Introduction: What Is a Street Performance? – 2 The Role of the Faro Convention and Its Spatial Framework. – 3 Taking Part in an Itinerant Cultural Heritage. – 4 Conclusions.

**Keywords** Street performances. Faro Convention. Heritage community.

## **1 Introduction: What is a Street Performance?**

Street performances as we know them today are the evolution of a *pastiche* of cultures and different forms of entertainment whose origins are very old and which embody, in some way, the sum of every performance art. This type of show has a lineage that extends back to *cinaedi* and *circulatores* of the Classical era, to buffoons and acrobats of the late Middle Ages, and to the acrobats and tightrope walkers who fluctuated between city squares and the palaces of the Renaissance lords. The subsequent phenomenon of the aggregation of acrobats, actors and comedians into real companies, which reached an apex during the Counter-Reformation, outlines the emergence of a new aesthetic dimension, with precise spatial connotations and a unique morphology. This dimension has been recently translated into a new kind of show called *nouveau cirque*, which developed in France in the '70s. *Nouveau cirque* reflects the ancient heritage of circus disciplines by defining them in different contexts, including the street.

Today the concept of street performance is used to describe a broad selection of disciplines, which assume many names both in Italy and abroad.

Depending on the location, the opinions and the traditions of the artists performing these shows, and even the name and the definition of street performance, can vary greatly. In Belgium, for example, the term *art forains* is preferred to *art de la rue*, which is considered too generic. *Art forains* is instead used to reconnect the shows to the tradition of the fair, where in ancient times street performances used to occur.

Some of the various names used seem to overlap, some seem to oppose one another. The use of expressions such as street theatre or street show do not raise major difficulties, but terms such as theatre *in situ*, artistic street expressions, urban performances or urban performing arts are more unclear. All refer to the same type of show.

The definition is not merely a formal problem, as one of the main challenges to promotion and dissemination of street performance is the lack of clarity about what subjects should be considered under these expressions in the regulations and laws.

For the purposes of this work, however, the concept of *street performance* is considered according to the following characteristics:

- It happens in the public space, which is almost always in the open air, in static or itinerant form. What really distinguishes the spaces where street performances occur is that these spaces are not designed to host any form of entertainment.
- Street performance can be done in a variety of different places and contexts, rural and urban, without compromising the quality and nature of the performance. Among the places we include are squares, streets closed or open for traffic, shopping centres, public parks, etc. Concerning the contexts, we include festivals, fairs, events, or no particular context at all: within the daily life of the city. Sometimes street performances are complementary to other types of events.
- It is distinguished from any other live show because it's not the audience entering the entertainer's space, but it is the show entering the audience's space – which is also a public space. Spectators consequently access the show free of charge, but they may choose to pay an optional offer at the end. Street performances undertake therefore a democratic relationship with the spectators, in which the artist is on the same level as the public and there are no intermediaries between them.
- Its nature is predominantly entertaining and is not linked or motivated by cultural, popular and religious traditions, as are processions and rituals.
- It falls within the realm of the performing arts and not in the visual arts.

Each of these points could be reasonably questioned, because street performances are often distinguished by exceptions to the rules. The last point is one of the most debatable: many studies have deliberately counted the visual arts and installations among possible disciplines which constitute street performances. The French approach is perhaps among the most

resolute in embracing this methodological choice. In any case, the features mentioned above make it possible to condense a substantial gamut of relations between social groups, individual skills, public spaces and values into one category. It is therefore an interesting case study to analyse in light of the most recent instruments for the safeguarding of ICH.

## 2 The Role of the Faro Convention and Its Spatial Framework

The introduction of the Faro Convention inaugurated a season of policies and studies on cultural rights which has opened innovative points of view allowing us to move easily in this direction. It is an innovative Convention, which fits into the evolutionary trajectory of the thought on CH and decisively transforms its direction. Both the principles that it states and the cultural politics that it promotes are harbingers of a pluralistic approach which characterizes the action of the CoE and stands out for its holistic definition of the concept of CH (D'Alessandro 2014).

The interest here is to draw attention to one of the main changes introduced by the text on the debate on CH: it is the shift of attention from the object to the process, by focusing on the individual and individuals – that is, the community (Dolff-Bonekämper 2009). Cultural phenomena, therefore, multilayered in relation to good practices in management and education, become a space where individuals and communities reveal themselves and interact with a participatory approach. Moreover, CH is intended as a living and changing element, characterized by a dialectic that concerns the individuals and the places where they live.

These assumptions interest us because they offer the possibility to consider the morphology of street performance as a complex system of relations between artist, audience and location – and thus between communities and public spaces. In the text of the Convention the notion of place is absolutely detached from a precise topographic dimension and a fixed spatial reference. Therefore, it can first be interpreted as a social place, a space in which the expression and practice of a certain CH manifests itself. In this way, even a simple street may be related to CH, provided that individuals recognize within a specific meaning that is not replicable elsewhere because that precise place is essential to the existence of a cultural value. To protect the heritage, then, means to protect a set of social relationships that happen in a place that is foremost a relational space.

These considerations are very close to the reality in which an itinerant street performer operates while using the concepts and practices that characterize his work. His *savoir faire* is not identified in the specific discipline that is the object of his show, but in the process of creating a temporary cathartic moment which rests on the triple relationship described in the preceding paragraphs. It is an expertise through which he is able

to build a cultural and social event that, providing the right conditions for development, can go far beyond simple public entertainment.

Once we have identified the space of a square - or any other suitable place - as the centre of those connections between spectators and artists, we can interpret street performance as a systemic expression of a genuine heritage which exists here and now. It is not possible to fully understand the street art phenomenon by focusing exclusively on the action of the artists because the value of the performance is also constituted by the presence of an audience and the relationship with it. If we assume a particularly enlightened cultural policy, we could imagine urban spaces in which governments enact specific regulatory measures on the basis of cultural values linked to the communities of street artists. This kind of choice would be a revolution in the governance of these processes, especially considering that this vision could be extended to the regional or national level.

The Convention gives a formal space for debate and engagement in the safeguarding of projects to public institutions and affected communities. A simple example of a possible interaction between the two voices would be to identify and consider the areas where street performances traditionally occur as CH sites. It would be plausible to state that a square, depending on the activity of street performers, is part of the CH of a city. As such, the presence of artists and audiences in this place should be preserved, controlled and promoted, as stated in the concept of a HC given in art. 2. It is clear that, at present, even the most virtuous regulations do not take into account the possibilities offered by this approach. It goes far beyond the domain of administrative authorities. A practice based on this vision of cultural policy would be able to give a new direction to other crucial issues, such as the official recognition and promotion of street performances.

### **3 Taking Part in an Itinerant Cultural Heritage**

The bold assertion of cultural rights as an integral part of human life, like other fundamental rights, also creates the ground for a further step in this direction. Without departing from the scope of our discussion, it is interesting to recall here that the detailed definition of such rights under the Fribourg Declaration of cultural rights<sup>1</sup> also includes a right to identity and CH, and, as already highlighted elsewhere (Zagato 2015), it confirms that the right of everyone to engage with the CH of his choice has to be conceived as an aspect of the right to participate in cultural life, which is

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1 Fribourg Declaration on Cultural Heritage adopted on 7 May 2007, available at <https://www1.umn.edu/humanrts/instreet/Fribourg%20Declaration.pdf> (2017-12-15).



affirmed by the Faro Convention (art. 15(1)(a)). The assertion of a right to CH that characterizes this Convention is an extremely important legal arrangement, especially if it is addressed to a community whose hallmarks are still ignored and are marked by a lack of or inconsistent acknowledgment on the part of civil society. By leverage with these rights, however, street performance and its artists could find a large and effective form of recognition. The problem is now to clearly establish how this community should and could reconfigure itself to fit within the text of the Convention.

To avoid misunderstandings, it is important to start by recalling that according to the action coordinated as in the art. 1, and in art. 1(b), the subject of law is not only collective but also individual. These two areas are not on the same level and this could lead to confusion: the fact that every individual has the right to their own cultural development or to participate in public cultural life is not connected to the needs of a community within the same rights. The distinction which regulates relationships between individuals and communities is therefore based on a responsibility that, like the right to property, is foremost personal. To exercise this right, therefore, requires answering specific responsibilities: in order to enjoy the aforementioned right on a collective level one must take part in a HC. Cultural liberty and the right to property, in essence, are exercised in compliance with group membership through a form of liability that arises from the individual and then moves to the community. We have to consider that the text is addressed to the Member States who must ensure the recognition of above responsibility and rights, a constraint from which the States cannot withdraw.

Here we deal with a conceptual cornerstone: a HC should not rely on this constraint, because the States assume it as an obligation. Member States, in fact, cannot do anything until the persons involved begin to cooperate in a rational and democratic manner. In our case, it would not be enough to deal with the problem by involving both the community of artists and the public institution: a third pole becomes necessary, as do clarifications that take into account the polymorphic nature of today's street performances. The large-scale vision we have adopted requires that public players are not considered only on a national scale, but also at the regional and sub-regional levels. Artists should try to find a form of cooperation or participation that can communicate with and be recognized formally by interested parties, public and private.

The federation is definitely a good starting point, as the various existing cases have demonstrated a strong potential for dialogue with the institutions concerned. In any case, it seems that the most effective form of cooperation - bearing in mind the nature of the problem - should include an international network: this could be a network of the various federations, which would be able to respond to problems that arise with superior expertise.

Finally, we must also take into account the large presence of commissioners and therefore the presence of private organizations. The full implementation of art. 4(a), cannot lie outside the consideration of private stakeholders in the industry that we are analysing here. If it is true that “anyone who, alone or collectively, has the right to benefit from the CH and contribute to its enrichment”, the presence of the private sector is essential, provided that this clause is not interpreted as a mere form of economic exploitation of CH. It is however necessary to acknowledge that private productions of street performance events are an essential part of this form of entertainment, without which it would not exist as we see it now.

This approach accommodates the full concept of *optimum competency synergy* that has been proposed elsewhere in relation to the liability and the right to heritage of communities. This synergy identifies the same three sectors (private, public and collective) as the key players of CH. It should be noted that, given the above concepts, the Faro Convention grants a strong potential to take a radical step forward in the dialogue with institutions and with civil society.<sup>2</sup> This is precisely what the street performance milieu needs.

Regarding the connection between a HC and the spatial context, we can make one last, important observation. The scope of the concepts contained in the Convention make it possible to consider the spatial reference in terms of ductility and adaptability. Gabi Dolff-Bonekämper (2009) specifies that “a HC can be built up across territories and social groups. It is defined neither in terms of the place where the heritage is situated, nor in terms of the social status of its members, who may participate on from elsewhere, even from a long way away”.

Basically, this means that if anyone in the community is the owner of a right to cultural participation – as we stated above – we need to establish where and with whom any individual can exercise this right. What if, as in the case of street artists, the owner of said rights moves from one city to another, from one state to another: is, therefore, an itinerant? In this case, some questions remain to be clarified: we are discussing the place where a right is enjoyed, both on the spatial and social level. The Faro approach is relevant in this case as well: individuals may choose to belong to different communities at the same time or, by changing over time, to move into the social space and the physical space. Similarly, still moving, they can continue to belong to the same community without being limited to a fixed place. They can collectively or singly associate with other existing

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2 One of the main advantages of this Convention is the ability to focus attention on a particular aspect of the relationship between CH, social communities and territory, which has a major role in our case: it is the shift from the concept of government to the one of governance.

groups that show some connection with their cultural identification, while retaining their requirements for mobility. In extreme cases, the concept of community asset can be extended to include the virtual belonging of individuals to that community. In addition, heritage communities can relate to a single industry, thus uniting people who work and cooperate in a common cultural order: this can be done temporarily or permanently. The spatial context as expressed by the Faro Convention can be extremely large or tiny, but cannot be a conceptually closed space. In our case, this strong adaptability is one of the main features that would allow an interpretation of street performers as an actual HC, whose spatial context is characterized by continuous mobility.

## 4 Conclusions

It is interesting to consider that the provisions of the 2003 UNESCO Convention would not have led to similar results. The important concept of participation, interpreted as active presence of the holders of the practices in question, still firmly ties in to the concept of community, but here it is relegated to a transfer of competences in the form of administrative activity.<sup>3</sup> Operationally communities are seen here as a veritable social interface for the intangible heritage detection system, and their role is interpreted as a mediator between the governing bodies.

Furthermore, within the meaning of art. 2(1), the Convention only provides vague parameters to define “communities, groups and, in some cases, individuals”. It can be stated within the meaning of that article that the practitioners and the depository of a heritage item are those who identify it as part of their heritage and who have an active role in its transmission and re-creation. Well, in the case of itinerant street performers, it is not a simple task to identify all of the cultural custodians. There are typically no particular difficulties in the attribution of certain elements of ICH to specific representative communities, because these communities are clearly established and easily identifiable. The relationship between individuals, heritage and territory is therefore resolved *a priori* and does not constitute an obstacle: it is instead the base upon which the framework of safeguards provided by the Convention operates. Regarding the dimension of street performances, however, we face difficulties: which community should be considered representative considering that all street performance communities are constantly changing and evolving, both in terms of space and in terms of individual members?

<sup>3</sup> Europe’s diversity of forms of administration and the exchange of experience between these administrations gives an idea of how many different cases a street performer could face trying to carry out his work while respecting existing regulations.

The Faro Convention's provisions allow us to overcome these difficulties thanks to the trend towards an idea of evolving and changing heritage: CH does not imply an attitude toward the past, but it includes an element of constant transformation due to the interest and active participation of involved communities. The tools of governance that would be developed by virtue of that vision would be put to good use in the domain of street performances.

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# **The Right to Speak and to Exist of Heritage Communities**

Adriano De Vita

(Associazione Faro Venezia, Italia)

**Abstract** Heritage Communities (HCs) often are formed as civic structures in opposition to public decisions which are perceived as dangerous with regard to their quality of life and protection of places that give shape to their identity. This puts them in the uncomfortable position of being perceived as the No-Side. To overcome this situation, many HCs developed over time a more proactive approach. The HCs are now fully aware of not being structures of representation, they do not 'represent' anybody: they are the active citizenship and they claim for a clear political role. Only the shared governance; only the shared decisional power can be considered 'participative' in the full sense of the term.

**Summary** 1 Community and the Construction of Reality. – 2 Emerging Narrations. – 3 The Symbolic Status of HCs. – 4 The Conditions for a Public Speech. – 5 Good Practices. – 6 Conditions for the Civic Participation. – 7 Conclusions.

**Keywords** Heritage Community. Participation. Active Citizenship.

The following paper is not the result of a systematic and methodologically strong research. It is rather an attempt to provide an explicit and consistent structure to a number of remarks which raised during various direct relationships with the major Venetian HC. The ideas outlined here always refer to them, also where this is not clearly spelt out.

## **1 Community and the Construction of Reality**

Some time ago, St. Mark's Square has been covered by huge billboards which helped to generate sufficient income to the necessary restoration works of Doge's Palace's facade. In that period, the square was continuously overcrowded by a stifling flow of tourists taking pictures of everything. One day I decided to make a short video revealing an interesting thing: that is a tourist who was taking some pictures from Ponte della Paglia, similarly to many others. He was taking photos of the facade of the National Library of St. Mark's, that was entirely secreted by big posters.

The tourist was photographing the Library as if the billboard was not

there. Others were also taking the same pictures and those of the Bridge of Sighs, at their right, which was veiled for the same reason. In these cases, we clearly see the operation of cultural patterns,<sup>1</sup> namely, those sets of organized and consistent meanings which determine our perception of the world and of ourselves. Venice is beautiful, Venice is unique, Venice is a dream. These are models of meaning which exist in the mind of visitors before they arrive in the city. The active presence of these models is so powerful that it overlaps the visitor's ability to perceive the real environment in which they are. Why should they obsessively take pictures of watches and perfumes? The tourist photographs the 'imaginary Venice' also if he/she cannot see it in any way.

After all, as philosophers have known for centuries, we cannot get a direct perception of the world. We can only perceive the picture of the world that we build through the language and models of perception transmitted by the society in which we live. The result is the tourist arriving in Piazzale Roma with a car and trying to penetrate in the city just because his satellite navigation system tells him that his hotel is two kilometres away, without indicating about canals and strict pedestrian *calli*. The driver can see canals and water, instead of paved roads, with his own eyes but acts according to the representation of the world that his satellite system gives him. This is a perfect example of the power of the narration to create the reality in which we live. Our behaviour and the sense of our life are determined by this continuous social building of meanings. When we talk about community we are talking about persons sharing a specific system of meaning. The HCs defined by the Faro Convention are formed when such a set of shared meanings exist. Often, if not always, this set of sharing meaning in Venice was formed in the face of a threat. The transformation of St. Mark's Square in a huge commercial set, albeit temporary, led a part of the population to perceive a serious threat to their sense of identity and greatly facilitated the emergence of the first Venetian HCs.

Since then, the threats have multiplied, but have also multiplied the organized group of citizens asking for the right to be heard. There's no need for these communities to exist when the goods and the social practices which own cultural and identity value are enhanced and safeguarded by public institution. In these cases, various association and committees which aim to enhance the common CH and do it on a volunteer-based action still exist. But their ability to develop *explicit* cultural models seems to emerge only in case of conflict. In Venice, these conflicts are higher than elsewhere because of the choice, in the last twenty years, of all public bodies to give priority to mass tourism rather than to any other productive

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<sup>1</sup> Here we use 'culture' in its anthropological meaning. In general terms, it is a vision of the world shared by a specific population or social group. It is mostly unaware and learned through education.



activity. This led to a dramatic reduction in the population which has already turned Venice into a ghost town, overcrowded by visitors but almost uninhabited and dead from a demographic and civil point of view.

## 2 Emerging Narrations

Conflicts between cultural models must not be considered as a negative fact as they could disturb an imaginary harmony between rulers and ruled. Their existence should instead be recognized as an engine which pushes citizens to get a move and play an active role in looking after the places in which they live and the part of their tangible or intangible culture which is the foundation of their social identity. Throughout the entire text of the Faro Convention, the need for cooperation between public institutions, civil society organizations and private investors is emphasized. But what if the proposals of HCs are not shared nor supported by the public authority? To legitimate the existence and actions of HCs only in the case of perfect harmony with public policies means to completely de-legitimize them as organizations with their autonomy of thought and action. Nevertheless, it is their ability to elaborate cultural models and public actions that defines their political reliability. The lack of public subjectivity makes HCs to be irrelevant in taking important decisions.

It should also be taken into account that HCs evolve over time and that the history of these changes is still little known. HCs often are formed as civic structures in opposition to public decisions which are perceived as dangerous to their quality of life and protection of places shaping their identity. This puts them in the uncomfortable position of being perceived as the No-Side. To overcome this situation, many HCs develop over time a more proactive approach. This means being able to overcome several difficulties, because the processing of complex projects requires a certain internal organization, appropriate skills, and a lot of free time. Informal groups of citizens cannot operate with the same level of effectiveness and efficiency of a public office who works full-time with qualified staff and salaried or of private companies.

Despite these difficulties, a few HCs can develop new cultural models. This process is long, difficult, confrontational and requires the creation of a specific language (concepts and stories) capable of 'telling' and describing the city from a different perspective than the tourist-advertising model or the progressive closure of the territory in support of major private investors. Only when this process of cultural innovation is consolidated we become able to perceive reality with new eyes. Or rather, we build a 'reality' that was not so.

A brief example may clarify how these new narrations take shape. Everybody knows about the *gondola*, the typical Venetian boat, but just a few

realize how the *gondola* system works. There are around 650 persons working with gondolas. Not only gondoliers, but also the *squeri* which make them and take care of the maintenance, the artisans which make the details and decorations and the whole touristic system which intensively use them. In fact, the gondola system is a small industry with a considerable spin-off, which has so far prevented his death. As part of the gondola's ICH we must recall the system that regulates the profession of a gondolier. It is undoubtedly a guild which is accessible after a very difficult training process that can be completed successfully only by sons and relatives of gondoliers accustomed from childhood. Guilds have taken a very negative meaning over time, but we must remember that they have worked well for centuries and that their negative connotation comes both from the Fascist period and from the current prevalence of liberal models. Guilds have strengths and weaknesses, but are themselves, an historical organisational model, an expression of ICH.

There is also a typical use of the gondola different from the touristic system: the ferries. The Canal Grande divides the city into two parts, just as the Seine in Paris or the Tiber in Rome, but only three bridges cross it. That is the reason why ferries always have been an economic and appreciated public transport service for residents. It must be marked that Venetians move by feet for employment-related reasons. They don't hang around calmly as tourists do, and they are not *flaneur*. They are in a hurry as everyone, so they walk very fast to reach their destination. Good observers can distinguish between venetians and tourists because venetians keep standing during the crossing: they are not afraid to fall into the water and in this way they do not psychologically interrupt their walk.

In this context gondola ferries plays a key role, as they serve their purpose better than normal public transportation - the *vaporetto* - which cross the canal by its length in regular times. Motor based public transportation service is obviously necessary, but it should not make gondola ferries service disappear, with its tangible (the gondola itself) and intangible (the know-how which is needed to make and use it) CH. On this aspect, we can clearly see the difference within two cultural models which struggle for supremacy.

Gondola ferries cross the canal and intersect *vaporetto* routes. Which is an obstacle to which? It is not a matter to establish who is right, it is a matter of understanding if both narrations got right to public expression. Citizen can choose between two models only if both of them are public, explicit, well analysed and with equal dignity.

Table 1. Two narrations

<b>Motor model</b>	<b>Oars model</b>
Gondola ferries are slow and expensive	Gondola ferries are quick, efficient and highly appreciated by residents.
Gondola ferries hinder the navigation	Gondola ferries work as speed deterrent on normal street: they augment the safety forcing motor boat to reduce their speed.
Gondolas and piers are expensive to maintain	Motor boats are expensive, and oars ferries are more sustainable.
A modern Venice must augment both the number of passengers and the speed of transports.	A modern Venice must improve life's quality of his inhabitants and admit that the development of motor transportation has physical limits which are already reached.
Ferries are an anachronism to be done away once for all.	Ferries produce city-compatible employment, being also a relevant factor of cultural identity.
Public motor boats are polluting and cannot maneuver in tight spaces.	They do not pollute, do not produce dangerous waves, do not damage buildings.
Mariners, commandants and workers are selected and trained as in every public enterprise.	The model of organization and professional development of artisans and gondoliers is itself an intangible heritage.

As we can see in table 1 the two narrations are mostly counterpoised. This opposition is an expression of two distinct cultural patterns which – as usual in cultural confrontation – struggle to delegitimize each other. The specific case of the gondola is just one example among others which invest the entire conception of the city:

- in the last decades, Venice was seen as a city that needed to modernize. People were talking about rapid transports, lagoon subway, major works, tourism as only resource and progressive leaving of residents.
- the arising one is the one who see Venice as the city of the future, not as a residual of the past. Venice as an autonomous water-city and not the old town of something else. It needs to be enhanced for its specific features because these features are able to grant a better quality of life compared to a normal land-city.

The first narration is still largely prevailing and strengthened during the last twenty years, while the latter is slowly developing and acquires more consensus day by day. In this process, the HCs play a relevant role as they work as a sort of civil vanguard, potential to be able to give voice to that diverse part of the citizenship which we use to call *active citizenship*. But to play this role it is mandatory that HCs can acquire a formal right to speak as political bodies.

### 3 The Symbolic Status of HCs

A HC is not only a group of people taking care of a place that is precious to them, keeping an eye on the past in a future perspective. Usually it is made by people who share a common objective: it is a purpose and work group. These groups do not always turn into a community in the strict sense. They will always be weak communities, not as the 'blood and soil' ones or the ones founded on a religious faith. Unlike the ethnic communities, the HCs are formed by persons who choose to be part of them (Zagato 2015, 159). But it is true that also there exist strong communities which present the same characteristic of voluntary membership, as for monastic orders. What also characterize strong communities is their procedures of access and the resulting type of membership. To become monks, it is needed to renounce to personal identity (the name, the vests, taking an oath). The same is often for special military forces in which, in addition, harassment practices serve as initiation rituals. To be effective, these practices need *be kept in secret*, as their secrecy strengthens the community bonds. Nothing of what said can be traced in HCs, and therefore they can be called communities only in a very improper sense, even if the term is by now in general use and we will keep using it.

Usually, in HCs, people know each other, but it is uncommon that they hook up outside the work meetings and not all the personal relationship can be described as good. A social group can describe itself as a community only if it is able to elaborate his own culture, namely, a world view which is recognizable, shared and transmitted. The gondoliers' HC has these features. It is easily recognizable because has elaborated a set of ideas, meanings and practices consistent with each other. It is widely accepted among professionals of the gondola and also among citizens, albeit to a lesser degree. It is transmitted because the group has developed a specific set of practices to teach the knowledge and techniques related to the gondola. These criteria can also be used to formally recognize the existence of a HC and distinguish it from other types of social groups.

But that is still not enough. An HC exists inside a broader social context and it is necessarily involved in a communication process within it. Its visibility and public relevance depends mainly on his capacity of communicating his internal culture to the wider social context. It is a matter of assuming the right to speak publicly. In Venice, HC are multiplying in a spontaneous and chaotic manner but rarely they have achieved a degree of stability and organization sufficient to effectively manage the public communication processes. In fact, these processes require a good command of media, languages and sophisticated techniques that are heritage of qualified communication's professionals. But even before considering these difficulties it is important to remember a few basic principles of public communication.

The intentional and organized communication is always addressed to someone and for a purpose. In the case of HCs three are the main subjects of the communication: *the political power, the citizenship and the other HCs*. HCs communicate with public administrations, using various channels, to promote ideas and projects that can influence government's decision. They are not always considered because of their small dimension, not really representative, too numerous and not coordinated. Usually, political decision makers listen (only to a limited extent) the so-called 'trade associations', that is to say the enterprises, the syndicates, the hoteliers, retailers, but since active citizenship is not organized as a lobby, it is not listened and receives no institutional legitimacy. To overcome these difficulties some civic organizations, not just HCs, are turning to direct communication with the citizens. This can be possible especially thanks to the social channels that the web has made available to everyone and that are used in two ways: to discuss specific topics and to organize public meetings and events of various kinds.

The more skilled in this field can get attention, if they may mobilize a high number of persons. If this success the HC may become relevant during elections and - for this reason - they get more attention. But the HCs totally differ from the electoral committees and it would be simplistic to consider them in this way. The models of life quality, care and enhancement of the tangible and intangible CH that HCs gradually develop are certainly of a political nature, but also exceed and overpass the usual forms of representation. Many HCs statutes declare it apolitical group and in day-to-day work attach the utmost importance in avoiding any kind of affiliation to traditional parties. HCs are slowly developing cultural models that - if sufficiently explicated, disseminated and shared - can turn into new citizenship rights, specific policy choices, new models of democracy. HCs are not *representative* organization, like political parties. They are *active democracy* bodies and need a *continuous democracy system*.

This process is also slow because of the excessive abundance of civic committees and associations, many of which consist of a small group of friends, and sometimes of a single person. Only in the territory of the Venetian lagoon, civic organizations that can be considered as a HC in a broad sense are more than 600. If a mayor wants to meet them one by one it would take about two years.

The only way HCs have to get a significant public role is to get the ability to create networks of actors capable of coherent, synergistic and coordinated activities. To create networks of relationships and shared projects, however, is a very expensive business in terms of time and money and requires non-trivial skills. In the Venice area, only a few cases have

achieved this objective. One is the Istituto Italiano dei Castelli<sup>2</sup> that triggered an extensive network of collaborations and initiatives in the annual *Patto Città Consapevole* (Conscious City Covenant).<sup>3</sup> Once we clarified the main recipients of the communication activities we can also identify their purposes. These may be listed in order of priority and complexity, from the simplest: 1) Specific projects; 2) Participation in political choices; 3) Citizenship rights; 4) New models of democracy.

Most communication activities are related to the operational needs of the HC. Since these are groups of volunteers, their motivation is activated in the highest degree in the face of concrete objectives to be achieved in a short time. The concreteness of the task to be achieved is an important factor of aggregation as opposed to more theoretical discussions about 'principles' which tend to produce tensions and divisions. The demand for participation in political choices is connected to these operational priorities because the cooperation with the public authorities is necessary to achieve most of the goals that the HCs. When this type of collaboration is not possible because of the divergent choices of the administration, HCs feel aware of having no public role. The sense of helplessness stimulates the desire to obtain it. A further evolution is brought about when the communities begin to reflect on models of democracy rights. It is however very rare that explicit formulation of these issues reaches an adequate level of articulation because an HC is not a research centre, but an operating group. A more detailed reflection on citizenship rights, however, is necessary because in fact HCs propose, through their work, notable innovations on these issues.

The HCs are fully aware of not being structures of representation, as are political parties, trade unions, business associations. In fact, they do not *represent* the active citizenship: HCs *are* the active citizenship. The demand that is emerging gradually, but steadily become clear, is that active citizenship has a real and effective role in the management of heritage and cultural policies.

Without being fully aware, the HCs support *de facto* participatory democracy as an emerging form of democracy, which is proposed as integrative compared to the usual model of representative democracy (hierarchi-

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2 Istituto Italiano dei Castelli is a cultural non-profit association founded in 1964 to promote knowledge, preservation and enhancement of the fortified buildings.

3 Patto Città Consapevole, Network of Venetian Associations. In its program, among other things, it states: "La cultura come produzione della coscienza sociale dei processi reali" (Culture as the production of social consciousness of the real processes). The Pact stresses the need of a "constant and pervasive cultural development involving citizens". The construction of an ethically aware citizenship, informed, and protagonist "is the condition without which democracy remains an empty word". The process does not happen spontaneously, but "is the result of converging strategies politics, administration and civil society".

cal). This self-awareness development process is slow, quite confused, and is not obvious. The right to public speech of the HC is by now only provided on a very theoretical level, indeed. It is very limited and often openly denied.

For example, the current mayor of Venice has centralized all the communication activities of the Municipality around himself, he denies the right to publish comments on institutional web channels and others that express the slightest dissent, closed the press office and hired a specialist in communication of his confidence that remunerates with personal funds. In similar cases, any direct communication channel between the community and the administration of the capital city is closed. These difficulties, however, tend to increase the level of awareness on the importance of HC to improve their ability to publicly communicate their ideas and their actions.

In any case, the weak theoretical elaboration on the role and on the knowledge of HCs can be recognized in certain confusion on the concepts and language used in real situations of internal comparison. Basic concepts such as enhancement, common good, participation, active citizenship, heritage, culture and similar are used with extremely vague significance: people use them, but each one gives it a different meaning. This means that these concepts are still outside of the common sense and remain confined to the narrow range of specialists.

#### 4 The Conditions for a Public Speech

The right to public speech of the HCs is fully implemented only when some essential conditions are given. Adequate resources are needed. The communication takes time to be processed, it requires appropriate technical skills such as: the management of informatics tools, the production of printed texts and video-making. Social media are easily usable by everyone, but their use often takes the form of an 'internal' communication channel for the community itself, and not appropriate for articulated, open reflections. In some cases, you need permission to communicate, especially in institutional settings, in conferences, in the sessions of municipal councils. All these conditions are weak and unstable for HCs, which therefore have a substantially reduced right to public speak. There are growing opportunities of communication but there is no right in its fullest sense. It is much more an apparent freedom regulated by a *concession* informal scheme, as is for the prince towards his subjects. A substantial evolution for HCs would implicate changing to a regime of *right to existence and public action*.

It is well known to people involved in communication that (Watzlawick, deAvila, Helmich 1967, 72-4) it is not just the 'what' that matters; rather, it is a matter of 'who'. To give an example, if a qualified researcher is inter-

viewed on television about something falling outside his area of expertise, most of the time he can say anything, even nonsense, with the assurance of an attentive audience. On the contrary, a stranger saying intelligent and well documented things will be hardly listened with the same grade of attention, and he probably will not have access to the television media. HCs are in the latter situation.

Slavoj Žižek, in his *Reading Lacan*, presents a further example of how the status of 'who' makes the communication can determine the credibility of the words said. He points out that in the legal field the words of the judge are effective because uttered by a person who occupies a definite place in the symbolic order of the institutions and this is true even if the judge, as a person, was a crook: "I know that things are as I see them, that the person in front of me is a corrupt weakling, but nonetheless I treat him with respect. In fact, he wears the insignia of a judge, so that when he speaks it is the law itself speaking through him". And again: "A corrupt priest who preaches the virtue can be a hypocrite, but if people assign to his words the authority of the Church, may be pushed to do good" (Žižek 2009, 54).

We must pay close attention to these last observations. Formal systems of public recognition of the HCs would open a *symbolic trap* that could prove fatal for them, rather than favour them. There are many and well-known cases of organizations with solidarity purposes that only after having gained this symbolic status can get access to funding and tax breaks that would have been inaccessible if acting as for profit companies. By this I don't suggest that forms of institutionalization of the HCs would be negative in themselves, but that the rules for this formal recognition are absolutely critical and must be built with the highest possible degree of awareness.

An attempt to legitimize the word and the existence of HCs, giving them a proper symbolic status, was done in 2004 with the proposal of the Venice Charter on Value of CH for the Venetian community.<sup>4</sup> Art. 3 reads:

Encourage, following the Marseilles example, the birth of Heritage Commissions as a public space for dialogue and exchange among HCs, citizens' associations, institutions and cultural organizations, in order to generate synergies and participatory processes in the development of local and transnational cultural policies and activities.

The Charter was proposed by a group of institutions and local communities with the support of the CoE, Venice office. But the initiative didn't receive any response from the city administration.

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4 Adopted at Forte Marghera (Venice), on 7 May 2014. Available at <https://farovenetia.org/convenzione-di-faro/carta-di-venezia> (2017-12-15).



The Heritage Commissions could play a very positive role in strengthening 'the right to life and speak' of the community, but to achieve this object an explicit system of accreditation is needed. Also these commissions may have at least one specific operational purpose which, as the Venice Charter specifies, could be the following (art. 5(b)):

it would also like to create an index for the identification and mapping of the elements of hereditary interest from the communities themselves local, as a practical means of 'cultural democracy' is understood to be safeguarded and valued, with attention to social, economic and professional backgrounds, places that have a special value for the local community and whose memory, still alive, must be passed down to the future generations

## 5 Good Practices

HCs evolve in time by developing different organisational models. The scarcity of available resources and the almost complete absence of public legitimacy force them to develop peculiar tools to achieve results. The vast majority of publications related to the issue of participation focuses on the ways public authorities can organize systematic consultation's means. Often one has the impression that authorities want to force the almost passive citizenship to become active.

These consultations are very complex to manage and are suitable to some sort of distortion and manipulative practices. It is a matter of

taking the maximum care of the equity of parts, which requires exact, sudden and complete information, possibly in forms of clear and understandable documents. (Allegretti 2010, 37)

A good overall picture of the experiences in this fields is available in Bobbio (research commissioned by the Trento Province in 2007). One of the most interesting results of this research consists in evidencing that the consultation practices organized by public administrations have a 'assimilatory' nature, because they tends to foster a compromise between different positions, by devaluing the differences and confirming decisions already taken (Bobbio, Pomatto 2007, 6-7) The alternative that emerged from the research promotes the clear explication of the differences and incompatibilities that arise between different groups of citizens. In this way, political choices become clear instead of clouding the vision. The various groups maintain their identity and elected officials are obliged to

declare publicly their choices.<sup>5</sup> The alternative is to pay more attention to participatory practices that are directly promoted ‘from below’ in an autonomous way (Allegretti 2010, 37).

These practices are numerous but little known because of their non-institutional nature and because they have sparse and poor access to public speech contexts. In order to understand how they evolve and how they produce results a researcher should experience their day to day activities for a long period of time. To interview some people or occasionally examine the documents they produce could not be enough. Despite these difficulties, it is not difficult to find interesting practices. In Venice, you can identify some HCs that have developed more than others these practices. Some of these HCs are:

*Poveglia per tutti*:<sup>6</sup> it aims to manage the deserted island of Poveglia that belongs to the State property. It has garnered widespread affiliation and has many members. He has developed a set of proposals for the management of the island but it has had no response from the public authorities. Its statute is very innovative because it provides for the establishment of organizations and specific practices to guarantee the internal participation in decision-making processes.

*Forum Futuro Arsenal*:<sup>7</sup> it aims to foster management of the entire complex, respecting its historical significance and its productive vocation connected to the sea. The Forum has developed a number of proposals to achieve this goal but did not get any attention or cooperation from the mayor and city council. The organisational structure of the Forum is interesting because it is built as a network of all HCs (more than thirty) engaged in the Arsenal.

*Gruppo 25 aprile*:<sup>8</sup> it is a very large group whose success depends on a strong and well-managed network of communications’ activity (it is very active on Facebook, but as a closed group) that organizes spectacular public events to attract the attention also of the international press. It is a political group in the ground but it concretely operates as a community asset to reach specific objectives. The group works through smaller working groups acting as a HC. One of these, for

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5 The social movements that are fighting for participation are often reluctant to an open confrontation or discussion in relation to positions they consider antithetical to their own, not without good reason, because they are afraid of being forced to soften their antagonist charge. As one activist stated: “we do not want to reach a common thread [with our opponents]. We want the talks to remain divided [...] So we prefer to speak of participation [rather than] resolution and we want that there are winners and losers. Yes we want just that” (Bobbio, Pomatto 2007, 31).

6 <http://www.povegliapertutti.org/> (2017-12-15).

7 <https://farovenetia.org/progetto-arsenale/> (2017-12-15).

8 <https://gruppo25aprile.org/> (2017-12-15).

example, is trying to ‘take over’ an old abandoned lighthouse in the lagoon to run it independently.

*Fortificazioni Veneziane*:<sup>9</sup> the community deals with the re-use, restoration and enhancement of the ancient Venetian defence system (fortresses, barracks, powder magazines, islands) with subsidiary management of local HCs. It acts as ‘focal point’ for the co-ordination of various local activities that could improve the network of services to citizens. Recently it has engaged active independent groups of young people interested in this specific type of building. The young people are bringing new energy and ideas to the group’s work. The relationship between new HCs and historical organizations for the protection of tangible CH of the *Fortificazioni Veneziane* is an interesting example of cooperation, whose development deserves to be analysed deeply.

These very different experiences lead to the idea that HCs are not all the same. This impression of homogeneity, often described in the literature, simply shows the lack of real knowledge by the authors of those texts of how these communities act. A good practice should indeed be reproducible by others and serve as a basis for a legislative intervention. This is the way to activate an *institutional learning circuit* capable of running on systemic and ongoing basis. Note also that a good practice is not necessarily a successful practice. Even the failed experiences can be important sources of learning.

## 6 Conditions for the Civic Participation

Since long time, sociologists have been working to understand the dynamics and processes of civic participation, and it is not easy to summarize the evolution of this investigation. Nevertheless, two fundamental outcomes can be identified. The first refers to a limited participation and focuses on a theme or a specific goal; the second refers to a continuous participation, to the possibility of ‘taking part’ in the activities of a group regardless of the possibility of compromising on decisions by which it is governed (Turra 2005, 10). Other relevant distinctions concern the difference between lobbying and civic participation: the first is designed to promote the interests of a small group, the second aims to promote the wider interests of the community (Mannarini 2009, 5-6). But often, if not always, these studies seem to assume that the participatory activities start or should be guided by ‘from the top’. Yet a summary but very effective analysis of the various possible

9 <https://www.facebook.com/FortificazioniVeneziane/> (2017-12-15).

forms of participation is outlined in the famous ‘ladder’ of the American sociologist Sherry Arnstein published for the first time in 1969 (216-124).

Table 2. Arnstein’s ladder on civic participation (modified)

Control	Real participation
Delegated power	
Partnership	
Pacification	Apparent participation( <i>tokenism</i> )
Consultation	
Information	
Therapy	Denied Participation
Manipulation	
Repression	

Arnstein accurately describes the concrete cases that exemplify the steps of the scale, which makes it very easy to compare current experiences with those of community groups she studied more than forty years ago. The latter comparison underlines that there are no big differences. If the demand for more civic participation seems always present in the body of Western societies and even has been growing, the real participation or participatory modes have not spread and implemented much. Also, the original scale lacks the step ‘repression’ (in Tab. 2 the step has been added: this is the only difference). This lack is quite strange because repressive activities are increasingly frequent and sometimes violent. Just focus on the No-TAV’s affair in Piedmont or the continuous complaints of the Venetian Port Authority against the No-Big-Ships group. But of relevance is also the story of Roberta Chirolì, graduated in cultural anthropology at the University Ca’ Foscari who was condemned before a court and sentenced to two months in jail - sentence then suspended - because of her final dissertation on the No-TAV movement (Rossi 2016). Despite having committed no violence or damage to property or people, the conviction was based on the idea of ‘moral participation’ in the No-TAV movement activities. The proof was the repeated use of the pronoun ‘we’ in her thesis. Another student, under investigation for the same reason, was however acquitted because in her dissertation she used the pronoun ‘they/them’, with no moral participation.

If this judicial approach would be followed by other judges, any anthropological (a sociological) good research on issues of ‘hot’ political relevance would become *per se* illicit.

A useful contribution to the development of our investigation is emerging from the program *Participatory governance of CH*, which has been running as a sub-sector (one of five) of the ambitious project, *Voices of Europe*, funded by the EU in 2015, and still ongoing. The program aims to guarantee

a fruitful dialogue between civil society and the European Commission (European Commission 2015). The programs' points out again that not any kind of public participation in the field of CH can be considered as *participative governance*. Citizens can participate in educational projects, entertainment activities, also in consultation processes, but so far they are not involved in a participative governance. Only shared governance and shared decision-making practices can be considered 'participative' in a proper sense.

In other words, only the last points in the Arnstein's ladder on civic participation (control exercised by the citizens, delegated power and partnership) can be considered as an expression of participative governance.

Of relevance are the results of a brainstorming session on the "participative governance of CH" program, held in Florence in July of 2015. The participants emphasized that *real participation* (the first three steps of the Arnstein's ladder) implies a real transfer of power by the public authorities to active citizenship organizations. Without these real power-sharing activities, the management and safeguarding of community's assets/goods are interesting and even useful, but remain essentially marginal and modest, too. In the course of the brainstorming session, a number of useful criteria defining the conditions that allow a true shared responsibility has also emerged. Here is a briefly account:

- Confidence;
- Ethic and respect;
- Political willing (no tokenism);
- Professional and social willing;
- An appropriate legislative framework;
- Transparency and access to information;
- Education/Formation for every person involved;
- Funds to promote real participation.

## 7 Conclusions

The world of HCs is in fast and continuous evolution. The original idea that seemed to relegate them to structures with a scope limited to the conservation and enhancement of cultural and traditional practices, largely associated with folklore, does not work anymore. These are organized groups of citizens who want to be relevant in the active management of CH, both tangible and intangible, working directly with the public institutions. This collaboration, however, is not always possible. Since HCs are increasingly able to process articulated ideas and proposals, their claim to have a right to speech in the public debate has increased. This right is an integral part of the growing demand to have a consultative role recognized by the institutions in the context of participatory democracy practices. The evolution of ideas and innovative practices tried out by the various HCs

are still poorly understood. This lack of understanding should be filled because these practices are bearers of profound instances of renewal in the management of the CH, in the forms of civic participation and in the organisational forms of active citizenship groups.

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## **II.2**

### Cultures, Rights, Identities





# **Industrial Heritage in Action**

## **Beyond Museification and Regeneration**

Maria Lusiani, Fabrizio Panozzo  
(Università Ca' Foscari Venezia, Italia)

**Abstract** This paper proposes a reflection on the contemporary phenomenon of industrial heritage re-uses. It will do so by coupling a review of the extant debate on industrial heritage with a comparative appreciation of several micro-cases of industrial heritage re-use located in Italy. This will allow for a reconstruction of the main discourses and practices in and around industrial heritage sites, and it will be conducive to a reflection on which specific notions of 'culture' are mobilized in these discourses and concrete experiences. In particular, the paper will show the link between industrial heritage preservation discourses and museification practices and between strategic discourses and regeneration practices. On top of this, it will illustrate a case of site-specific artistic practice that activates a dialogue with industrial heritage, beyond museification or local regeneration intents. The paper will then discuss the meaning of culture in these discourses and practices, the implications of the dominant discourses and practices, together with the need to consider the manifold ways in which culture can relate to industrial heritage.

**Summary** 1 Introduction. – 2 The Rise of Industrial Heritage. – 3 Industrial Sites as Heritage: Preservation Discourses and Museification Practices. – 4 Industrial Heritage as Resources: Strategic Discourses and Regeneration Practices. – 5 An Alternative Approach: Cultural Intervention in Industrial Heritage. – 6 Conclusion.

**Keywords** Industrial Heritage. Cultural Re-uses. Preservation. Regeneration. Discourse. Practices.

### **1 Introduction**

Starting from an acknowledgement of the growing and tighter relationship between 'industrial heritage' and 'culture' in our contemporary society, in this paper we intend to conduct a critical reflection on the nature of this claimed relationship. We will do so by unpacking the discourses of industrial heritage re-uses and reconstructing the main extant practices beneath

The chapter is the outcome of a joined work of the authors. However, some sections can be attributed to one of the authors for their main contribution - as follows: section 1 can be equally attributed to Maria Lusiani and Fabrizio Panozzo; sections 2, 3, and 4 can be attributed to Maria Lusiani; section 5 can be equally attributed to Maria Lusiani and Fabrizio Panozzo; section 6 can be attributed to Fabrizio Panozzo.

them, while inductively investigating which specific notions of ‘culture’ are mobilized in the different discourses and concrete experiences in and around industrial heritage sites.

In other words, the paper revolves around the relation between industrial heritage and culture, without embracing any pre-established definition of these constructs. Rather, it is their meaning that is object of research and discussion, as it emerges from a review of extant discourses and practices of industrial heritage re-uses.

In the last decades, there has been a surge of attention for industrial heritage, among policy makers, urban planners and researchers. In fact, we are witnessing, on the one hand, a growing availability of built spaces, mainly generated by de-industrialization processes, outsourcing of production in developing economies and obsolescence of some public infrastructures (e.g. old factories, old railways, old ports, military buildings, etc.). On the other hand, a growing demand for spaces of aggregation for new forms of co-working, production, distribution, innovation and cultural consumption by associations, entrepreneurs, and civil society at large (Bacchella et al. 2015). Taken together, these two phenomena explain policy makers’ and urban planners’ turn of attention for the re-use of former industrial sites for new social and cultural purposes. Indeed, the matter of industrial heritage and its destination has become prominent in the public debate: for example, 2015 has been declared the “European year of industrial and technical heritage” – an E-FAITH<sup>1</sup> initiative, upon a Council of Europe endorsement), as a way to address attention and resources towards the study and enhancement of the industrial heritage in Europe.

This industrial heritage discourse has been producing concrete consequences, such as the massive public spending by European institutions and local governments for the restoration and re-destination of former industrial sites. Yet, these regenerated sites are then often left unused, or filled with cultural activities with dubious effects in terms of regenerated local economy (Edwards, Llurdés 1996), or even of sustainability of those activities themselves in the long run (Bacchella et al. 2015).

Overall, a lot of debate has now accrued and many experiences have accumulated too in and around industrial heritage sites. It is probably time to understand what is going on. In particular, beyond simply reconstructing the state of the art, in this paper we will critically explore the extant discourses around industrial heritage and the related practices of re-use, particularly questioning the role and meaning of culture in these experiences.

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<sup>1</sup> European Federation of Associations of Industrial and Technical Heritage is a platform promoting contacts and co-operation between volunteers and non-profit volunteer associations in Europe. It is the place where these can meet, exchange experiences, learn from each other and support each other’s activities and campaigns (<http://www.e-faith.org/home/?q=content/what-e-faith>).

From a methodological point of view, we adopt a qualitative, inductive research design, generally considered the most suitable approach for exploring novel phenomena and building knowledge from rich and complex data (Langley 1999; Gioia et al. 2013). More precisely, we combine a review of secondary sources and extant debate, with a comparative appreciation of multiple ‘micro-cases’, and a more traditional in-depth case study approach (Yin 2013).

First, we reconstructed the debate around the notion of industrial heritage and explored who started talking about industrial heritage and when. We thus identified two intertwining discourses: a) a *preservation discourse*, which aimed at establishing and legitimizing former industrial sites as part of our cultural heritage deserving preservation and care; b) a *strategic discourse*, which shifted the focus on the potential value derived from the re-use of former industrial sites for cultural destinations.

Second, we accessed an archive of micro-cases collected and filed by an independent Italian cultural association devoted to fostering knowledge about industrial heritage in Italy and beyond.<sup>2</sup> The archive consists of about 40 files on industrial heritage sites in Italy and 20 files on industrial heritage sites in Europe. Each file briefly narrates the case by presenting basic technical information about the building, a data sheet about its former use and history, a description of its current state and destination, and information about the ownership and the management of the site. Although certainly not exhaustive, this case archive provides an illustrative mapping of the main practices of industrial heritage re-use. We coded each case by noting:

- the location;
- the type of former industrial use (e.g. factory, energetic central, storage, etc.) and the period in which it was active;
- the present use (e.g. museum, library, archive, park, multifunction cultural centre, etc.) and since when it was re-opened for the new destination;
- the actors involved (e.g. family owners, foundations, public agencies, policy-makers, entrepreneurs, universities, urban planners, etc.) and their roles (e.g. owners, managers, occupants, sponsors, etc.);
- the type of cultural content (e.g. the building itself, machineries, production traditions, archival material, cultural events, museum collections, etc.).

From this coding, two dominant clusters of practices emerged, reflecting the two abovementioned dominant discourses: a) *museification* - linked to the preservation discourse; b) *culture-led regeneration* - associable to

<sup>2</sup> <http://www.archeologiaindustriale.net>.

the strategic discourse. The first section of the paper will review these two main sets of discourses and practices.

We argue that these clusters of discourses and practices of industrial heritage reuse enact different notions of culture, based on different disciplinary approaches and sociopolitical discourses. First, also chronologically, is the preservation discourse that locates 'culture' in the historical value of the artefact and drives toward its preservation as a monument, often coupled with museum destination. Second comes a more developmental and strategic discourse that imagines 'culture' as the generic driver of regenerations, often linked to urban planning and real estate developments aimed at luring the 'creative class' into industrial heritage. The first section of the paper will therefore review the two main ways of interpreting 'culture' in and around industrial heritage.

The paper then further expands this reflection by addressing and illustrating a third, emergent, notion of culture that moves beyond museification and regeneration. One based on the activation of projects of contemporary art that are designed, curated and exhibited in and around industrial heritage without necessarily conceiving it as a museum or aiming at its regeneration. In this third case the notion of culture corresponds to 'contemporary artistic practice' that is site-specific and activates a kind of dialogue with industrial heritage. This practice will be illustrated through an empirical reconstruction of the birth and the becoming of an experience of 'contemporary artistic practice' in and around industrial heritage sites.

Finally, we will conclude discussing the meaning of culture in these discourses and practices, the implications of the dominant discourses and practices, together with the need to consider the manifold ways in which culture can relate to industrial heritage.

## **2 The Rise of Industrial Heritage**

Until a few decades ago, industrial heritage was a term that did not even exist. Physical spaces of industrial production existed, but no particular attention was devoted to them beside their (present or past) functional dimension as plants or other infrastructure for productive activity. In more recent times - together with the so-called post-modern turn of attention for the symbolic dimension of production and of human activity at large - the concept of industrial heritage started to gain momentum and a whole discourse generated around it, around what it is, around the fact that it is worth being preserved or destined to new culture-related uses.

The general context then is the one of the move from the industrial to the post-industrial society, starting to take place in the '60s in the UK, and in the '80s in Italy. As the functional value of industrial sites started declining with social and technical innovations leading to new produc-

tion processes or a change in demand, the cultural-historic values of these sites, instead, did not suffer the same decline and even increased (Dewulf, Baarveld, Smith 2013). In other words, the growing abandonment of industrial areas due to the outsourcing of production in developing economies, the obsolescence of some public infrastructures and the more general changes of the new economy opened up the issue that these sites are, first, testimony of some material and immaterial culture (e.g. heritage of the industrial revolutions) and, in turn, of what to do with them (Celano, Chirico 2011).

### **3 Industrial Sites as Heritage: *Preservation Discourses and Museification Practices***

At first the emphasis was on raising people's awareness on the value of industrial sites as a form of heritage in itself (Hudson 1963; Alfrey et al. 1992). The first efforts in the debate were about reattributing value to industrial 'voids' as the only alternative to abandonment and oblivion (Celano 2011). In Italy, a formal recognition of industrial heritage as cultural heritage arrived relatively late and by decree (d.lgs. 62/2008), where industrial heritage found a legal definition as "a complex of physical remnants, testimony of the organization of an industry in a territory". What descends from this definition is that industrial heritage should not be read in isolation, yet instead in relation to the modifications of the territory generated by the industrialization. This bears also an interdisciplinary dimension, as far as industrial heritage can be conceived of as a bundle of physical artefacts (e.g. buildings, plants and machineries), but also as their meanings and their historical and social contextualization.

As soon as the concept of industrial heritage - or industrial archaeology - stopped being perceived as an oxymoron, newly established documentation centres or national associations (in Italy the main actor is the AIPAI - Associazione Italiana per il Patrimonio Archeologico Industriale, founded in 1997 and dedicated to research and cataloguing of the Italian industrial heritage) started identifying and cataloguing these sites.

Then the attention shifted to the importance of preservation and interpretation of these sites (Sýkora et al. 2010) and on the technical implications of preservation acts: not only should the material and built heritage be physically recovered ('hardware' part), but also, because of their very nature, reflections on the good as a former working place and as a part of social, cultural or other contextual transformations ('software' part) should be secured (Celano 2011). The underlying idea is that through a sustainable and well-conceived renovation we can rediscover our past within the context of the traditional life style (Celano 2011). This obviously requires interdisciplinary preservation efforts, including architecture restoration

competences, but also historical, urban planning, cultural planning and public policy ones.

The dominant practice emerging from our analysis of the re-uses of industrial heritage is the following: family owned businesses closed down the activity or moved it elsewhere; in the 2000s-2010s many of them restored and re-opened the industrial site as a museum and/or an archive to preserve and exhibit the factory history and production-related traditions embodied in documents, photographs, or machineries to celebrate the glory of the company business or its industry. Within this dominant practice of 'museification of industrial production' two sub-patterns can be found, depending on the main actors involved and on who drove the transformation.

First, 'family-led museification' of the factories that are often still active. In these cases, it is the business owning family (sometimes in the form of a family private Foundation) who decides to transform the site into a museum and who finances restoration works. In these cases, the family or family-related Foundation is the owner and often also the manager of the museum/archive. This is the case for example of Birra Menabrea, a beer factory located in Biella, now in part transformed into a museum and library on the history of beer production with a connected restaurant, all owned and run by the Group Birra Forst; or the case of Fabbrica di Liquirizia Amarelli, a liquorice factory located in Rossano, Calabria, and partly transformed into a museum on the history of the family business itself.

Second, 'publicly-led museification' of formerly private factories or other industrial sites, then acquired by a local government and transformed into museums and archive. This is for example the case of the 'ex stabilimento Florio delle tonnare', a large fish storage site in Favignana, Sicily, owned by the Region of Sicily and managed and restored by the Trapani Superintendence for cultural and environmental heritage upon European Union funds. The site now hosts exhibitions of maritime archaeology, a video-installation of old workers' memories about their past activity and a permanent exhibition of fishing activity-related photographs. Another example is Centrale Montemartini in Rome, a thermoelectric central dismissed in 1963. Owned by the Municipality and run by ACEA, the local public utility company, the site was transformed into a museum of its past activity in 1997 (displaying machineries and documents about thermoelectric activity) and, in a second stage, as a permanent exhibition site hosting a section of the Municipal Museums collections.

Taken together, despite some differences, these cases share the same feature of having an industrial site restored and converted into some kind of exhibition centres, mainly for celebrative purposes, as testimony of the material and immaterial culture related to the history of the site. This is why we labelled this first practice *museification*.

Clearly, the practice of museification of industrial heritage sites well

relates to the discourses of industrial heritage preservation. What is the place for culture in these discourses and practices? Here 'culture' is the cultural heritage in/of the industrial complex that is the material artefacts, documents and photographs or video material, as a repository of a past – and sometimes lost – intangible culture linked to the industrial production techniques and traditions. Consequently, the focus (in the form of flows of resources and attention) tends to be on the preservation of the 'container' (the industrial building itself) and of its related artefacts. Culture can then here be seen as the *object* of an action and as an end in itself.

#### **4 Industrial Heritage as Resources: Strategic Discourses and Regeneration Practices**

Very soon the discourse shifted to claiming the value of industrial heritage as a strategic resource to be restored, modernized and re-used as cultural destinations for some consequent presupposed job creation, territorial competitiveness and local development (Edwards, Llurdés 1996; Hospers 2002; Pawlikowska-Piechotka 2009; Lamparska 2013).

One of the first contributions that set the scene for this view of industrial heritage was Alfrey and colleagues' book (1992), which addressed the issue not only of how industrial heritage resources can be identified, but also about how they can be exploited. Essentially, Alfrey et al. (1992) made an influential argument in favour of planning for new uses in CH sites: this sounded new in itself at that time, as opposed to a rhetoric of mere preservation. Since then the idea that industrial heritage sites constitute a valuable resource started establishing itself in people's minds.

For example, Edwards and Llurdés (1996) proposed a typology of industrial heritage and claimed about their potential as new tourism attractions. Other scholars moved the argument beyond, positing that, through tourism, industrial heritage sites were a potential great resource for local economic development (Xie 2006; Lamparska 2013). Similarly, Hospers (2002) claimed that industrial heritage serves more than just increased tourism flows: it is about potential regional renewal. On the same note, Pawlikowska-Piechotka (2009) and Sýkora et al. (2010) argued for the value of industrial architecture that, once modernized and re-used as museums, galleries, and other tourism and leisure needs, is supposed to generate social, historical, aesthetical and economic enrichment. Connected to this are some functionalist, normative contributions hinting at the best strategies to make industrial cultural heritage fruitful as a resource, as for example McIntosh and Prentice (1999) on the importance of encoding the experience of the industrial heritage site with people's personal meanings, something that would increase the sense of perceived authenticity.

Mapping the repertoire of micro-cases of industrial heritage re-uses, a second practice emerges. This is about public entities financing the recovery and restoration of industrial heritage sites for further entrustment to third parties (cultural associations of any kind) for unspecified future culture-related uses.

A notable example in Italy is Laboratori Urbani ('Urban Labs') initiative of the Puglia Region. The Puglia Region identified 151 dismissed buildings with former public functions, such as abandoned schools, industrial plants, monasteries, market places, military buildings. The Region finances their restoration and re-destination as public spaces for young local people. The design and management of the activities to be installed in these spaces is demanded to private companies or associations through public competitions for every so called Urban Lab. So far the initiative entailed an investment of over €50 million and resulted in the recovery and restoration of about 100,000 square meters, for 151 buildings spread throughout 169 Municipalities. The Urban Labs that started their activity in these spaces range from the establishment of visual or performing arts activities, the use of spaces for social purposes, co-workings, research on new technologies, consulting and training services for young entrepreneurship, exhibition spaces, and so on.

Another example in this sense is the one of the Ex Ansaldo factory in Milan. In this case a massive formerly industrial space of about 6,000 square meters has been recently devolved (upon public competition) by the City of Milan to an association of firms (Esterni, Avanzi, Make a Cube, Arci Milano and H+). The definition of the new functions and of the activities that will take place in this site is in progress, but it rests on a general concept of contemporary cultural production. The project aims at hybridizing training, creativity, events, entrepreneurship, restoration and leisure, as a multi-functional cultural centre.

The pattern shared by these practices is one of massive public financing campaigns for major restoration projects to qualify urban areas and create new spaces for cultural and entrepreneurial activities to be subsequently identified. The emphasis of these interventions is therefore on the creation of spaces for other activity, supposedly triggering local cultural and economic growth. This is why we labelled this practice "culture-led regeneration".

The practice of culture-led regeneration of industrial heritage matches indeed the strategic discourses of industrial heritage re-uses. What is the meaning of culture here? Here 'culture' becomes the new function for the previously industrial site, which in turn works as something instrumental to other ends (tourism attraction, new job creation, regeneration of urban areas, etc.). The focus in terms of flows of resources and attention tends again to be on the container, but rather in the form of restoration and functional requalification of the spaces to host a variety of new pos-



sible businesses or other initiatives (incubators, hubs, offices, co-working spaces, cultural centres, cafés, etc.). In other words, culture is here the *tool*, the means to other ends, or a strategic resource, instrumental for some (supposed) other local development.

## 5 An Alternative Approach: Cultural Intervention in Industrial Heritage

All in all, what emerges in the mainstream discourses and practices in and around industrial heritage is a shared focus on the restoration, preservation or requalification of the container, where culture is either the ‘object’ of these actions, or the ‘tool’ to other ends. But what about culture as the ‘subject’? And what about the contents, beside the containers?

Arguably, an alternative practice can be identified. It is the one about art interventions in industrial heritage sites that are not designed by family business owners for self-celebrating purposes, nor are commissioned by policy-makers in the name of some supposed local regeneration. It is about individuals or collectives of artists who spontaneously take up an industrial site to perform their activity in the name of culture, sometimes just on a temporary base.

An example in this sense is the one of Dolomiti Contemporanee - in-environment visual arts lab, a major curatorial project that was initiated in 2011 by Gianluca D’Inca Levis, a contemporary art curator, with a background in architecture. By the time of the first DC cultural intervention, the Dolomites, a range of the North-Eastern Italian Alps, had just become a UNESCO World Heritage site (2009). These mountains had been hosting hubs where people had lived and worked for centuries, constituting an immense motor of local identity and of social and economic development. Crises of several kinds have turned these motors down in the past decades. The mountains economy has declined and then changed in favour of tourism exploitation - and many of these sites linger abandoned.

The first intervention took place in Sass Muss, a former chemical hub located in Sospirolo (Belluno) beneath the Dolomites. The chemical factory, built in 1924, had flourished in the ‘20-’30s, then, damaged by WWII bombing, started a rapid decline and was completely dismissed in the ‘60s. In the early 2000s a publicly owned agency (Attiva spa, an operating agency mainly participated by local governments of the Veneto region, aimed at developing and commercializing urban and industrial areas) acquired the abandoned site and undertook a major restoration project through European funds, yet left it then empty and unused. In 2011, Gianluca D’Inca Levis decided to occupy and transform the former industrial complex of Sass Muss for three months (August-October) into a contemporary art exhibition centre, creating a sort of “creative citadel”. The citadel included

an international residency for artists; the former warehouses became exhibition rooms; the surrounding mountain environment became the training ground for the artists and the invited curators who worked on the identity of the site and its surroundings, by inhabiting them.

The operating budget was €400,000 and expenditures were covered through public funding (€80,000) and through material support by 100 local partners (providing maintenance services, tools and materials, food, transportation, communication services, etc.), as well as a large base of volunteers, found through a door to door communication campaign by DC staff prior to the launch of the project. In those three months of activity, 70 artists from ten different Countries lived and worked at Sass Muss, over 100,000 visitors came, ten exhibitions and ten public events of other kind were held, and over 200 articles on the initiative appeared in the press and online. The local community came back to the factory, finally re-opened, to visit it. Following the three months event, many of the partners who had contributed to the project decided to transfer their own commercial activities within the site, renting the spaces. The site came back to life and was returned to the local territory, re-activating it. After the initiative, the curator/initiator left, leaving behind a site that was back into the map, even with some commercial activities that had moved there.

This first intervention marked the beginning of DC, a serial curatorial art project through which the curator strives to identify relevant abandoned sites on the Dolomites, such as large factories, other complexes of industrial archaeology, or residential settlements that are no longer active, and to reactivate their potential by rethinking their relationship with the surrounding nature and civilization in a non-trivial and non-stereotyped way, through the curatorship of temporary visual arts events. In fact, in the next few years (2012-2016) similar experiences were replicated by DC in other sites (Blocco di Taibon in 2012, Spazio Casso in the Vajont area in 2013, the Ex Villaggio Eni in Borca di Cadore in 2014) with similar enduring outcomes.

Because of the entrepreneurial impetus of similar approaches moved essentially by the willingness to “make culture”, we labelled this practice *cultural intervention*. What is the place of culture here? The 2011 art intervention was not designed and commissioned by public policies in the name of some supposed local regeneration. It was an entrepreneurial act led by an individual curator who goes, does, leaves, deliberately, to act elsewhere by “cultural blitzes”. The focus was on the content in relation with the container, on the substance within the form, as a whole, and culture was the originating ‘bother’, not a strategic resource to other ends. Rather, we see DC initiative as representative of other similar cases that perform a strong denouncing act of the disjunction between form and substance in the mainstream industrial heritage discourse and in the practice of planning for the containers before (or even without) the cultural content.

## 6 Conclusion

Building on these insights and considerations, two (intertwined) issues can be brought up for discussion: the issue of materiality and the issue of functional determinism.

First, it should not be surprising that most of the strategies in place around industrial sites are about the creation of containers through museification or through functional requalification of the spaces. These interventions require enormous capital for restoration and design, but also, because of their materiality and endurance, tangible visibility for the policy-makers or the private bodies who finance these operations. The largest shares of financial resources allocated to enhancing the 'value' of industrial heritage are indeed spent on restorations and/or architectural regeneration. Such an almost exclusive focus on the materiality of industrial heritage has fundamental consequences on the actual notion of 'culture' that gets activated. More precisely, the allocation of resources traces a rather neat line between an idea of culture as preservation or exploitation of the material or as promotion of the artistic contemporary production. The focus on materiality tends to declare less relevant the cultural or social processes that get (or do not get) activated, the artists themselves or the forms of culture that flow through these spaces. In cultural planning attempts, there seem to be serious problems in terms of resource allocation: most of the limited amount of available resources goes to large investments for restorations or other interventions on the built heritage, and nothing remains for operating costs and for the planning of cultural contents for these sites. In other words, in the industrial heritage landscape all is 'materialized' too much or too fast.

Second, in our view this all is creating many 'containers without a content'; the content comes after - when it does - and instrumentally. We see all this as part of the more general discourse on culture-led regeneration (McCarthy 1998; Bailey, Miles, Startk 2004) that considers the territory as the context where cultural processes can be encouraged and used to transform the economy, and culture as a strategic resource at the service of urban strategies, of the vision that a territory has of itself, and of its vcourse is its inherent functional determinism. Put simply, the assumption is: 'you restore, something will happen' in terms of enrichment, economic development and competitiveness. Moreover, the effects of this supposed functionalism are not determined at all: 'you restore, something will happen, sometimes nothing happens'. How much are those industrial heritage museums actually visited? How much are those archives or libraries actually used? How many cultural associations or other entrepreneurial activities actually operate in those very spaces and manage to survive and grow? The immediate risk is then a passive and uncritical acceptance of the leading paradigm of a culture-driven development in the case of

industrial heritage too, with potentially dreadful consequences in terms of public money waste.

Indeed, both the preservation discourse (and related museification practice) and the strategic discourse (and related regeneration practice) of industrial heritage can be subsumed as cases of 'spaces in search of meaning', albeit in different ways, as opposed to the cases of cultural intervention, which can be considered 'meaning in search of spaces'.

We conclude provocatively, noting that industrial heritage sites are many and pervasive: do they really need all to be restored and reused, if sometimes there is no demand then for whatever is produced in there, or no obvious virtuous economic cycle, as instead claimed? In any case, we should at least stop producing containers before contents. Careful attention should be placed by industrial heritage policies in escaping functional determinism by reversing its inner logic: culture - content - should be on top.

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## Cultural Heritage. Scenarios 2015-2017

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# Towards an Effective Method of Governance of Cultural Heritage Sites

Maria Luisa Tufano, Lea Brizzi, Sara Pugliese, Valentina Spagna  
(Università degli Studi di Napoli "Parthenope", Italia)

**Abstract** 2014 Commission Communication "Towards an integrated approach to cultural heritage for Europe" argues "Cultural heritage is... a common good". The fundamental characteristic of this kind of goods is that both their production and their fruition have a collective feature, since they are expression of a voluntary cooperation among individuals sharing an unifying element (territory, ethnicity, religion, ideology, etc.). The choice of the EU to consider CH as a 'common good' arises the problem about the best form of governance to apply to it, while seeking a fair balance between public action and private initiative able to maximize the benefits generated by CH and at the same time to assure its complete protection. The paper proposes an analytical reconstruction of the progressive affirmation of rights of information and participation within the international agreements and soft law. More specifically, the paper points out that, even if the 2003 and 2005 UNESCO Conventions contained references to stakeholders participation, the attempt of UNESCO organs and bodies to affirm this awareness passed mainly through soft law, in particular through the Operational Guidelines and Directives implementing the UNESCO Conventions. As a consequence, the full acknowledgement of stakeholders' information and participation rights within the cultural sector is far from being considered accomplished. The second part of this study focuses on the models of participative land-use decision making concerning environmental matters established by the EU regulation, with particular attention to the Directives concerning European Impact Assessment and Strategic European Assessment. Then, the paper analyses some Italian experiences of participatory land-use decision making, mainly those concerning the infrastructure building. Considering the issues arisen from this analysis attached Annex proposes a model aimed at strengthening the awareness of CH dynamic value as an 'identity symbol' and the democratization of the land-use decision making for cultural purposes.

**Summary** 1 Introduction. CH as a 'Common Good': What the Most Suitable Form of Governance Might Be. – 2 International Law Concerning the Right to Information and Participation in the Cultural Sector. – 3 Models of Participatory Decision Making in EU Law: Environmental Impact Assessment and Strategic Environmental Assessment. – 4 Models of Participatory Decision Making in Italy. – 5 Conclusions. – Annex: I Phase: Stakeholders' Selection and Weighting. II Phase: Participation.

**Keywords** Common good. Governance. Stakeholders. Participation.

## **1 Introduction. CH as a ‘common Good’: What the Most Suitable Form of Governance Might be**

Since 2005, in the wake of the Faro Convention promoting CH governance founded on participation and valorization to the benefit of the whole community, the debate on the need to give greater weight to cultural policies and the search for innovative methods of CH governance has increased.<sup>1</sup> At the same time, the EU began to reflect on the value of CH within European society and how to manage it in such a way as to maximize its contribution to the growth of the EU’s GDP, as well as fostering innovation, competitiveness and economic wellbeing.

Commission COM (2014) 477 *Towards an Integrated Approach to Cultural Heritage for Europe* states that “Cultural heritage is a shared resource, and a common good”. From this perspective, the Commission offers Member States some guidelines concerning CH management, which are fully integrated into the participatory governance model proposed by the Faro Convention. Stakeholder participation is mentioned in several points.<sup>2</sup>

COM (2014) 477 and the *Mapping of Cultural Heritage Actions in European Union Policies, Programmes and Activities* adopted in compliance with it (European Commission 2014) respond to a ‘dynamic’ conception of CH that had gradually developed in Europe in the light of the UNESCO 2003 Convention and the 2005 UNESCO Convention. According to this vision, CH was not only seen as a stock of goods to be preserved, but also as a flow in a process of ‘heritagization’ (European Commission 2015, Annex I, 19), where “heritage affirmed itself as the dominant category, including if not overwhelming cultural life and public policy” (Hartog 2005, 10), which, encompassing tangible and intangible factors as well as natural

Section 1 is the work of Prof. Tufano; section 2 is the work of dr. Brizzi; section 3 is the work of dr. Pugliese; section 4 is the work of dr. Spagna. The Conclusion and Annex I are the result of shared reflection.

**1** See Faro Convention, art. 1(a); art. 4(c); art. 5; arts. 9-12.

**2** Firstly, the Commission declares that its “overall aim is to help Member States and stakeholders make the most of the significant support for heritage available under EU instruments, progress towards a more integrated approach at national and EU level, and ultimately make Europe a laboratory for heritage-based innovation” (see COM (2014) 477, 3). Secondly, the involvement of stakeholders is envisaged both in order to adopt effective management and business models through public-private partnerships (COM (2014) 477, 5), and in order to launch the EU Research and Innovation policy framework and agenda for CH based on the contribution of a high-level group of experts looking at innovative and sustainable investment, financing and management of CH (COM (2014) 477, 8). Lastly, the stakeholders are invited to “jointly look into how public policies at all levels, including the EU, could better be marshalled to draw out the long term and sustainability value of Europe’s cultural heritage, and develop a more integrated approach to its preservation and valorization” (COM (2014) 477, 13).



and human elements, can be inserted within the category of 'common goods'. The benefit to the community of CH falling into this category not only derives from its static preservation, but also from its transmission and constant regeneration according to a dynamic logic.

The category of *common goods*, defined in the field of public economics (Kaul, Grunberg, Stern 1999; Anand 2004; Deneulin, Townsend 2007) in the late '90s, responds to a logic of economic wellbeing that does not refer exclusively to single individuals, but to whole communities (Sandler 2001).<sup>3</sup> As a consequence, the fundamental characteristic of common goods is that their fruition and often their production have a collective aspect, as they are the expression of voluntary cooperation among individuals sharing a unifying element (territory, ethnicity, religion, ideology, etc.). It is important to specify that a 'common good' not only consists of the result of cooperation, but also the very process of cooperation and aggregation. They thus become the goods of the whole community, since their aim is to produce durable and shared, but not divisible, economic wellbeing (Deneulin, Townsend 2007, 27).

As a consequence, the choice of the EU to consider CH as a 'common good' poses the problem of the best form of governance to apply, while seeking a fair balance between public and private actions able to maximize the benefits generated by CH and at the same time to assure its complete protection.

In reality, the EU stresses the need for a CH decision-making model based not only on the involvement of all public actors according to a multilevel logic, but also on the participation of private stakeholders in both the definition of strategies<sup>4</sup> and, from a bottom-up perspective, in the implementation and assessment phase.<sup>5</sup>

Nevertheless, defining CH as a 'common good' and involving stakeholders in decision making is not sufficient to ensure that good governance is applied, without arranging for some mechanisms to make responsibilities for protection, sustainable management, funding, and monitoring clear and verifiable. Indeed, like all common goods, CH is exposed to the risk of 'free riding', highlighted by the so-called theory of the 'tragedy of commons', arising from the possibility that some may avoid contributing to the common efforts through their personal sacrifice, not investing their own resources, but nevertheless enjoying the collective results (Harding 1968). In the cultural sector, such free-riding behaviour may be exercised by

<sup>3</sup> In this sense 'common goods' are different from 'public goods' because, even if both classes of goods are non-rival and non-excludable in consumption, the second produce individual rather than collective wellness.

<sup>4</sup> See COM (2014) 477, 8, 14,

<sup>5</sup> See COM (2014) 477, 5.

States, enterprises, or groups of individuals. A classic example concerning States is non-compliance with the measures of protection and conservation established by UNESCO Conventions or recommended by other International Organizations such as the CoE or the EU, as they consider the efforts of other States sufficient to compensate for their lack of contribution. In situations of this kind, triggering mechanisms like ‘naming and shaming’ may well prove useful in inducing States to comply (Vadi 2015, 236 ff.). An example of free riding by enterprises is the acquisition of sites of cultural and naturalistic interest in order to transform them into production sites (the so-called *land grabbing*) (Silvestri 2012). Also the destruction of cultural sites through terrorist attacks could be considered a form of free riding by groups wishing to damage historic, artistic or archaeological sites and goods in order to destroy the culture they represent, generate fear, and disrupt the way of life of a community. Furthermore, the ‘tragedy of commons’ may also be brought about by ‘negligent free riding’ by public and private subjects in tandem, as in the case of inadequate prevention, thus exposing CH to destruction due to natural disaster.

Considering the exposure of CH to these risks, it is particularly difficult to find a way to manage it as a ‘common good’, as required by the Commission COM (2014) 477.

Legal studies have so far focused more on CH protection than on CH management. Conversely, other disciplines, such as public economics, have tried to develop effective methods of managing CH that can take into account the interests of stakeholders and involve them in decision making. Some scholars underline the need to set up institutions inspired by a logic of ‘self-governance’, where the different interests of stakeholders are mediated not by PAs, but through power-balance mechanisms characterized by voluntary cooperation (Zhang 2012, 168). Yet ‘self-governance’ has several limitations since it protects CH from risks ‘internal’ to the community but not ‘external’ ones (Buzio, Re 2012, 184 ff.).<sup>6</sup>

In order to overcome these limits, other scholars use the ‘cultural districts’ model (Santagata 2002). The expression, clearly inspired by ‘industrial districts’, refers to geographical areas with numerous tangible and intangible resources, including informal knowledge and know-how shared by the whole community.

It may appear easy to organize forms of self-governance into cultural districts, as they ought to represent the formalization of pre-existing relational capital, but the spontaneous and voluntary creation of forms of self-governance certainly cannot be taken for granted, given the scarce awareness of the value of CH in the community and a wealth of possible

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6 Examples of ‘external’ risks might be over-exploitation in tourism, harmful to tangible CH, or the risk of intangible practices (mainly artisanal production techniques) being counterfeited.

administrative, bureaucratic and procedural constraints. In addition, hierarchical and elitist mechanisms could impede the full and effective participation of all those with a stake in decisions relating to the protection, fruition, and valorization of tangible and intangible CH.

From this perspective, the EU needs to encourage the States through binding norms, guidelines, technical assistance and funding, as well as the exchange of best practices, in order to introduce innovative forms of governance inspired by participatory decision making and 'democratize' CH management.

However, participation alone is not sufficient to assure the 'democratization' of CH decision-making practices. If stakeholders are to be truly involved before consultation, they must be offered complete and substantiated information, showing the value of CH and the threats it is exposed to so as to identify the best protection and valorization measures to be implemented. After consulting the stakeholders, it is important to assess the impact that the proposed decisions will have on them in order to mitigate the negative effects and establish the sharing of responsibilities beforehand.

In order to analyse the regulations concerning stakeholder information and participation from a 'multilevel perspective' (international, European and national), this study takes as its starting point a critical reconstruction of the norms and guidelines on participatory governance found in international conventions and soft law. It then focuses on the participatory decision-making methods drawn up by the EU institutions within the land-use framework (EIA, SEA) and on the analysis of some participatory models that have been applied in Italy. The study then proposes an operative method of 'cultural strategic assessment' as a simple example of a decision-making process able to ensure full respect of stakeholders' opinions and to share responsibilities among them clearly.

## **2 International Law Concerning the Right to Information and Participation in the Cultural Sector**

In international law, the issue of information and participation in CH management has gradually come to the fore as the conception of CH has evolved from something material and static to something intangible and dynamic (Ciampi 2014; Scovazzi 2014, 2015; Zagato 2012, 2014; Triggiani 2015).

The UDHR and the 1966 Covenants already contained some provisions on the link between human rights and CH,<sup>7</sup> and these formed the basis for

7 See UDHR, art. 27; ICESCR, art. 15; ICCPR, art. 27.

subsequent CH conventions,<sup>8</sup> but, in spite of its gradual consolidation as a 'general interest', the issue of the participation of stakeholders in decisions concerning CH was largely ignored until the mid '90s.

In 1998, the Aarhus Convention guaranteed the rights to information, participation and access to justice in environmental matters for the so-called 'public concerned', an expression denoting

the public affected or likely to be affected by, or having an interest in, environmental decision making (art. 2(1)(2)).

The Convention includes among those sharing this interest NGOs "promoting environmental protection and meeting any requirements under national law [...] deemed to have an interest".

In reality, the Aarhus Convention does not take cultural sites into account directly. Indeed, within the definition of 'environmental information', the reference to 'cultural sites and built structures' is limited to cases where "they are or may be affected by the state of the elements of the environment" (art. 4). Nevertheless, the Convention has triggered a heated debate on the necessity to ensure stakeholder participation in decisions concerning the whole territory, including cultural sites.

This problem became a central issue in the 2003 UNESCO Convention.<sup>9</sup> Indeed, the Convention promotes a dynamic concept of 'safeguarding', conceived as

measures aimed at ensuring the viability of the intangible cultural heritage, including [...] the revitalization of the various aspects of such heritage.

From this perspective, it contains specific provisions concerning policies aiming to promote the role of ICH in society, ensuring the broadest possible participation of communities, groups and individuals that can create, maintain and transmit this heritage, involving them actively in its management. (arts. 11-15. Urbinati 2012, 207 ff.).

The question of participation is examined in depth by the 2005 UNESCO

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<sup>8</sup> In addition to the 1954 Hague Convention, which cited "the CH of all mankind", the point of reference is the 1972 UNESCO Convention, which proposes a new perspective of CH as a *world heritage* and establishes that "parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole" (Leanza 2011, Francioni 2012, Magrone 2014).

<sup>9</sup> In compliance with art. 1, the purposes of the Convention are "to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned; to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof".

Convention, establishing that

Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention (art. 11).

The issue of participation is addressed more specifically in the implementation of the UNESCO Conventions. Indeed, the OG of the WHC adopted by the ICPWCNH (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage) in 1977, and last emended in 2016, establish that

common elements of an effective management system could include: a) a thorough shared understanding of the property by all stakeholders, including the use of participatory planning and stakeholder consultation process

and that

legislations, policies and strategies affecting World Heritage properties should [...] promote and encourage the active participation of the communities and stakeholders concerned with the property as necessary conditions to its sustainable protection, conservation, management and presentation.

Furthermore, participation is also required in the preparatory phase of a nomination for inscription on the WHL (para. 123) and it is increasingly becoming an essential requirement. Thus, it is possible to affirm that participation is an integral part of the governance model of UNESCO CH sites.

As for the 2003 UNESCO Convention, the Operational Directives, adopted by the General Assembly of the States Parties in 2008, last amended in 2016, contain several references to the participation of individuals, communities and groups, also establishing criteria for the accreditation of non-governmental organizations by the ICSICH (Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage)<sup>10</sup> (paras. 79-91).

Finally, the Operational Guidelines to the 2005 UNESCO Convention adopted by the Conference of Parties in 2009, encourage the Parties to develop and implement policy instruments that

aim at supporting the creation, production, distribution, dissemination

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<sup>10</sup> See art. 5 of the 2003 UNESCO Convention.

and access to cultural activities, goods and services with the participation of all stakeholders, notably civil society as defined in the Operational Guidelines (art. 7 OG).

Thus, the OG establish a set of criteria for the admission of representatives of civil society to the works of the organs of the Convention (art. 11 OG).

The growing importance attributed by the UNESCO bodies to information and participation have led to a new focus on cultural rights, so much so that in the 2009 CESCRC specified the extension of the right to take part in cultural life<sup>11</sup> (Zagato 2012; Ferri 2014).

Nevertheless, the solely programmatic nature of the 1966 Covenant definitions of rights, and the lack of effective instruments of enforcement by the Committee meant that the application of cultural rights was only partial and late in coming (Millar 2006).

In conclusion, even if the rights to information and participation attained a higher profile in international law, even becoming a crucial element in the governance model of UNESCO CH sites, attempts by the UNESCO bodies to affirm this model were carried out mainly through soft law (Montella 2015; Barile 2015; Barile, Saviano 2015, Urbinati 2012, 208).

Consequently, full acknowledgement of the right of stakeholders to be informed and to participate in decision making in the cultural sector is still far from being accomplished.

### **3 Models of Participatory Decision Making in EU Law: Environmental Impact Assessment and Strategic Environmental Assessment**

If the need for a participatory method of CH governance has only recently emerged in international law, EU law, on the other hand, has been addressing the issue since the '80s in the area of regulating land-use decision making in environmental assessment processes.

The first directive to deal with the issue of stakeholder consultation was Directive 85/337 on EIA,<sup>12</sup> where CH was considered something static: just one of the important territorial elements in project assessment.

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<sup>11</sup> CESCRC, General Comment no. 21, "Right of everyone to take part in cultural life", art. 15(1)(a) of the ICESCRC.

<sup>12</sup> Member States should ensure that authorities with specific environmental responsibilities are consulted, guaranteeing that any request for development permission and any information concerning the project and its effects are made available to the public and that "the public concerned is given the opportunity to express an opinion before the project is initiated". However, no reference is made to the need to explain to the 'public' how their opinion was taken into consideration in the previous decision.

A more holistic approach was asserted by Directive 97/11, looking at territorial elements in a more integrated way (art. 3) and reinforcing the weight of the opinions of authorities with environmental responsibilities and citizens' right to information.

However, the EIA procedure gave States great discretionary power regarding the subjects to be consulted.

Moreover, after several European States signed the Aarhus Convention (*supra*, para 2), the EU considered it necessary to harmonize the procedures adopted by the States to assure stakeholder information and participation.

The first step towards the gradual coordination of procedures is Directive 2001/42 on SEA. SEA appears to be broader in scope than EIA, since it is to be applied to all public decisions (from land-use planning to infrastructure planning and financial programs, including cultural and touristic programs and programs co-financed by the EC).

SEA consists of several phases, including

the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision.

Consequently, unlike EIA, which can be considered a binding phase of a PAs' consent procedure, SEA does not merely constitute a procedural constraint, but a real decision-making method based on consulting the public concerned and the prior analysis of the impact of any decision on the stakeholders' environmental interests (Rega, Baldizzone 2015).

In line with the Aarhus Convention, the *public* is considered mainly in an organized form, constituted by NGOs and associations representing diverse interests (art. 2).

SEA aims to balance the positions of experts, institutional stakeholders and the public (arts. 5-6; Illsley, Jackson, Deasley 2014). In both EIA and SEA, Member States maintain their discretionary power not only in the selection of the subjects to draw into the assessment procedure, but also in definition of the specific methods of informing and consulting with the authorities and the public (arts. 5-6). Opinions expressed during consultations have to be taken into account in the planning/programming/drafting phase and, when a plan or program is adopted, the authorities and the public are informed about how environmental considerations were integrated into it and how the opinions expressed during the consultation were taken into consideration (arts. 8-9).

Even if SEA is evidently broader in scope than EIA, CH is still considered just one of the elements to be taken into account in the environmental report and impact assessment. Thus, CH is still perceived as something

static, a territorial element to be preserved rather than a resource able to contribute to a successful plan/program, deserving specific measures to make management sustainable, unlike the measures concerning natural elements. This static approach is also confirmed by a greater focus on the potential 'negative' effects of the plan/program rather than on an overall assessment of its impact.<sup>13</sup>

Further, and on the one hand, the expression 'strategic environmental assessment' alludes to a process moving away from the merely evaluative, towards decision making, where considerations concerning the environment and CH become primary, orienting all the choices concerning the territory. On the other hand, excessive focus on only the potentially negative effects of the plan/program restricts the assessment spectrum, limiting the strategic function of the orientation of public choices and favouring a logic of risk, disaster and emergency assessment, prevention and management.

As a result, the national and local authorities responsible for land-use planning do not consider SEA to be a decision-making method capable of fostering the adoption of effective and organic choices for the territory, but as yet another procedural constraint to be eluded, if possible, or simply to be fulfilled as a matter of bureaucratic compliance. This is also demonstrated by the practice of the Commission<sup>14</sup> and EU case law.<sup>15</sup> The stakeholders, on their own, ignore the importance of being informed and participating in the consultation (Rega, Baldizzone 2015, 114).

The second step in affirming the rights acknowledged by the Aarhus Convention in EU States consists in the adoption of Directive 2003/4, establishing procedures to ensure the right of access to environmental information, together with Directive 2003/35 concerning participation in the environmental sphere. Directive 2003/35 amends the EIA Directive introducing the definition of 'public', that, in compliance with the Aarhus Convention, includes "one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups" specifying contents and possible methods of participation to be

**13** Indeed, concerning the 'likely significant effects on the environment of implementing the plan or programme', Annex I, F), footnote 1 specifies that "these effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects". Thus, the environmental report should not only point out the risks, but also the advantages arising from the plan/program. Nevertheless, Annex II concerns the effects to be assessed, referring prevalently to negative ones, such as, for example "the risks to human health or the environment (e.g. due to accidents) [...] the value and vulnerability of the area likely to be affected due to special natural characteristics or cultural heritage" (Lock 2013).

**14** See the European Commission Letter of 20 October 2008 concerning the 'Strategic Environmental Assessment (SEA) of the waste management plan for the Campania region'.

**15** C-295/10; C-41/11; C-177/11; C-473/14; see also the Opinion of Advocate General Kokott joined Cases C-105/09 and C-110/09, 4 March 2010.



offered to the public (art. 3.4), points 1-3; D'Arienzo 2010).

Directives 2003/4 and 2003/35 significantly erode the discretionary power left to the States by the EIA and SEA Directives, leaving them merely operative aspects (art. 3.4, point 5). So, in spite of the reluctance of the States to harmonize their systems, the contribution of these Directives to the strength of public information and participation rights is highly significant. However, the proposal for a Directive on access to justice in environmental matters was not adopted,<sup>16</sup> due to the important differences among Member States concerning the *status* and the role of NGOs.

In view of the difficulties States have in harmonizing their systems, after concluding the Aarhus Convention with Council Decision 2005/370, through Regulation 1367/2006 the EU Institutions proposed a model of NGO involvement in decision making regarding the application of the Aarhus Convention to Community institutions and bodies. In particular, the Regulation defined specific entitlement criteria for NGOs at Community level (art. 11), establishing that any non-governmental organization meeting these criteria must be entitled to institute proceedings before the Court of Justice for any infringement of environmental rights by EU Institutions (art. 12).

This procedure not only made a significant contribution to reinforcing NGO participation in the European environmental decision-making process, but also to allowing European judges to define more clearly the range and terms of NGO rights.<sup>17</sup> However, the definition of 'environmental information' in the Regulation, reproducing the definition found in Directive 2003/4, makes no reference to CH, perhaps due to the jealousy of Member States regarding their sovereignty over the cultural sector.

Furthermore, the Aarhus Convention, highlighting the need to ensure active stakeholder participation in decisions concerning territory - making choices but also sharing responsibilities - led to the reform of the EIA procedure through Directive 2014/52.

This Directive extended the category of environmental objectives to be taken into consideration in EIA, to now include "resource efficiency and sustainability, biodiversity protection, climate change, and risks of accidents and disasters". The connection between these dynamics and CH is evident. Indeed, in compliance with *considerandum* 16, one of the objectives of EIA is

the protection and promotion of cultural heritage comprising urban historical sites and landscapes, which are an integral part of cultural diversity.

16 COM (2003) 624 def., 24 October 2003, withdrawn by the Commission on 21 May 2014.

17 See T-545/11, C-673-13, T-111/11, C-612/13, T-245/11.

However, in spite of the emphasis of *considerandum* 16, all the references to CH in the binding part of the Directive seem to consider it as one of the environmental components (art. 3). Nevertheless, this Directive introduces important amendments concerning the consultation, now considered as a necessary phase of EIA, and the procedural norms related to the public participation, now significantly strengthened (Glucker et al. 2013).

Doubtless, Directive 2014/52 seems oriented to a more dynamic approach to the territory and to CH in particular. Indeed, the extension of the elements to be considered during the assessment process, and continuous references to the prevention and management of risk to CH and the landscape within the Annexes represent a step forward in overcoming a material and static conception of CH, shifting towards a more 'intangible' approach (Toro, Requena 2013). From this perspective, the Directive contributes to a gradual acknowledgement of the 'political' value of EIA, to be understood mainly as a phase in the decision making and not a mere procedural constraint.

However, in spite of this undeniable change in perspective, CH is still considered to be just one of the physical territorial elements in both EIA and SEA. This assumption is confirmed in the second part of *considerandum* 16, where

in order to better preserve historical and CH and the landscape, it is important to address the visual impact of projects, namely the change in the appearance or view of the built or natural landscape and urban areas, in environmental impact assessments.

Once again, the effects associated with the perception of the landscape by the local community, and the sense of belonging, integration and cohesion are completely ignored.

Recently, several events concerning the construction of infrastructures have shown that, when the effects of a plan/program/project on the community's perception of the symbolic value of the territory are not taken into account, confrontation between the Institutions, experts and citizens may become conflictual. It is therefore necessary to develop forms of decision making for land-use management that, taking inspiration from the EIA and SEA models, can renew them in such a way as to mitigate the effects of decision making on the relationship between the territory and the community, and especially the identity value of CH (Tufano, Pugliese 2017).

#### **4 Models of Participatory Decision Making in Italy**

The need to adopt a fair decision-making approach to CH sites is perceived as extremely urgent at national level. In Italy especially, due to

the enormous value, regional diversification, and fragility of its CH, it is necessary to build better bridges between PA's land-use management and the local communities so that these can become protagonists in their own development.

Because of its impact on local identity and the sense of belonging, CH management is a crucial vehicle in building up a network of shared interests and a system of relationships among territorial actors that can contribute to effective local development (Gelosi 2013, 7 ff.). Furthermore, in order to form a network of relationships able to foster new participatory governance, ensuring virtuous management of CH and thus the whole territory, an effective system for disseminating full and substantiated information is required. Such a system must be able to spread awareness of the intrinsic value of the heritage itself, also promoting a process of shared decision making in a solid and constant relationship involving the institutions, the social and economic actors, and all citizens (Gelosi 2013, 17).

To achieve this goal, an instrument needs to be set up to collect and catalogue data on the local CH from which to create a widely accessible and easy-to-use digital information system. In this regard, it is essential to identify typologies of data useful to detect the specific characteristics of the cultural sites, indispensable to provide full and relevant information both for the competent authorities and all the other stakeholders. Appropriate data cataloguing must be able to intuitively highlight the strengths and weaknesses of the cultural sites, stimulating and directing the interests of stakeholders.

Once the widespread usability of an adequate information system has been guaranteed, it is necessary to identify efficient and effective models of participatory governance viable in the cultural field.

For this purpose, it may be of interest to examine some decision-making models that have already been implemented in Italy. Starting from the '90s, the Italian legislator has tried to overcome the rigid formalism of the traditional authoritarian system in place, introducing more flexible decision-making instruments for PAs in order to valorize the interests of the citizens and attract private investments for local development.<sup>18</sup>

Undoubtedly, the most emblematic experience of joint decision making in land-use management is represented by so-called 'Negotiated Planning',<sup>19</sup>

18 The reference is above all to L. no. 142/1990, reforming the local authorities' orders, and to L. no. 241/1990, about fair administrative procedures.

19 '*Programmazione negoziata*' in Italian. This expression refers to a set of administrative instruments introduced by the Italian legislator to promote inter-institutional cooperation in order to implement and accelerate regional development. The first 'negotiated planning instruments' were meant to be extraordinary instruments for the development of Southern Italy, L. no. 186/1964. These instruments gradually became standard, operating nationwide

and especially the ‘Territorial Pacts’,<sup>20</sup> consisting of agreements proposed by local authorities, social partners or other public or private stakeholders, aiming to draw up a programme of shared actions for local development. The decision-making process within these instruments is characterized by a negotiated procedure where public and private stakeholders make mutual commitments formalized in a binding Protocol and approved by a central administration after assessment of its consistency with the local development goals, after which a public body is made responsible for implementing and monitoring the Protocol.

Even if this system has indubitably marked a significant change in the traditional relationship between PAs and citizens, moving toward a more democratic model of land-use governance, results show that they have only rarely fulfilled their objectives. As a consequence, they have been replaced by other systems, such as PIT, less participatory than previous ones as they only afford private partners a consultative role (Bianchi, Casavola 2008). Even if an examination of the structure of ‘Territorial Pacts’ might prove interesting in itself, their inefficient results<sup>21</sup> and, above all, their specific aim of attracting private investments in order to address the challenges of local development, thus selecting only certain kinds of stakeholders (entrepreneurs), make these instruments unsuitable for CH-related purposes.

More recently, the need to involve citizens in the decision-making process has come to the fore in relation to the planning and localization of large infrastructures, actions that could have a significant impact on the identity and sense of belonging of the local communities, as they lead to territorial transformation.

The first significant application of a shared decision-making process in a field of this kind was related to the construction of the High Speed Train Connection between Turin and Lyon. In this case, the protests of the local community induced the institutions to develop a decision-making method involving dialogue and conflict management. The Observatory for the Turin-Lyon railway connection was set up<sup>22</sup> with a round table consisting of representatives of the national and local institutions and, as permanent invitees, ARPA, the Agency for Metropolitan Mobility, specialists from various fields, and technical teams for the preliminary and definitive plans as well as experts and bearers of particularly important interests (business

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(L. no. 142/1990; L. no. 488/1992; L. no. 104/1995; L. no. 662/1996. Contieri 2000; Cuonzo 2007; De Geronimo 2012).

**20** ‘*Patti territoriali*’ in Italian. These instruments, regulated by L. no. 662/1996, represent the most participatory ‘negotiated planning’ tools.

**21** See the 2011 Ministry of Economic Development (Ministero dello Sviluppo Economico 2011) Report on “negotiated planning”.

**22** [www.presidenza.governo.it/osservatorio\\_torino\\_lione/osservatorio.html](http://www.presidenza.governo.it/osservatorio_torino_lione/osservatorio.html).

associations, NGOs., etc.). The introduction of this round table, albeit after the decision to construct the infrastructure and relative localization, and despite criticisms over lack of transparency, undoubtedly constitutes a unique Italian example regarding the implementation of major public works (Averardi 2015).

Another interesting example was the construction of the Genoa motorway upgrading project where, for the first time in Italy on such a large scale, and clearly inspired by the French model of *démocratie de proximité*,<sup>23</sup> the Italian Government opened a public debate with the citizens before starting construction works. This debate, carried out by a Commission composed of independent experts, allowed all the latent conflicts regarding the project to come to the surface, so that the parties affected by the construction work were now informed and able to fully participate, at a time when it was still possible to make significant changes to the plans. In reality, this system was able to reduce the dissent, even if it was unable to overcome the opposition of those who were totally against the construction project (Averardi 2015).

Thus, the inherent limitation in the two consultation examples described above was that public debate had been driven by the need of the Institutions to stem dissent that had arisen from decisions already adopted unilaterally by the PAs, rather than the real desire to open the land-use policies to a new form of shared governance. Indeed, in both cases the public debate focused on 'how' the infrastructure should be realized rather than 'whether' it should go ahead at all.

Even purified of the above-mentioned critical issues, it does not seem an easy matter to apply the models described to the cultural sphere. The selection of the stakeholders in the case of large infrastructures occurs as a natural process, as the population living in the territory affected by the works is sensitive to, and interested in, participation in decision making, due to the preponderance of potentially negative effects that such actions may have on it.

It is certain, in fact, that the negative effects, impacting on tangible individual rights (e.g., health, property), are perceived more easily by the affected population. Conversely, decisions relating to the management and promotion of CH appear to be largely characterized by potentially positive consequences, less easily perceived by the local stakeholders unless they are provided with the necessary information to gain an awareness of the historical and cultural value of the local heritage as well as the possible impact that virtuous valorization would have on the economic and

<sup>23</sup> Over the last two decades, the French legal system has opened up its policies, above all regarding land use, towards a more democratic system to include listening and discussion procedures between citizens and the PAs. These instruments are disciplined by L. no. 276-2002 (Averardi 2015; Poquet 2001; Le Louarn 2002).

social assets of individual citizens and the community as a whole. In this field, therefore, it is much harder to identify the stakeholders to involve in decision-making processes and their interest in participation.

## 5 Conclusions

From the proposed scenario, it emerges that at international, European and national levels, a variety of methods have been employed to involve stakeholders in cultural site-related decision making. Nevertheless, in all these methods, cultural sites appear to be simply considered as an element of the territory, indistinct from other territorial assets (the environment, landscape, urban plans, and architectural features).

Furthermore, none of the methods adequately takes into account the *cultural dimension* of the sites, which would imply the need to move beyond the historic, artistic, archaeological or environmental value of these assets, considering their role as symbols of traditions, customs, and ways of life. Consequently, no method currently applied in land-use management is really able to assure effective cultural governance, or guarantee to all the stakeholders (including independent ones) participation in decisions and a share in the responsibility of implementing them, thus counteracting the opportunistic actions of 'free riders'.

In order to fill this gap, a solution might be to start from EIA and SEA as models, developing methods of consultation and impact assessment able to ascertain communities' true perception of the value of CH. These methods would offer them the chance to make proposals about CH site management, making commitments to bring them about. In this way, it would be possible to think about the CH as something dynamic, valorizing it not only as a memento of the past, but also as something which acquires a new 'life-blood' every time someone visits it, interprets it, feels emotions within it or exploits it for material purposes.

Annex presents a model of Cultural Strategic Assessment based on full and substantiated information, the involvement of the stakeholders and the assessment of the effects of cultural decisions in order to open a debate on the effective and dynamic management of cultural sites to be protected and exploited to the benefit of local, national, European and International communities as a *common good*.

## Annex

### The Cultural Strategic Assessment Model

#### I Phase: Stakeholders' Selection and Weighting

1. *Definition of two stakeholders' groups*: during this phase, the decision maker (DM) (public or private subject charged with management a CH site - CHS) communicates the starting of a consultation aimed to involve the stakeholders in the decision - making process concerning the exploitation, the management, or the transformation of the CHS.

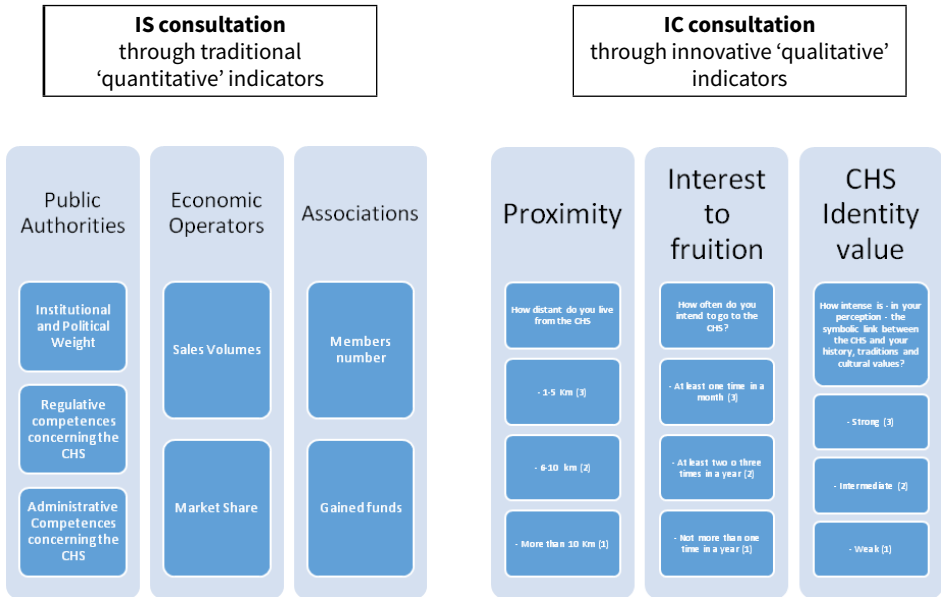
I group *Institutional Stakeholders (IS)*: public authorities, economic operators and associations which consider the CHS as a resource and which can be involved in initiatives, projects, funding of CHS management.

II group *'Identity' Community (IC)*: people which consider the CH as an identity symbol. This group includes: i) *citizens*, which consider the CHS as a resource to reinforce cultural and moral values, a vehicle to affirm rights, an instrument to attract external people and external influences into the community; ii) *marginalized people* (migrants, handicapped people, drop-outs, alcoholics or addicts, young people involved in illegal circuits), which conceive the CHS as a symbol helping them to affirm or restore their belonging to the community, to share values, to be involved in projects devolved to common objectives, to feel themselves as 'co-owners' of common goods.

Documentation is offered both the groups to give them a *full and substantiated information* about the historic, artistic and archaeological value of the site, its state of conservation, the number of visitors, the communication and promotion initiatives, the available funds.

2. *Phase of self – selection and self-weighting:* during this phase, IS and IC submit themselves to a voluntary questionnaire aimed to assume awareness about the value they perceive about the CHS and to assess their real interest to be involved into the CHS decision – making process.

Questionnaire submission trough a cascading menu



While quantitative indicator ranking is a free DM's choice, as it concerns the qualitative indicator ranking, only people which obtain a rank  $\geq 6$  will pass to the participation phase.



## II Phase: Participation

During this phase, the DM verifies the real interest of IS and of IC to be involved in the CHS management

### II.1 Availability to be engaged

Are you interested in an operative engagement within the CHS management (event organization, touristic guide, contributions in kind, technical support, promotion)? YES (1) NOT (0)

- Will be your contribution free or paid? Free (1) Paid (0)
- Could You offer also a financial support to the initiatives organized within the CHS? YES (1) NOT (0)
- Are You available to pay an association fee or a ticket to enter the CHS? YES (1) NOT (0)

### II.2 Impact Analysis of decisions concerning the CHS

(available only to people obtaining at least 2 points to the II.1 question)

Could a better and easier fruition of the CHS offer you an added value from an economic perspective? YES NOT

If YES, what kind of added value?

- a) Profit opportunity;
- b) Work opportunity;
- c) Investment opportunity;
- d) Opportunity to start a touristic, commercial, artisan, gastronomic or promotional activity connected to the CHS

Could a better and easier fruition of the CHS offer you an added value from a social or relational perspective? YES NOT

If YES, what kind of added value?

- a) Inclusion
- b) Cooperation with NGOs operating within the zone;
- c) Opportunity to share objectives and projects with the other members of the community

Could a better and easier fruition of the CHS offer you an added value from a "cultural identity" perspective? YES NOT

If YES, what kind of added value?

- a) Redescovering your traditions;
- b) Strengthening your sense of belonging to the community;
- c) Being involved in the decisions concerning your community.

### II.3 Proposition phase

- Current limits to the fruition of the CHS and the perception of its symbolic value (free answer)
- Proposal to overcome these limits (free answer)
- Syntesis of the proposals by the DM
- Submission of the syntetized proposals to a preference vote by the IC members through an on - line platform
- Establishment of working groups (WG) composed by economic operators, NGOs and IC taking similar engagements (question II.1)
- Election of WG spokespeople

### II.4 Decisional Phase

Institution of a "Stakeholders Table", composed by PAs and WG spokespeople. The Stakeholder Table has the role to traduce the proposal preferred by the IC voters in a binding document aimed to

- distribute the operative and the financial tasks to every involved subject, taking account of the availability expressed during the II.1 question;
- monitor the proposal implementation;
- assess the results;
- releve and correct negative externalities coming from the decisions realization

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# **The Recognition of the Right to Cultural Identity**

## **Some Prospects to Reinforce Migrants' Protection**

Marcella Ferri  
(Università degli Studi di Bergamo, Italia)

**Abstract** This article aims to study the protection assured to cultural identity of migrant people under international human rights law. The analysis stresses the relevant prospects opened in the light of interpretation elaborated by the Committee on Economic, Social and Cultural Rights on the right to take part in cultural life. In the recent years, the Committee has come to conceive the right of cultural identity as a right which, while keeping a collective dimension, must be recognised to every single individual; this interpretation opens the way to overcome the traditional interpretation protecting cultural identity only in favour of persons belonging to national minorities, and indigenous peoples.

**Summary** 1 Introduction. – 2 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: some Important Prospects versus Several Limits. – 3 The Right to Enjoy One's Culture Recognised by the International Covenant on Civil and Political Rights and Its Collective Dimension. – 4 The Right to Take in Part in Cultural Life Recognised by the International Covenant on Economic, Social and Cultural Rights: Its Origins and Recent Evolution. – 5 Conclusions.

**Keywords** Cultural identity. Migrants' rights. Right to take part in cultural life.

### **1 Introduction**

Within our societies, characterised by a growing cultural pluralism, the issue of cultural identity is increasingly discussed. The concept of cultural identity is closely linked with the notion of culture which seems to be greatly complicated.

Since the '80s legal scholars, influenced by anthropological studies, have developed a deep reflexion about the notion of culture, underlining the different meanings it can assume.

In particular - widely summarizing this debate<sup>1</sup> - it is possible to identify two main concepts: on the one hand, a narrow and materialistic definition

1 Several authors elaborated different definitions of culture, see in particular Prott 1988, 94-95; Symonides 1993, 50-51; Eide 1995, 230; Stavenhagen 1995, 65; O'Keefe 1998, 905; Stamatopoulou 2007, 108-109; International Commission of Jurists 2008, para. 6; Psychogiopoulou 2008, 223.

of culture which indicates the most elevated expressions of human creativity and intellectual activities; on the other hand, a broad and anthropological notion according to which culture is:

A coherent self-contained system of values and symbols that a specific cultural group reproduces over time and which provides individuals with the required signposts and meanings for behaviour and social relationship in everyday life. (Stavenhagen 1995, 66)

This latter definition allows us to underline that culture plays a fundamental role allowing everyone to define and express their own identity.<sup>2</sup> In this framework the protection of cultural identity represents a critical condition, an authentic *pierre angulaire* (Borghi, Meyer-Bisch 2001), to assure the human dignity of everyone.

The international human rights law has traditionally been tending to protect the cultural identity only in favour of indigenous people and the so-called national minorities. Surely persons belonging to these groups live the high risk to be discriminated on the ground of cultural origin; however, we have to recognise that nowadays cultural identity has to be protected in favour of everyone.

Knowledge communications and people movements are so simple and swift that cultural identity - while keeping a strong collective dimension - is becoming a good affecting every single individual, who can build their own identity making reference to different cultures and ways of life.

The protection of cultural identity is becoming urgent and overdue, in particular, for migrant workers, refugees and asylum seekers.<sup>3</sup> Indeed their cultures are not, generally, shared with the majority of the society; at the same time, they can have multiple and interlaced identities that makes it difficult to identify them into one single community of belonging (Sen 2006; Métraux 2013, 23<sup>4</sup>). This framework shows the individual and personal nature of cultural identity.

This article aims to analyse whether and to what extent the international

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<sup>2</sup> Wilhelm 1993, 222; Ayton-Shenker 1995; Keller 1998, 36; Donders 2002, 30; Meyer-Bisch, Bidault 2010, 34; Reidel 2010, 68; Pedrazzi 2011, 17.

<sup>3</sup> According to the IOM the term 'migration' means "The movement of a person or a group of persons, either across an international border, or within a State [...]; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification" (cf. <http://www.iom.int/key-migration-terms>). Consequently we will use the expression 'migrant people' or 'migrants' in order to indicate overall, migrant workers (or economic migrants), refugees and asylum seekers.

<sup>4</sup> The Author underlines that migrant must: "tisser appartenance à la culture d'origine et appartenance à la culture d'accueil pour progressivement se construire une identité nourrie d'appartenances plurielles".



human rights law assures protection to the right to cultural identity of migrants. We will examine the most relevant international human rights Treaties dealing with this issue: the ICRMW, the ICCPR and the ICESCR. Our brief analysis is based on the interpretation elaborated by the Committees set out by these Treaties to monitor their implementation by States Parties.<sup>5</sup>

## 2 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: some Important Prospects *versus* Several Limits

We have to immediately recall that the ICRMW, adopted by the UN on 18 December 1990,<sup>6</sup> was not ratified by the majority of migrant-receiving States; consequently it is not binding on the States where the protection of migrants' rights is more relevant.<sup>7</sup>

Another important specification is about the Convention's field of application *ratione personae*: it concerns only migrant workers and members of their families; in the light of this, it cannot guarantee any protection to some migrants, as refugees and asylum seekers, for whom the protection of cultural identity arises in an urgent and, sometimes, dramatic manner.

As underlined by the Preamble, the ICRMW aims to define a framework of 'basic norms' as regards the treatment assured by States to migrant workers and the members of their families.

The Convention is characterised by a complex structure: besides the Preamble, it is composed of 93 Articles divided into 9 Parties. The most significant aspect of the Convention lies in the fact that it establishes a set of rights recognised to all migrant workers regardless of the regular nature of their presence inside the State's territory (Part III); in addition to these rights, the Convention provides some additional rights concerning only migrant workers who are in a regular situation (Part IV).

The Part VII of the Convention set out the CMW. The CMW, composed of independent experts, is tasked with monitoring the implementation of the Convention by the States Parties.

This body exercises its monitoring function by examining the periodic States Reports, the inter-state complaints and the individual complaints. The Committee's competence to receive and consider the complaints re-

5 These Committees are: the HRC, the CESCR and the CMW.

6 For a comment about the ICRMW see *inter alia* Nafziger, Bartel 1991; Lyon 2009; de Guchteneire, Pecoud, Cholewinski 2009.

7 The Convention entered into force on 1 July 2003. To this day the ICRMW was ratified by 51 States, among which there is no European Union Country.

quires that at least 10 States make a specific declaration recognising these competences. To this day only 2 States (El Salvador and Guatemala) have made the declaration concerning the inter-state communications and 4 States (El Salvador, Guatemala, Mexico and Uruguay) have recognised the Committee's competence with regard to the individual communications. Consequently the individual complaint mechanism has not yet entered into force and this circumstance limits in a significant way the functionality of the Committee.

The Committee held its first session in 2004 and since then its work has been quite lacking and it has dealt basically with the examination of States' Reports. The Committee has adopted only few General Comments, and in particular the General Comment 1 (2011) on migrant domestic workers<sup>8</sup> and the General Comment 2 (2013) on the rights of migrant workers in an irregular situation and members of their families.<sup>9</sup>

The lacking work of the Committee makes difficult to analyse the interpretation elaborated about the norms of the ICRMW. However this Convention represents a fundamental reference as regards the protection of cultural identity of migrant people: indeed the analysis of its norms allows us to identify several provisions concerning cultural rights and in particular the right to cultural identity.<sup>10</sup>

We can recall Article 31 providing that States Parties must ensure "respect for the cultural identity of migrant workers and members of their families".

This provision suffers some limits for two reasons. Firstly the provision makes only reference to a State obligation to respect and does not impose an obligation to promote; secondly, the norm leaves States a wide margin of appreciation as, in the second paragraph, provides that they "may take appropriate measures to assist and encourage efforts in this respect".

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8 CMW, General comment 1 (2011) on migrant domestic workers, UN Doc. CMW/C/GC/1 (2011).

9 CMW, General comment 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, UN Doc. CMW/C/GC/2 (2013). In November 2017, the CMW and the Committee on the Rights of the Child adopted the Joint general comment no. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and no. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (UN Doc. CMW/C/GC/3-CRC/C/GC/22), and the Joint general comment no. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and no. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (UN Doc. CMW/C/GC/4-CRC/C/GC/23). The present publication was closed before their adoption.

10 As regards cultural rights of migrant workers see Nafziger, Bartel 1991, 792; Agbetse 2005.

In spite of these formulations, it is meaningful that the General Comment 2 has explicitly referred to “the right to respect for their cultural identity”<sup>11</sup> underlining that the cultural identity is recognised by the Convention as the object of a specific right.

Surely art. 31 is extremely meaningful as cultural identity is recognised to all migrant workers, including those in irregular situations.

For many years the right to cultural identity and, more in general, cultural rights have been qualified as rights of minor importance, a kind of “luxury” (UNDP 2004, 38),<sup>12</sup> which can be postponed after the achievement of some more ‘urgent’ rights as the right to health, food, water and so on. The fundamental relevance of the ICRMW lies in the fact that it overturns this logic: indeed the Convention includes the respect for cultural identity into the core of fundamental rights (right to life, to health, freedom of movement...) to be recognised to all human beings, regardless of their regular presence in the State’s territory.

The importance of cultural identity for migrant workers is also underlined by art. 17 providing some fundamental guarantees for migrant workers and members of their families who are deprived of their liberty. According to this provision they have to be treated “with respect for the inherent dignity of the human person and for their cultural identity”.<sup>13</sup> In the light of this formulation, cultural identity is compared to human dignity and it represents an essential criterion which the treatment of migrant workers deprived of their liberty have to comply with.

The Convention recognises also some other important cultural rights of migrant workers, and in particular the right to employ a language they understand in communications with juridical authority in case of arrest, procedures against them or expulsions (arts. 16(5) and 18(3)(a)).

With specific regard to migrant workers in regular situations, the Convention secures also the right to participate to political life, the access to and the participation in cultural life and the right to education. Concerning education, States must promote the integration of children of migrant workers in the local school system by teaching the local language; at the same time they must promote the teaching of their mother tongue and culture and, to this end, can provide specific “schemes of education” in

11 CMW, General Comment 2 (2013), para. 6. As underlined by the Committee, this right is “Convention-specific”.

12 The Report highlights that the role played by culture and cultural liberties in order to assure human development has been hardly recognised and these difficulties can be linked with some misconceptions and in particular the perception “that ensuring cultural liberty is a luxury: it would be nice, but the costs are just too high”.

13 In the light of this, the General Comment 2 (2013), points out that States parties must provide personnel employed in detention centres with training in, *inter alia*, cultural sensitivity (para. 39).

mother tongue (art. 45).

It is extremely significant to recall also art. 34 making reference to the obligation of migrant workers to respect the cultural identity of the inhabitants of States where they live.

This provision is relevant from a double point of view. Firstly it expresses the attention paid by the Convention to cultural identity: this is indeed recognised as a good to be protected in favour of everyone. The importance of cultural identity emerges in a significant way as art. 34 compares the obligation to respect cultural identity with the obligation to comply with the laws and regulations of the destination State.

Secondly, this provision is symptomatic of the notion of integration to which the Convention refers. The integration is conceived as a complex and bidirectional process involving on equal terms both migrants and people living into States of arrival. The Convention does not aim at realising the assimilation of migrant workers nor their ghettoization by the creation of divided ethnical communities. On the contrary an effective and actual integration requires, on the one hand, the respect of cultural identity of migrant workers and, on the other, their positive participation in the societies of arrival. This participation needs the respect of cultural identity of the inhabitants of destination States - as the compliance with their laws -; this *ratio* emerges also in art. 45 where the Convention underlines the importance to promote the integration of children of migrant workers in the local school system by teaching the local language.

The importance to know the culture and the law of the destination State is underlined also in the General Comment 1 (2011); in the Committee's view the vulnerability of migrant domestic workers originates from several aspects, including the "unfamiliarity with the culture and national labour and migration laws".<sup>14</sup> In the following paragraphs, concerning the pre-departure training and awareness-raising programmes, which States parties must develop, the Committee recalls programmes dealing with the law and the culture of the State of arrival (programmes "know your obligations").<sup>15</sup>

Unfortunately, the attention paid by the Convention to the cultural identity of migrant people is not reflected in the practice of the CMW - even if is still at a very early stage.

As we have already highlighted, the CMW has adopted only two General Comments; the General Comment 2 on the rights of migrant workers in an irregular situation includes some brief - although significant - references to the cultural identity of migrant workers.

Firstly, as regards the right to health and, in particular, the health care

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14 CMW, General Comment 1 (2011), para. 7.

15 CMW, General Comment 1 (2011), para. 30 (b).

for migrant workers, the Committee affirms that States parties must provide the medical personnel “with culturally sensitive training”.<sup>16</sup>

A second, greatly meaningful, reference is about the right to education. Although the States obligation to promote the teaching of the mother tongue and culture is secured by the Convention with regard to the children of migrant workers in a regular situation (art. 45(3)), the Committee recalls art. 31, recognising the right to respect for cultural identity of all migrant workers and art. 29(1)(c), of the Convention on the Rights of the Child, according to which the education must promote the respect of children’s cultural identity. These provisions allow the Committee to affirm that when States parties provide children in regular situations with teaching of their mother tongue, they must ensure the same even to children of migrant workers in an irregular situation having the same mother tongue.<sup>17</sup>

The analysis of Concluding Observations adopted by the CMW as regards the periodic reports submitted by States Parties to the Convention does not allow us to find significant references to cultural identity; the only references concern the cases where the Committee underlines that States must facilitate the cultural reintegration of migrant workers deciding to return to their State of origin.<sup>18</sup>

### **3 The Right to Enjoy One’s Culture Recognised by the International Covenant on Civil and Political Rights and Its Collective Dimension**

As regards the ICCPR, we can recall art. 27 recognising to persons belonging to ethnic, religious or linguistic minorities the right “to enjoy their own culture”.

According to the traditional definition of minority, proposed by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his renowned study about minorities (Capotorti 1977, para. 568),<sup>19</sup> the notion of minor-

16 CMW, General Comment 2 (2013), para. 73.

17 CMW, General Comment 2 (2013), para. 78.

18 See for example CMW Concluding Observations Guinea, CMW/C/GIN/CO/1 (2015), para. 49.

19 See Capotorti 1977, para. 568 where the Special Rapporteur specifies that the term minority indicates: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.

ity is applicable only to minority groups having the nationality of the State where they exist.

Actually, a grammatical and systematic interpretation of art. 27 ICCPR allows us to apply this norm also to minorities composed of non-citizens (Nowak 2005, 645).

This thesis was confirmed by the HRC in the General Comment 23 (1994) on the rights of minorities; in the Committee's view, the formulation of art. 27 and the state obligations deriving from art. 2(1) ICCPR imply that the rights secured to members of minorities by the Covenant must be recognised also to aliens.<sup>20</sup>

Despite this affirmation of the Committee, some scholars question the possibility to apply art. 27 ICCPR to the so called 'new minorities' (Thornberry 1991, 164 ff.).<sup>21</sup>

Indeed, the question is far from being resolved as the practice of the Committee does not allow us to clarify this issue.

The Committee's views applying art. 27, concern communications submitted against States of which the authors of the communications are nationals. Similarly, the analysis of Concluding Observations does not permit to reach a clear solution. Indeed, in some cases the Committee has clearly affirmed the possibility to apply to aliens the rights guaranteed by art. 27;<sup>22</sup> in others it seems to exclude this solution.<sup>23</sup>

Even supposing that the right to enjoy one's culture can be recognised

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20 HRC, General Comment 23 (1994), *The rights of minorities*, UN Doc. CCPR/C/21/Rev.1/Add.5 (1994), para. 5.1.

21 Thornberry states that non-nationals "do not have the 'identity' rights proclaimed by art. 27" (171). In this regard see also Medda-Windischer 2010, 68 ff.; the Author recalls the UN DRPBNERM (1992) and the FCPNM (1995) and underlines that the new minorities are generally excluded from the field of application of international instruments securing minority rights.

22 See for example, HRC, Kuwait, CCPR/C/KWT/CO/2 (2011), para. 31, where the Committee is concerned about "the lack of protection of foreign nationals who belong to ethnic, religious or linguistic minorities living in the State party". See also Republic of San Marino, CCPR/C/SMR/CO/2 (2008), para. 16; Syrian Arab Republic, CCPR/CO/84/SYR (2005), para. 19; Japan, CCPR/C/79/Add.102 (1998), para. 13.

23 In this regard, it is extremely meaningful to recall HRC, Concluding Observations Latvia, CCPR/C/LVA/CO/3 (2014), para. 7; on this occasion, the Committee affirms to be concerned at the effects produced by the State language policy on the effectiveness of some Covenant's norms - including art. 27 - and recommends "to ensure the full enjoyment of the rights in the Covenant by 'non-citizen' residents and members of linguistic minorities". The explicit reference to non-citizen, besides persons belonging to linguistic minorities, allow us to affirm that in the Committee's view the concept of minority includes only nationals. See also HRC, Concluding Observations Hong Kong-China, CCPR/C/CHN-HKG/CO/3 (2013), para. 22 and Check Republic, CCPR/C/CZE/CO/2 (2007), para. 18; in these cases the Committee recognises to aliens some cultural rights, and especially linguistic rights, not making reference to art. 27, but to other provisions and in particular the principle of non-discrimination.

also to migrants, this provision suffers another important restriction.

Although the norm makes reference to single persons belonging to minorities as the subjects of the rights and so it recognises cultural rights in favour of individuals, this provision is characterized by a significant collective dimension. This element emerges firstly from its literal formulation and, in particular, from the specification “in community with the other members of their group”.

This reference, introduced in order to “maintain the idea of group” (Capotorti 1977, para. 171), allows us to identify the main *ratio* of this provision in the protection of the minority as a whole.<sup>24</sup>

This aspect can be supported recalling the General Comment 23 (1994) where the HRC identifies the provision’s objective in ensuring the survival and the development of the “identity of the minorities concerned”.<sup>25</sup> In this perspective the rights secured by art. 27 “must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant”;<sup>26</sup> in other words the rights assured by art. 27 represent extra protection, recognised to persons belonging to minorities in addition to rights guaranteed to them as single individuals.

This framework finds a significant confirmation in the Committee’s practice concerning the limitations applicable to rights secured by this norm.

According to the traditional criteria of limitations clause, the Committee has stated that the rights of persons belonging to minorities can be legitimately limited in the presence of “a reasonable and objective justification”. In particular - and this is the most interesting aspect for our analysis - in the case *Sandra Lovelace v. Canada*, the HRC identified this justification in the necessity to protect and maintain the identity of the minority.<sup>27</sup>

This principle has been further developed in the case *Kitok v. Sweden*.<sup>28</sup> The author of the communication was a Swedish citizen belonging to the Sami minority which claimed a violation of his right to enjoy his culture due to his exclusion from the Sami community and the consequent de-

24 See Nowak 2005, 656-7; recalling the expression “individually or in community”, characterising art. 18 ICCPR, the Author underlines that “Rather, members of minorities are guaranteed the rights listed in art. 27 only “in community with the other members of their group”. This means that individual enjoyment of a minority culture, individual protection to the religion of a minority and the individual use of a minority language are not protected”. See also Wolfrum 1999, 371; Yupsanis 2013, 362, Pentassuglia 2004, 50 and 106 ff.; according to Pentassuglia: “il semble incontestable que l’art. 27 est conçu pour protéger un intérêt collectif” (50).

25 HRC, General Comment 23 (1994), para. 9.

26 HRC, General Comment 23 (1994), para. 1.

27 HRC, *Sandra Lovelace v. Canada*, communication 24/1977, CCPR/C/13/D/24/1977 (1981), paras. 16-17.

28 HRC, *Ivan Kitok v. Sweden*, communication 197/1985, CCPR/C/33/D/197/1985 (1988).

nial of his rights to reindeer breeding. Indeed, according to the Reindeer Husbandry Act, Sami members who had engaged in any other profession for a period of three years, would have lost the Sami membership and the rights connected to this status.

Adhering to the Government's thesis, the Committee underlined that the restriction of reindeer breeding number, pursued by the Reindeer Husbandry Act, has some economic and ecological reasons and, in particular, aims to preserve the existence of the Sami minority.

Taking into account these objectives, the Committee resolved the conflict between the interest of a single person belonging to a minority and the necessity to protect the minority as a whole, giving priority to this latter exigency. Recalling the Lovelace case, the Committee upheld the principle whereby "a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and to be necessary for the continued viability and welfare of the minority as a whole".<sup>29</sup>

The analysis of this quasi-jurisprudence confirms that the *ratio* of art. 27 lies in the protection of minority as a whole: in this framework, this provision cannot be able to promote culture as a good to be ascribed to every single individual.

#### **4 The Right to Take in Part in Cultural Life Recognised by the International Covenant on Economic, Social and Cultural Rights: Its Origins and Recent Evolution**

Being the most important human rights treaty concerning cultural rights, the ICESCR includes some provisions which prove to be really useful for our analysis: in particular we have to focus on the right to take part to cultural life recognised by art. 15(1)(a) of the Covenant.

As the analysis of the *Travaux Préparatoires* shows, this norm was elaborated making reference to a materialistic and narrow notion of culture: it was interpreted as including the most noble manifestations of human creativity and intellectual activities (art, philosophy, music, literature). In the drafters' view, it was urgent to ensure access to culture for all, overcoming the elitist idea that culture would have been only a privilege for the upper classes. This exigency led to conceive culture as a material good which States must guarantee to everyone access; consequently, the right to take part in cultural life had been interpreted as the right to access to

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29 HRC, *Ivan Kitok v. Sweden*, communication 197/1985, CCPR/C/33/D/197/1985 (1988), para. 9.8.



museums, theatres, libraries and so on.<sup>30</sup>

Differently to art. 27 ICCPR, which recalls an identitarian and anthropological notion of culture, the provisions of ICESCR and in particular art. 15(1)(a), were based on a materialistic and narrow sense of culture. The notion of culture adopted by this latter norm proves the tendency of international law to protect the right to cultural identity merely in favour of persons belonging to indigenous people and to the so called “national minorities”.

The materialistic conception of culture is not mistaken in itself but, unlike the anthropological one, is not able to underline the strict relationship existing between culture and personal identity.

As we have underlined in the Introduction, a significant debate has been promoted by legal scholars about the concept of culture. Within this debate they had underlined that culture provides individuals with a “horizon of meanings” where they can find references allowing them to build their identity; according to this conception, culture plays a fundamental role in order to allow everyone to define and to express their identity, regardless of the eventual belonging to a minority or an indigenous group (Ayton-Shenker 1995; Donders 2002; Meyer-Bisch, Bidault 2010; Reidel 2010).

In this framework, some scholars had stressed that besides a ‘narrow’ definition of cultural rights, including only rights with an explicit reference to culture - as rights secured by arts. 27 ICCPR and 15(1)(a) ICESCR - it is possible to identify a ‘broad’ notion of cultural rights which involves all rights having a strict and close link with culture and personal identity (Eide 1995, 232; Symonides 2000, 52; Donders 2007, 235; Meyer-Bisch, Bidault 2010).<sup>31</sup> In this view

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

**30** In this regard it is significant to recall the declaration made by some delegations’ representatives during the Travaux Préparatoires: really meaningful the statement of the Indian representative according to which this provision “referred to culture in its most intellectual and organized aspects” and it would be designed “to recognize the loftiest aspects of culture”; cf. General Assembly, “General Assembly Official Records, 12th session, 3rd Committee, 796th meeting”, paras. 18-19.

**31** Some Authors has proposed a list of cultural rights, conceived in a broad sense; see Prott 1988, 96; Symonides 2000, 189. In this regard it is particularly meaningful the Fribourg Declaration on Cultural Rights proposed by the Fribourg Group; the Declaration makes reference to the rights to cultural identity and cultural heritage, to reference to cultural communities, to access to and participation in cultural life, to education and training, to information and communication and to cultural cooperation; cf. <https://www.unifr.ch/iiedh/assets/files/Declarations/declaration-eng4.pdf> (2017-12-15); Meyer-Bisch, Bidault 2010). As specific regards, the right to cultural identity see also Zagato 2012, 45; Symonides 2000, 189; Reidel 2010, 78.

to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life.<sup>32</sup>

This academic debate is closely connected with the reflexion promoted by the UNESCO about culture and cultural rights.

Since the 50s, the UNESCO has elaborated a concept of culture which refers to traditions, systems of values, meanings and ways of life and underlines the link existing between culture and identity of peoples and individuals. This notion is at the heart of several soft and hard law instruments promoted by the UNESCO in order to increase the protection of CH and cultural diversity.<sup>33</sup> In this respect a significant milestone is represented by the 2001 UNESCO Declaration highlighting that cultural goods are “vectors of identity, values and meaning” (art. 8).

This reflexion has been greatly influencing the interpretation elaborated by the CESCR about the right to take part in cultural life. The interpretation of this right has been undergoing a meaningful evolution allowing the CESCR to overcome the materialistic and narrow notion of culture which, as we have underlined, had characterized the elaboration of this provision during the *Travaux Préparatoires*.

Since the General Discussion Day on the right to take part in cultural life, organised in 1992, the Committee’s members stressed the importance to overcome the “materialist or even mercantilist”<sup>34</sup> definition of culture recognised by the two International Covenants and to elaborate a notion of culture able to encompass all human activities characterising the way of life of a person or a group giving them a “sense of identity”.<sup>35</sup>

The important development in the interpretation of this right emerges from the Concluding Observations. Since the 2000s the Committee has been adopting a broad conception of the right to take part in cultural life recalling the right to use one’s language, the right to CH, the right to worship places, the land rights and the right to cultural identity.<sup>36</sup>

32 Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, UN Doc. A/HRC/14/36 (2010), para. 9; the Special Rapporteur proposed this definition and explicitly recalled the definition of cultural rights elaborated by the Fribourg Group

33 See *inter alia* Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It (1976), Declaration concerning the Intentional Destruction of Cultural Heritage (2003), Convention for the Safeguarding of the Intangible Cultural Heritage (2003).

34 CESCR, “General discussion on the right to take part in cultural life as recognized in art. 15 of the Covenant”, UN Doc. E/C.12/1992/SR.17 (1992), para. 6.

35 UN Doc. E/C.12/1992/SR.17 (1992), para. 17.

36 In this regard see in particular CESCR, Concluding Observations Vietnam, E/C.12/VNM/CO/2-4 (2014), para. 33; on this occasion the Committee, referring to members of

Within this evolution a fundamental milestone is represented by the General Comment 21 on the right to take part in cultural life, adopted by the CESCR in 2009.<sup>37</sup> In particular its relevance lies in two aspects.

Firstly the definition of culture formalized by the Committee: it made reference to a broad and anthropological notion stating that culture includes all manifestations of human activities allowing individuals to express and build their identity.<sup>38</sup> On this occasion the Committee emphasized the individual dimension of culture: while maintaining a strong collective dimension, it is a good that everyone - and not only persons belonging to indigenous groups or national minorities - should be entitled to enjoy.

Secondly, on this occasion, the content of the right to take part in cultural life was interpreted in a real broad manner. The Committee affirmed that the state obligation to respect “includes the adoption of specific measures aimed at achieving respect for the right of everyone” and, following this affirmation, it recalled all rights allowing people to choose, define and express their cultural identity. The Committee referred to all cultural rights falling into the broad notion elaborated by scholars and made a specific reference to the right to cultural identity.<sup>39</sup>

The recognition of the right to cultural identity opens some important prospects to protect migrant people. This emerges also from the General Comment 21 (2009), where the Committee underlined that the protection of migrants’ cultural identity requires a special attention which cannot be assimilated to the protection of minorities and indigenous peoples.

## 5 Conclusions

This brief analysis allows us to show that the protection assured by the international human rights law to cultural identity of migrants is now still lacking but, in the future, it could have some important development

indigenous people, recommended to respect “the right of everyone, alone or in association with others or as a community, to choose his or her identity, including the right to identify as belonging to an indigenous people”. In a similar way, see People’s Republic of China, E/C.12/CHN/CO/2 (2014), para. 36; Denmark E/C.12/DNK/CO/5 (2013), para. 21; Kuwait, E/C.12/KWT/CO/2 (2013), para. 30.

**37** CESCR, General Comment 21 (2009) “Right of everyone to take part in cultural life”, UN Doc. E/C.12/GC/21 (2009).

**38** UN Doc. E/C.12/GC/21 (2009), paras. 11 and 13: culture includes “all manifestations of human existence [...] through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives”.

**39** UN Doc. E/C.12/GC/21 (2009), para. 49: the right to cultural identity is defined as “the right [...] To freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected”.

prospects.

As the ICMWR deals specifically with the migrant workers' rights, at first sight it could appear to be the most important treaty with regard to this issue. Indeed, the Convention devote a great deal of attention to the protection of cultural rights and its provisions confirm the urgent necessity to protect and promote the cultural identity of migrant workers; in particular comparing the cultural identity to human dignity, the Convention recognises its critical nature.

However, the ICMWR suffers several limits concerning its field of applications. On the one hand, it concerns only a specific category of migrants, namely the migrant workers (and the members of their family); on the other hand, it has not been ratified by States of destination, where the protection of cultural identity is becoming more and more essential and urgent.

Similarly, the ICCPR and in particular the right to enjoy one's culture (art. 27), did not turn out to be useful. Even assuming that this norm can be applied to aliens - an issue moreover not undisputed -, its main *ratio* is to promote the survival and the development of the minority as a whole. Consequently, this provision is not adequate to assure an effective protection to cultural identity as we conceive it as a personal good to be recognised in favour of single individuals.

On the contrary the right to take part in cultural life, secured by art. 15(1)(a) ICESCR, offers some relevant prospects as regards the protection of migrants' cultural identity. As we have briefly described, the interpretation elaborated by the CESCR on this right is undergoing a meaningful evolution; within this evolution the Committee has achieved the elaboration of the right to cultural identity as a human right to be recognised in favour of everyone, regardless of his or her belonging to indigenous people or national minority.

The identification of this right opens some fundamental prospects to protect cultural identity of migrant people; for example, this right could assure the presence of intercultural mediators at schools, in hospitals and in some public authorities, the possibility to receive an education on one's language and culture, the use of traditional names and traditional dresses, the celebration of religious and cultural festivities and so on.

It is extremely meaningful to underline that the 'identitarian' notion of culture, formalized by the CESCR in the General Comment 21, was recalled with identical terms by the Committee on the Right of the Child in the General Comment no. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts.<sup>40</sup>

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<sup>40</sup> See in particular Committee on the Right of the Child, General Comment no. 17 (2013) "on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts", UN Doc. CRC/C/GC/17 (2013), para. 14, lett. f).

This circumstance proves that the international human rights law has started to recognise the fundamental role played by culture in relation to the individual identity: indeed it is at the heart of human dignity. As culture provides individuals with values and references allowing them to build and express their identity, not to respect someone's cultural identity means forcing them to be different from who they actually are and how they perceive themselves: in other words, to breach their human dignity.<sup>41</sup>

The implementation of the right to cultural identity can significantly reinforce the protection assured to migrants who, also from this point of view, can experience a condition of high vulnerability.<sup>42</sup>

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41 Taylor 1992, 30: "There is a certain way of being human that is my way. I am called upon to live my life in this way, and not in imitation of anyone else's life. But this notion gives a new importance to being true to myself".

42 After the entry into force of the Optional Protocol to the ICESCR, in 2013, individuals are entitled to submit an application to the CESCR alleging a violation of the rights set forth in the Covenant; this could reinforce the concrete implementation of the right to cultural identity.

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# **Misrecognition and Reinvention of Stigmatised Cultural Heritages**

## **The Case of the ‘Romani People’**

Alessandra Sciorba  
(Università degli Studi di Palermo, Italia)

**Abstract** In contemporary European societies, rhetoric and practices of cultural stigmatization, reductionism and discrimination may, by putting them at risk, deeply affect arts, traditions, customs and competences of several cultural and ethnic groups. From this viewpoint, this paper takes into account the situation of ‘Romani People’ as an emblematic, and maybe the most durable example of cultural construction based on prejudices and marginalisation. This ‘case study’ serves as a particularly good representative in order to question the actuality of the dynamic and inclusive assumptions which the Faro Convention places at the very basis of the processes of patrimonialization of CH.

**Summary** 1 Introduction. – 2 A Theoretical Framework: (Mis)recognition, Power Relations and the Production of Narratives and Subjects. – 3 Mystifying Romani CH: Prevalent Narratives and Related Policies. – 4 Building on Prejudices a Lifestyle. – 5 Conclusions.

**Keywords** CH. Stigmatization. Romani People.

## **1 Introduction**

In the Faro Convention, the concept of CH finds an innovative definition: it is represented as a very broad notion with respect both to content – tangible and intangible cultural resources, without specifying the precise forms – and to the subjects who have to recognize cultural resources as such, i.e. the people who identify and assign a founding and constitutive value to cultural assets through a process of social construction.

Moreover, the Faro Convention strictly links the notion of CH to that of a HC, intended as

an extremely inclusive concept that does not refer to definitively constipated communities, but implies the perpetual opportunity of their creation and evolution, along with the possibility that everyone can belong to different heritage communities at the same time. (Sciorba 2015)

This is a very dynamic view of the relationships between cultures and people, and, on this basis, the “common heritage of Europe” can be identified by the Faro Convention with, for the most part, the roots of the European system of democratic values and human rights, considered as powerful instruments aimed at valorizing, recognizing and protecting the richness of human differences.

This kind of perspective explicitly challenges the risk of self-reference and conflictual dynamics, which could originate from an emphasis on cultural identities,<sup>1</sup> while implicitly dealing with the risks of *cultural reification*<sup>2</sup> which can negatively modify the relationships between cultural assets and citizens (Kirshenblatt-Gimblett 2006, 162).

Yet, this inclusive and flexible approach, in order to be effective, should be assumed by both the heritage community that can identify, maintain and renew CHs, and the rest of the society in which CHs are located. Unfortunately, in contemporary European societies, this kind of attitude seems far from being achieved, while rhetoric and practices of cultural stigmatization, cultural “reductionism” (Sen 2006, 24-37) and discrimination may, by putting them at risk, deeply affect arts, traditions, customs and competences of several cultural and ethnic groups.

In a contemporary European context increasingly marked by identitarian enclosures and the enforcement of imagined communities (Anderson 1991), this paper thus takes into account the situation of “Romani People” - usually called, in a derogatively and collective way, Gypsies - as an emblematic, and maybe the most durable example of cultural construction based on prejudices and marginalisation.

In this paper, the same definition of ‘Romani people’ is assumed from a problematic perspective. As underlined by Leonardo Piasere (2003), while the qualitative and quantitative definition of ‘who Romani people is’ represents a problematic issue in itself,<sup>3</sup> what is certain is that “the history of anti-Gypsyism coincides with the history of Gypsies, namely, with the history of people called Gypsies” (Piasere 2012, 126).<sup>4</sup>

1 To understand how these kinds of processes have developed in Europe, see Sennett 2011.

2 Generally speaking, reification means the process of transformation of human actions and relations, but also thoughts, concepts and knowledge into ‘res’, things, intended as whole and completed objects. This process undermines the understanding of the complexity lying under the production of CH, and can inhibit its implementation and transmission (Scieurba 2015).

3 Nevertheless, as assessed by Piasere (2003, 46), it is possible to identify a European community of some millions of members (from two to six, dependently on different estimates) for the most part composed of non-nomadic individuals speaking romanese dialects and called Roma (or variants of this name) or with a derivative accent, Gypsies. Regarding the presence of Roma people in Europe, see Piasere 2003 and, more recently, Richardson Institute 2014.

4 For a complex definition of antiziganism or anti-Gypsyism, see Kyuchukov 2015.

Romani groups have been always perceived by the majority societies in which they have been living as different, inassimilable and unruly to the extent that “the lowest, most obscure and disregarded position in the hierarchy of Others – on the territory of Europe – would undeniably go to the gypsies” (Mladenova 2013, 14). As often underlined by the FRA,<sup>5</sup> this kind of radical racism against Romani people is everywhere on the increase in contemporary Europe.

This racist attitude derives from several levels of misrecognition of Romani variegated CH, starting with the fact that, as a diasporic people,<sup>6</sup> Romani groups have developed a “constellation of Romani cultures” (Guy 2001, 28), which have all been tempered, more than any others and over several centuries, through the contempt by and exclusion from what is recognised as the mainstream ‘Culture’.

Instead of recognising and valorising this peculiar history as one which has led to the creation of a CH which is particularly interesting for its intangible and syncretic character, contemporary anti-Gypsyism, on the one hand, continues to put in danger the survival of Romani traditions and, on the other, produces significant adaptive and reactive modifications of Romani social and cultural behaviours.

For all these reasons, this ‘case study’ serves as a particularly good representative in order to question the actuality of the dynamic and inclusive assumptions which the Faro Convention places at the very basis of the processes of patrimonialization of CH.

In the following section, I will thus outline the theoretical framework on (mis)recognition, power relations and the production of narratives and subjects that ground this analysis. Mainstream descriptions of Romani people’s traditions and social behaviours will then be taken into account by also considering their consequences in terms of social and cultural policies. Forms of cultural reaction enacted by Romani people will be thus considered within the complex tension between adaptation and performative resistance to oppression. The conclusive reflections are devoted to a more general question, emerging from this particular case, of what happens when CHs are continuously reinvented and implemented within the relation with misrecognition and dynamics and processes of stigmatization.

5 <http://fra.europa.eu/en/theme/roma> (2017-12-15).

6 On the complexity of the Romani diaspora, see Renard, Manus, Fellman 2007.

## 2 A Theoretical Framework: (Mis)recognition, Power Relations and the Production of Narratives and Subjects

As famously assessed by Charles Taylor, in a continuation of the Hobbesian dialogic concept of recognition,

our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Non-recognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being. (1992, 25)

Taylor's focus on the creation of 'distorted' identity as the main consequence of misrecognition dynamics is a productive starting point in order to investigate the case of Romani CH as forcibly modified by a violent interaction with prejudice and discrimination.

Indeed, in Taylor's word, misrecognition can lead not only to the endangering of cultures' survival, but also their alteration as a consequence of an interiorized self-deprecation.<sup>7</sup>

Yet, Taylor's perspective provoked a host of valid criticisms, as arguably failing "to address the root causes of misrecognition" (Petoukhov 2012); it reserved an inadequate attention to the struggle for a non-imposed recognition and to the unequal power distribution in the Hegelian master/slave dialectic (Coulthard 2007) and, as assessed by Nancy Fraser, it "effectively ignores distributive injustice altogether, by focusing exclusively on recognition" (Dahl et al. as quoted in Petoukhov 2012, 376).

Moreover, against any conception of culture as a 'natural-given' object which can just be perverted by misrecognition, each CH has to be intended, as the Faro Convention explicitly affirms, as a dynamic process which also originates in complex interaction.

Therefore, in order to explore our particular issue, Taylor's theory needs to be integrated into other models which can better consider some aspects of the process we are investigating, such as the ability of Romani groups to renew and implement their own CH in conflictual terms with respect to the rest of society, even when they have been forced to adapt their behaviours and lifestyle in reaction to prejudice and racist policies (Burgio 2015).

This conflictual dynamic has certainly contributed to divert some fea-

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7 In this respect, Taylor (1992, 65) claims to follow Franz Fanon's analysis on the relationship between colonizers and colonized people, in which "the major weapon of the colonizers was the imposition of their image of the colonized on the subjugated people".

tures of the Romani CH in a way which can be inserted among the consequences of non-recognition and misrecognition processes as they have been identified by Taylor. However, the reaction of Romani populations to these processes cannot simply be described as a passive response to forms of oppression that may have 'corrupted' a set of otherwise 'original' cultural elements.

In this respect, the Foucauldian way to explore the mode in which power produces subjects not only through specific individual and collective techniques but also the practices of subjectivisation enacted by the very people who face these techniques (Foucault [1982] 2000) can be particularly useful. Indeed, the French philosopher, by taking power dynamics into account, always stressed the need to oppose any reference to fixed and transcendent elements but rather the necessity of looking at subjects, knowledge and historical events, as from mutable, complex productions and specifications within peculiar 'genealogies' (Foucault 1977).

This kind of regard allows considering the part of autonomy which oppressed subjects always maintain within *power relations*, and also to contrast what Amartya Sen (2006) has termed "cultural reductionism", according to which people are classified on the basis of a unique identity without taking into consideration the possibility of *multiple affiliations*, nor the interrelation of choice and responsibility, constraints and freedom, which mark the construction of social identities.

From this perspective, even without directly intervening in the atavistic debate on the tension between liberal and communitarian scholars regarding collective and individual rights (see, *i.e.*, Habermas 1996), I will assume Frasers' concern for the risk of reifying identity, in which the identity politics model of recognition has the overall effect of imposing

a single, drastically simplified group-identity which denies the complexity of people's lives, the multiplicity of their identifications and the cross-pulls of their various affiliations. Ironically, then, the identity model serves as a vehicle for misrecognition: in reifying group identity, it ends by obscuring the politics of cultural identification, the struggles *within* the group for the authority - and the power - to represent it. By shielding such struggles from view, this approach masks the power of dominant fractions and reinforces intragroup domination. The identity model thus lends itself all too easily to repressive forms of communitarianism, promoting conformism, intolerance and patriarchalism. (Fraser 2000)

As Fraser does, and Sen recommends, I will thus consider also the dialogical movements which define and reconstruct different identities

within the same group,<sup>8</sup> far from any model of pre-defined authenticity, even built in conflictual terms.

Finally, the Foucauldian approach is also fundamental in order to address the specific 'discourses' produced around Romani people and their particular CH, and not only with respect to the more explicitly racist rhetoric. According to Foucault

in every society the production of discourses is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to ward off its power and dangers, to gain mastery over its chance events, to evade its ponderous, formidable materiality. (1981, 52)

The order of discourse" on Romani people in contemporary society perfectly reflects these kinds of characteristics, particularly with regard to those discourses 'of truth that provoke laughter' -through their distance from rationality and objectivity even in the presence of precise data which could easily negate them - even while they "have the institutional power to kill. (Foucault [1975] 2003, 6)

Indeed, many institutional discourses seem to be based on specific 'culturalist' narratives of misrecognition which increase Romani people's stigmatization and are strongly influenced by common stereotypes and prejudice towards them. In this respect, the definition of prejudice elaborated by Norberto Bobbio<sup>9</sup> finds an extremely concrete application in the example of Romani people. In Bobbio's words, prejudice is

an opinion or a complex of opinions, sometimes even an entire doctrine, which has been accepted uncritically and passively by tradition, by custom or by an authority whose dictates we accept without discussing them [...] and we accept them with such force that they resist any rational refutation. (1998, 107)

This acritical acceptance is related to the fact that

the strength of prejudice generally depends on the fact that considering a false opinion as truth responds to my desires, urges on my passions, serves my interests. (108, transl. by the Author)

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<sup>8</sup> This view implicitly takes into account also the definition of 'intersectionality' offered by Crenshaw (1989) about how different types of discrimination interact in the lives of minorities.

<sup>9</sup> The strength of anti-gypsy prejudices is demonstrated by the fact that even Bobbio, despite this illuminating analysis, then he falls, at least once, in an uncritical acceptance of one of them. Cf. Piasere 2015, 90.

From this perspective, the most dangerous prejudice is collective one “shared by an entire social group with respect to another social group” in a reciprocal way: the stronger the prejudice, the stronger will be the individual members’ identification with their own group. (109, transl. by the Author)

In Bobbio’s opinion, the main consequences of this kind of prejudice are discrimination – above all the juridical discrimination which prevents people from accessing rights – social marginalization and political persecution (121). All these consequences have clearly affected Romani people and their CH.

### 3 Mystifying Romani CH: Prevalent Narratives and Related Policies

Despite the mainstream cultural descriptions of Romani people (Bontempelli 2009, 149-50) it is worth remarking that no common Romani CH exists in the manner in which it is usually meant. Romani people also lack those forms of *imagined common identities* or *invented traditions* (Hobsbawm, Ranger 1983) which are usually produced by nationalistic rhetoric with respect to national groups. This is due to its diasporic history, the lack of a common territory, which has resulted in a complex mosaic composed by several different historical communities (Lapov 2004).

If a *common Romani identity* can be retraced, with exception made for the shared Indian origins, it ought to be searched for, in the most part, in a shared fate of prejudice and discrimination on which a heteronomously imposed, negative and imagined collective Romani CH has been built. In this respect, Radimila Mladenova has talked about the ‘imagined gypsy’ who, among others,

has been sculpted and re-sculpted by some of the most venerated white male writers in Eurocentric culture – Cervantes, Hugo, Pushkin, Mélière, Heine, Hemingway. (2013, 18)

As Piasere has emphasised, “Roma people are Gypsies inasmuch as they suffered a forced process of gypsy-ization” (2012, 126). From the moment that

they are selected as Gypsies, from the moment in which they are recognised, identified, perceived and named as Gypsies, they find themselves reified via a series of appalling practices enacted by those who do not consider themselves as such. (126, transl. by the Author)

In this sense, the misrecognition of Romani people results in a pervasive categorization built on different kinds of narratives.

The main persistent prejudice which affects and categorizes Romani people by mystifying their CH is certainly their general definition as a nomadic group. This definition takes into account neither the above quoted extant differences between the groups which compose the diverse Romani diaspora, nor the historical and contemporary persecutions which continuously force Romani groups to move within national and international boundaries. This cultural misrecognition clearly enacts several contemporary official discourses, and, by consequences, specific policies elaborated by European and national institutional agents.<sup>10</sup>

For instance, the fact that Resolution (75)13 of the Ministry Committee of the CoE on the Social Condition of Nomadic People in Europe,<sup>11</sup> and Recommendation (83)1 of the of the same Committee on Stateless Nomads and Nomads of Undetermined Nationality,<sup>12</sup> “recognize nomadism as a cultural characteristic” of Romani people, has led directly to the proliferation of ‘nomadic Camps’, “with incalculable damages for the Romani population” (Spinelli 2016, 496, 498).

This kind of stigmatising approach appears to be transversely adopted in Europe in the vast majority of countries, including recently. In a letter sent to the CoE Commissioner for Human Rights in February 2016, as a reply to previous letter in which the Commissioner has expressed concerns regarding the evictions of Roma families in different Italian localities, the Italian government implicitly assumes the same mystified cultural perspective. Indeed, the Italian Ministry of Foreigners Affair and International Cooperation affirms that Roma people from Romania “usually live in improvised/spontaneous and/or unauthorized settlements” as if this were a choice enacted by these people. By consequence, as these camps

gave rise to many problems, with regard to public order and public health, with very poor sanitation facilities, cases of exploitation of women and children early school drop-out and so forth [...] when local authorities dismantle the above unauthorized settlements, this is done for the very interest of the people involved.<sup>13</sup>

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**10** As assessed by Zagato (2015, 158), especially with respect to Roma minorities, a sort of “variable geometry” in intensity in the fight against discrimination can be found within the EU.

**11** <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800899bc> (2017-12-15).

**12** <https://searchworks.stanford.edu/view/1776008> (2017-12-15).

**13** <http://www.coe.int/da/web/commissioner/-/european-countries-must-stop-forced-evictions-of-roma> (2017-12-15).



In the same period, the French government sent the CoE Commissioner a very similar letter, responding to the same concerns expressed by the Commissioner regarding the eviction of Roma families<sup>14</sup> In this letter again, the main justification for evictions is the necessity “to protect the occupants from the risks related to their health, security and other dangers”.<sup>15</sup>

In both cases stigmatisation, in which the degrading conditions of Romani living situations are treated as a kind of cultural attitude and choice, is strictly related to a paternalistic tactic aimed at justifying evictions as an attempt to protect Romani people from themselves, and the rest of society from the social danger represented by this inassimilable population. The reality, of course, is entirely different, as ‘camps’ are often the only solution left to racialized and marginalized persons who have many difficulties in finding other alternative housing,<sup>16</sup> while evictions simply force them to move on yet again, towards other informal settlements that will, in their turn, be dismantled.<sup>17</sup> Moreover, the difficulties in obtaining formal residence for people living in ‘nomadic camps’ is often an obstacle in the process of gaining regular documents, the lack of which reproduces marginalization and social exclusion, even in respect to minors.

This kind of vicious circle is both grounded on prejudice towards Romani people as a culturally nomadic people, and continuously reinforces it (Sigona 2002; Argiropoulos 2011; Bontempelli 2009; Burgio 2015).

For Romani people, therefore, the ‘camp’ continues to be “the only practical substitute for a non existent homeland” (Arendt 1979, 284) on a perverse continuum (even if with undeniable differences) with the under-acknowledged fact that ‘Gypsies’ were one of the firsts categories of person to be interned in concentration camps of the first half of the twentieth century (Kotek, Rigoulot 2000, 307 ff. and 348 ff.; Center for Advanced Holocaust Studies, 2002).<sup>18</sup>

**14** France is particularly used to practices of evicting Roma, a practice which has often been followed by expulsions from the national territory. As of 2013, for instance, Amnesty International (2013) reports that “more than 10,000 Roma were evicted from informal settlements” in France.

**15** <http://www.coe.int/da/web/commissioner/-/european-countries-must-stop-forced-evictions-of-roma> (2017-12-15).

**16** Moreover, as happens in Italy, the possibility of accessing social housing is connected to the possession of formal residency which, in most of times, is not allowed when people live in camps.

**17** About the interlacement between material discrimination and symbolic stigmatization of Romani people in Italy, see Di Noia 2015.

**18** The near complete collective removal of this part of the history, also in exceptional authors such as Hannah Arendt, is a significant element of the building of such discrimination. Everyone in Europe knows what the holocaust is; only a minority will answer if questioned on the ‘Porrajmos’.

The cultural mystification of the Romani population as a nomadic group, finally, has concretely led to quite precise forms of cultural misrecognition: in Italy, for instance, in the name of their alleged nomadism, Romani people have been excluded from the provisions which protect other linguistic and cultural minorities.

A more general prejudice affecting Romani people is their representation as a people without history (this could represent a sort of collective removal of the fact that Romani history has always been strongly determined by persecution enacted by majority societies). This specific misrecognition is linked to the mainstream narrative of Romani people as a people without culture, despite the fact that Romani artistic production has always been markedly prolific, and that, in peculiar fields such as music, it has had significant influences on mainstream European culture, including, at different levels, composers such as Liszt, Haydn, Schubert, Beethoven (see, e.g., Colocci 1889, 295), and above all Ravel and Bartók (Brown 2000).

Therefore, along with a physical confinement, we can talk about a

cultural confinement enacted by the majority society with respect to the art and, more generally, the culture of Roma people. (Mannoia 2013, 411; transl. by the Author)

In this regard, the Romani population has also been stigmatised and misrecognised with respect to its CH by precise rhetoric of folklorisation linked to an exotic imaginary. The imposition of a forced mobility, for instance, is narrated as the product of an innate sense of liberty; the Romani artistic production in terms of music and dance is never regarded as culture, but just as the confirmation of idleness and wilderness.

At the same time, the impossibility of finding a regular, normal job is perverted in the refusal to perform an ordinary life, and in the will to live by one's wits without committing to anything.

This kind of narratives can lead to paradoxical forms of jealousy in the confrontation with people who are considered as the dregs of society (Piasere 2012, 134) but are simultaneously regarded as someone able to reach towards an unacceptable lifestyle, replete with the privilege of a lighter approach to life. The necessity of making recourse to charity, a role delegated to Romani women who wander the streets, begging from 'respectable' people, reinforces the stereotype of their lasciviousness and immorality. If this activity is performed by bringing children in tow - because mothers have no other place where to leave them, or because the presence of children is often the only way to convince people to offer some money - this image immediately nourishes the prejudice which deems them as irresponsible parents who 'produce' babies solely to exploit them.

It is into this conceptual framework that we can insert the ease with which Romani children are removed from their families and given up

for adoption, with the double objective of protecting children from their parents and protecting society from future Romani adults brought up in Romani communities.<sup>19</sup>

Along with a criminalising rhetoric and patronising, assimilationist attitudes towards Romani people, there are further ways in which their human dignity is reduced, by misrecognising their potential and competences (see, with respect to Italy, Argiropoulos 2001). These approaches have also been enforced by some non-Romani experts in 'Romani studies'<sup>20</sup> who, through emphasising specific Romani cultural elements, have contributed to producing "a gypsy stereotype, a dehumanized prototype" (Spinelli 2016, 207), which infantilises individuals and continuously reproduce their image as incapable and non-productive members of society.

#### 4 Building on Prejudices a Lifestyle

As assessed in the previous pages, the long history of misrecognition and mystification of Romani CH has produced an imagined stereotype of Romani traditions which has enforced stigmatising rhetoric and specific discriminatory practices and policies.

In their turn, these, practices, policies and this rhetoric have deeply influenced the way in which, on multiple levels, different Romani groups have reproduced their behaviour over centuries as a complex reaction to discrimination and persecution suffered since their first appearance in Europe, in the fourteenth century. Indeed, as assessed by Taylor,

We define our identity always in dialogue with, sometimes in struggle against, the things our significant others want to see in us. (1992, 33)

On the one hand, when people perceive that the cultural resources they owned cannot help them to find a place in society, and to achieve good living conditions, these resources, doubly devalued, will be at risk of disappearance (Sciurba 2015). On the other, in comparable situations, specific forms of adaptive and reactive resistance can take place, again by enforcing the common cultural elements which have been stigmatized by the majority of society. Indeed, as assessed by Burgio (2015, 48), stigmatized people can finally consider themselves as part of the same group exactly

<sup>19</sup> As Carlotta Saletti Salza (2010) has demonstrated, the percentage of children removed from Romani families and given over for adoption is widely disproportioned with respect to the same percentage of Italian children, taking into account that Romani people in Italy are a broad minority.

<sup>20</sup> The predominance of non-Romani authors' writing about Romani people can certainly be ascribed also to the lack of written history accounts in Romani cultures.

on the base of the oppression that they have in common. As noted by Carol Silverman, this kind of reaction has often lead to what Gayatri Spivak has termed “strategic essentialism” (as quoted in Silverman 2014, 142): through a form of reinvention of common identifying cultural elements, people may be forced to modify their lifestyle and behaviour in order to adapt to, and at the same time defend themselves from, dominant stereotypes. It is certainly true that

for Roma, identities are always emergent, constructed, fragmented, due to the changing constraints of marginality. Moreover, Romani cultural identities have always been construed in relation to hegemonic powers such as patrons of the arts, state folklore officials, and market forces. (Silverman 2014, 142)

Even though many Romani people have been socially integrated since they have accepted to completely abandon the more visible symbols of their cultural traditions, Romani groups

have often been able to respond – through inventing strategies and tactics of containment, response, resistance and resilience – to the gypsyization process they have suffered. (Piasere 2012, 130; transl. by the Author)

In particular, starting from the seventeenth century, Romani groups have developed specific reaction to the normalizing power enacted by the European nation-state model, with the direct consequence being the resurgence of anti-gypsy policies and the birth of a true (and unarmed) resistance struggle by Romani people (Piasere 2003, 49). In Piasere’s opinion, the main result of this dynamic was the creation of a Romani “social organization of dispersion” (*struttura sociale a polvere*) (2003, 50), by dispersing on the territory in more or less mobile or numerous groups in order to resist policies of annihilation.

In this context, along with forced mobility, the ‘culture of parenthood’ becomes an element common to Romani traditions. The strong unity of Romani families, along with ethnic endogamy, thus mainly derives from the need to be protected from a hostile external society.

For the same reasons, “daily life and the Immediate become the priority” (Aparicio Gervás 2014, 144) in Romani people’s perception. Building a long-term project of life becomes impossible when that life is continuously marked by evictions and forced mobility. This form of perception can also explain specific forms of resistance or the lack of interest towards children’s education as intended by the majority society.

Similarly, Romani groups’ economic organization seems to be significantly influenced by an immediate need for daily survival, enforcing fam-

ily enclosure: Romani groups have always been pushed, depending on different contexts, to insert their productive activities in the interstices of majority society's economy via developing a strong cooperation within and between families (Burgio 2015, 54-55). Furthermore, the varied and complex Romani religious dimension has been strongly permeated by the persecution and discrimination which they have suffered: due to their peculiar diaspora, and in order to maintain their peculiar form of invisibility,<sup>21</sup> different Romani communities have traditionally assumed the majority religion of countries in which they were living. Nevertheless, Romani people were also able to integrate this religious assimilation into a creative syncretic adaptation which has mixed ancient traditions with local rituals. Yet this adaptive ability also has been interpreted by anti-gypsy rhetoric as an inassimilable element of superstition (Burgio 2015, 62 ff.).

As I already said above, the same kind of misrecognition has affected Romani artistic production which has always been a strong instrument of resistance in the preservation of different Romani identities and their cultural transmission. The diverse Romani musical styles, for instance,

have developed in parallel with the evolution of historical and social events of a people forced into mobility, dispersion and oppression throughout the world, but [who], to an extraordinary extent, have been able to preserve their essential cultural elements (*romanipé*). (Spinelli 2016, 328; transl. by the Author)

Yet the difficulties encountered by these various people can also explain, among other things, the lack of systematisation of Romani literature and cultural production which has strongly contributed, caught within a vicious circle of anti-gypsy propaganda and discrimination, to reducing Romani CH to invisibility and silence, or to stigmatising it through *processes of empty folklorisation*.

In these difficult historical and social conjunctures, Romani groups have formally developed a form of common identity, in some instances adopting a model of nationalistic identity which had always left them at the margins of majoritarian Western societies.

A Romani anthem and flag were approved in 1971 during the first World Roma Congress, while "the formation of a Romani literature language and the production of a Romani dictionary were mandated several years [previously] by the International Romani Union" (Silverman 2014, 139).

It seems therefore that we finally have a Romani collective identity and

<sup>21</sup> The persistence and strength of Romani people's misrecognition seems to be proportionally related, at the same time, to the peculiar 'visibility' of their external 'appearances' and to the specific social and political invisibility to which they are relegated (for the concepts of appearances and visibility/invisibility, see Arendt 1959).

CH to preserve and protect against racism and discrimination. Yet, in the light of the social constructions analysed up till now, is the question so simple?

## 5 Conclusions

Starting with The Strasbourg Declaration on Roma, delivered by the CoE (2010), several recent European initiatives have been launched in order to remove discrimination and prejudice regarding Romani people, by recognizing the value of their CH.

The ERIAC, for instance, is a joint initiative of the Alliance for the European Roma Institute, the CoE and the Open Society Foundations, aimed to set up as an independent institution to promote Romani arts and culture. This last is one of the formal objectives of the CoE *Thematic Action Plan on the Inclusion of Roma and Travellers (2016-2019)*.<sup>22</sup>

Another initiative of the CoE is the Route of Roma Culture and Heritage, which has the objective

to increase the knowledge of people in Europe about Roma history, culture, values and lifestyle, to encourage the contribution of Roma to Europe's cultural life and diversity and ultimately contribute to giving a positive value to an image of Roma which are, more often than not, perceived in a negative and stereotyped way.<sup>23</sup>

At the same time, the 'Dosta!' awareness-raising campaign against prejudice, stereotypes and anti-Gypsyism and for the promotion of Romani culture, language and history is part of a wider CoE/European Commission Joint programme.

At the EU legal level, several antidiscrimination norms and formal guarantees on minorities' rights characterize the EU framework: from articles 2 TEU and 19 TFEU, to art. 21 of the European Charter on fundamental Rights, to the Race Directive (2000/43/EC). Nevertheless, concrete application of these provisions, especially in the case of Romani people, are far from being effective instruments in order to improve equality and combat discrimination.

In sum, as observed by Melanie Ram, if by obeying to European Institutions guidelines

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<sup>22</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c5a1d#\\_ftn5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c5a1d#_ftn5) (2017-12-15).

<sup>23</sup> [http://www.coe.int/t/dg4/cultureheritage/culture/routes/roma\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/culture/routes/roma_en.asp) (2017-12-15).

all CEE “States with large Roma populations adopted a variety of inclusionary policies and institutions that have enabled the defence of equal rights, some Roma participation and various programs and projects supporting Roma integration, [...] these policies are complemented by exceptionally exclusionary practices by both government and society that tend to negate these very efforts. (2014, 37)

Moreover, as assessed by the famous Italian Roman artist and University professor Santino Spinelli, despite the benevolent European initiatives listed above, Romani people are today considered as a ‘social question’ instead of an immense

human, artistic and cultural heritage, meaning that billions of euro are squandered every year by public bodies and European funds for fake or unimportant social projects in the name and on the behalf of Romani communities, who in the end receive very little or even nothing, and no support for their art, language or culture. (2016, 205; transl. by the Author)

Failures in these kinds of policies and initiatives can be traced back to the persistence in the misrecognition of Romani people with respect to the idiosyncratic elements which have produced and continue to mark their so-called CH.

First, this heritage is a resilient one, and in some way has been produced by the constant discrimination and oppression meted out by majority societies. The focus on this specific element is necessary not in order to identify and separate ‘original’ Romani cultural features from ‘constructed’ or ‘perverted’ ones, but so as to comprehend the *cultural complexity* involved.

Which part of Romani groups’ behaviours and traditions would have been maintained in a social context set free from evictions and discriminations? Would we still talk about a Romani population if the different Romani communities had been allowed to insert themselves into the society in which they have been living?

These questions, of course, are impossible to answer. Yet historical and social complexity in the ‘production’ of what is defined as Romani CH should be recognised as a starting point in order to implement effective policies against anti-gypsism and, in general, for a useful reflection on how to implement minorities’ cultural rights.

Instead of promoting, for instance, stereotyped and folkloristic views of an imagined Romani culture which inevitably finds an assimilationist counterpart in attempts at normalisation of this presence, European policies should be devoted to understanding the historical and actual role of majority societies in marginalising and oppressing these particular groups of citizens. This role has enforced separation and enclosure, with the con-

create consequence of the construction of an imagined CH based on defensive strategies.

“Europe invented the gypsies” (Bogdal 2011) is the first sentence we should read not only in more enlightened scholars’ books on this issue, but in all European Declaration on anti-gypsyism and antidiscrimination. Perhaps what makes this admission so difficult to be assumed is the fact that, as Mladenova claims,

gypsy representations are at the core of modern European culture, they are a product of its normative world view”, and reveal the dominant ‘grammar’ of our culture. (2013, 14)

For this reason, a deep and serious reflection on the complex dualistic relation which has built what is defined as Romani CH might allow some form of “new level of cultural consciousness” (Mladenova 2013, 23) in European societies; a form of recognition which appears indispensable in the general reflection on CH and the processes of patrimonialisation envisaged in the Faro Convention.

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# Mainstreaming Gender in the Protection of Cultural Heritage

Sara De Vido

(Università Ca' Foscari Venezia, Italia)

**Abstract** The purpose of this contribution is to reflect on the relationship between gender equality and CH, from a human rights law perspective. We will demonstrate that the two elements are not conflicting, but mutually reinforcing. Provided that some practices can never be condoned under human rights law, the approach followed in the article is twofold. On the one hand, it should be acknowledged the contribution given by women in the preservation of traditional practices and heritage sites. On the other hand, gender should be mainstreamed in the protection of CH – provided that the participation of local communities is ensured - in order to empower women and gradually combat discrimination against them.

**Summary** 1 Introduction. – 2 Some Terminological Issues. –3 Gender Equality in International CH Law. – 4 Traditional Practices and Gender Equality from an International Human Rights Law Perspective: Different Scenarios. – 5 Striking a Balance: where Culture Meets Gender and Human Rights. – 6 Women in the Promotion of Culture as Collective Memory. – 7 Conclusions.

**Keywords** Gender. Cultural heritage. Human rights.

## 1 Introduction

The conference organized in November 2015 on *Cultural Heritage. Scenarios 2015* has inspired me a reflection on the relationship between gender equality – part of my current research – and CH, of which I am almost a neophyte, from the specific point of view of IHRL. The session of the conference where I presented the first draft of this paper was named “Cultural heritage inspires” in the sense that CH promotes and strengthens participation as an essential component to build identities. In developing the text of this article, I have become more and more convinced that the promotion of gender equality has a role to play in the protection of CH, both in terms of participation of women to the process of recognition and of empowerment of women and girls against discrimination on the basis of gender.

At first sight, gender equality and CH seem to conflict in certain circumstances. Consider, by way of illustration, practices that allow and reinforce unequal power relations between men and women or that reduce women to a role of subordination: the male guardianship according to Islamic law

(*mehrem*) is an example. However, as stressed by the then *Special Rapporteur on Violence against Women*, Yakin Ertürk, even practices that are not seen as cultural phenomena, especially in Western countries, such as the portrayal of women as sexual objects, must be considered as a form of objectification of female body entrenched in the culture of a given society and a form of discrimination on the basis of gender.<sup>1</sup>

The contribution will start with some terminological issues, before briefly investigate on whether the main international legal instruments on CH do refer to gender equality. We will then propose some examples of traditional practices in order to analyse the complex relationship gender-CH-human rights. We will demonstrate that gender equality and CH are not conflicting but mutually reinforcing and that by applying IHRL it is possible to strike a balance between them.

## 2 Some Terminological Issues

At the outset, we should define the boundaries of our contribution. First of all, for the purposes of the analysis, we will refer to both tangible CH and ICH, which are extremely intertwined. Language, dances, local know-how are often associated with material culture. As outlined by an author, “the practice of intangible heritage can have tangible results or represent meaningfulness of the heritage” (Blake 2015, 153). In the examples that we will provide in the next pages, the two types of heritage are equally relevant.

Secondly, with regard to gender, in this contribution we will only focus on women and their rights, despite being aware of the fact that the concept of gender does not equate women. Charlesworth (2005, 15) has indeed emphasized that:

reading gender to be essentially about women does not capture the relational nature of gender, the role of power relations, and the way that structures of subordination are reproduced.

Gender refers to “socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences”, which results in “hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women”.<sup>2</sup>

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1 *Special Rapporteur on Violence against Women, its Causes and Consequences* (2007), *Intersections between culture and violence against women*, A/HRC/4/34, para. 48.

2 CEDAW Committee (2010). *General Recommendation no. 28, Core Obligations of States Parties under Art. 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/2010/47/GC.2, par. 4.

With regard to culture, it is not possible to dwell on the meaning of such a complex notion, well analysed by literature, in this short contribution. For our purposes, we will consider culture according to the definition provided by the 1998 Fribourg declaration, as composed of:

those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or a group expresses their humanity and the meanings that they give to their existence and to their development.<sup>3</sup>

We will appreciate culture as an evolving concept, which can be better understood by applying a *gender-based approach*, and whose relationship with human rights are yet to be fully explored. With regard to the manifestations of culture, in this article we will propose examples taken from traditional practices, which have been included in the UNESCO WHL, and in the two lists related to ICH. We will also refer to practices based on convictions well rooted in a given society that have been examined by the UN bodies responsible for the assessment of States' compliance with international human rights conventions, in particular by the HRC and the CEDAW Committee.

### 3 Gender Equality in International CH Law

Most binding international legal instruments regarding CH are silent on gender equality. Among the UNESCO Conventions, an indirect reference to gender is included in the 2005 Convention, entered into force in 2007. According to art. 7:

Parties shall endeavour to create in their territory an environment which encourages individuals and social groups: (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of *women* as well as various social groups, including persons belonging to minorities and indigenous peoples.

Nonetheless, women are depicted as people in 'special need', therefore vulnerable subjects and not *actors of change*. The central role of women is not mentioned either in the 1972 UNESCO Convention or in the 2003 UNESCO Convention.

The latter Convention includes, however, an interesting provision according to which "consideration will be given solely to such intangible

3 Art. 2(a). See the analysis of culture in Ferri 2015, 50 ff. and related bibliography.

cultural heritage as is compatible with existing international human rights instruments”.<sup>4</sup> This affirmation clearly encompasses all the major conventions on human rights, including the two 1966 Covenants, namely the ICCPR and the ICESCR, along with the CEDAW.

The absence of any reference to gender equality in the aforementioned texts is quite surprising, since other treaties on human rights and environmental protection do contemplate a gender-based approach, which has progressively permeated different issues of high priority at the international level.

It should be acknowledged that non-binding instruments have better emphasized the role of women in CH, despite the 2001 UNESCO Declaration being silent in that respect. As early as 1998, indeed, the *Stockholm Action Plan on Cultural Policies* recommended States to “give recognition to women’s achievements in culture and development” and to “ensure their participation in the formulation and implementation of cultural policies at all levels”.<sup>5</sup>

More recently, the ICSICH, at its eighth session in Baku in 2013, reported the position of many stakeholders according to which “an in-depth debate about gender equality and intangible cultural heritage has not yet happened” and that the working mechanisms of the 2003 Convention “have been quite gender blind so far”.<sup>6</sup>

At the same meeting, the Committee recommended to revise all relevant documents and forms (including the Operational Directives, the Periodic Reporting formats, and nomination files) to include gender-specific guidance and questions.<sup>7</sup>

Furthermore, in a report commissioned by UNESCO (2014) to which we will refer several times, experts analysed the relation between gender equality and CH, starting a debate which should inspire the activities of UNESCO in the years to come.

At an expert meeting held in Turkey in September 2014, a *draft* paragraph was proposed for the Operational Directives for the implementation of the 2003 UNESCO Convention, later included in the decision of the Committee of December 2015,<sup>8</sup> and eventually endorsed in the Resolution

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4 Art. 2(1). See also Cornett 2007.

5 Adopted during the Stockholm conference held from 30 March to 2 April 1998, objective 2, para. 8.

6 ICSICH (2013). *Report on the evaluation by the Internal Oversight Service of UNESCO’s standard-setting work of the Culture Sector and the related audit of the working methods of Cultural Conventions*, ITH13/8.COM/5.c, 9.

7 ICSICH (2013). Decision, ITH13/8.COM/Decisions, 7 December, para. 11a).

8 Draft Amendments to the Operational Directives on Safeguarding ICH and Sustainable Development, ITH/15/10.COM/14.a, 3 December 2015, para. VI.1.4.



adopted by the General Assembly of the States parties to the Convention in June 2016.<sup>9</sup>

The paragraph related to gender equality is of extreme interest and it reads as follows:

States Parties shall endeavour to foster the contributions of intangible cultural heritage and its safeguarding to greater gender equality and to eliminating gender-based discrimination while recognizing that communities and groups pass on their values, norms and expectations related to gender through intangible cultural heritage and it is, therefore, a privileged context in which group and community members' gender identities are shaped.

States parties, according to the Resolution, are therefore encouraged, among others, to “take advantage of the potential of intangible cultural heritage and of its safeguarding to create common space for dialogue on how best to achieve gender equality”, to “promote the important role that intangible cultural heritage and its safeguarding can play in building mutual respect among communities and groups whose members may not share the same conceptions of gender”, and to “assist communities and groups in examining expressions of their intangible heritage with regard to their impact and potential contribution to enhancing gender equality”.

The Resolution constitutes a landmark step forward in the recognition of gender equality while protecting CH, and confirms the practice of 2003 Convention governing bodies “to give increased attention to gender issues” (UNESCO 2015, 13).

#### **4 Traditional Practices and Gender Equality from an International Human Rights Law Perspective: Different Scenarios**

Let us now turn to the analysis of the relationship gender equality - CH from a IHRL perspective. Starting from ICH, different scenarios can be envisaged. The examples concern gender-based discrimination, which can take different forms: violence against women, widely recognised as a form of discrimination, and situations where discrimination amounts to different levels of participation of women in a given society. We have selected cases that demonstrate the relationship under investigation, despite being aware of the differences in the gravity of harm caused to a woman by an

9 2003 UNESCO Convention, General Assembly Resolution 6.GA 7, approving the amendment of the operational directives according to document ITH/16/6.GA/7, June 2016, para. 181.

act of violence or by the use of language.

The first scenario regards traditions that must be prohibited since they are harmful for women. Certain practices can obviously never be condoned from a human rights perspective – such as infanticide, bodily mutilation, child marriage, cannibalism – which constitute clear violations of human rights. In the list we should also include female genital mutilation, which is banned at the international and regional level:<sup>10</sup> despite some criticism on universalism vs relativism of human rights, there is growing awareness of the risks linked to this practice in terms of violation of the right to health and of reproductive rights of women and girls who are forced, because of the pressure coming from the community to which they belong, to undergo such practices.<sup>11</sup> Another example is the finger mutilation of girls practised by the Dugum Dani of New Guinea as a way to express grief after the death of a close relative. It constitutes a means through which the capacity of women to work and to use certain instruments, such as the arch, is limited and, as a consequence, it is a way to control them.<sup>12</sup>

The aforementioned examples are crystal clear in showing the negative implications of certain traditional practices on basic human rights such as the right to health and the right to physical integrity. Many other cases of traditional practice, however, “lie in a difficult grey area” in which “identifying the degree of harm to individuals can be extremely problematic and the thorny question is raised of who should make such determinations” (UNESCO 2014, 53).

It is the case of the Fijian practice of *Bulubulu* because of its use in rape cases, whose elimination was recommended to the Fijian government by the CEDAW Committee in a report issued in 2002.<sup>13</sup> For native Fijians, an apology presented to the father of the female victim of rape, even without her being heard, can be considered a sufficient redress for the sexual offence she suffered. Any charges can then be brought against the alleged perpetrator. The CEDAW considered the practice as “highly patriarchal”, which condoned sexual violence without the involvement of the victim.<sup>14</sup> As an author points out, the State and the Committee then entered into a dialogue in order to reflect on the possible evolution of the practice and this was extremely important in order to raise awareness of the problem of violence in the community (Addo 2010, 633). The Committee recom-

10 See extensively on this topic De Vido 2015.

11 In this sense, see also Lixinski 2013, 172: “This practice, despite being a traditional cultural practice, violates human rights, and as such does not merit protection”.

12 On the life and culture of Dugum Dani see Heider 2017.

13 CEDAW Committee (2002). *Summary Record of 530th Meeting*, CEDAW/C/SR.530.

14 CEDAW/C/SR.530, para. 29.

mended the State party to strengthen “its initiatives to combat gender-based violence” and to adopt “the proposed laws on domestic violence and sexual offences very early, prohibiting practices that legalize violence against women”.<sup>15</sup>

However, the position of the Committee has been criticized since *Bulu-bulu* is not limited to cases of rape, but, rather, it constitutes the basis of village life. Therefore, it should be prohibited only when it amounts to a way to take rape cases out of the court. In that respect, it is clear that the CEDAW Committee has proved to be

suspicious of cultural claims, even when they seem deeply rooted historically. It focused narrowly on gender discrimination, rather viewing the intersection between ethnic, religious and class exclusions. (Engle Merry 2006, 132)

If, on the one hand, the risk lies on the fact that cultural practices may reinforce unequal roles for women and men, on the other hand a gender perspective should take into account, as it will be discussed further, the social, economic, and political context in which the practices have developed.

The second scenario is quite the opposite: it is not the cultural practice that has proved to be a form of discrimination against women, but the official recognition of this practice as ICH. It is what has happened in the Gnawa community in Morocco, who is known for its music and rituals. Women were as important as men in their role as ritual specialists and trancers, but now that the practice is famous worldwide, women “are no more than an ornament on a male-dominated stage” (Kapchan 2014, 9). The heritage in this case is conservative in the perpetuation of a patriarchal society, and violates the cultural rights of women in the tradition, whose power has diminished.

The third scenario concerns a gradual transformation of the practice, upon acceptance and involvement of the community concerned, in order to meet the challenges of an evolving society. The illustrative example here is the Japanese *Kabuki* theatre, where women could not traditionally play any role. The tradition is really curious, because it was a woman, Izumo no Okuni, who started the Kabuki dance, but then women were banned from the dance. In 1629, the Shogunate indeed prohibited women to play Kabuki, because they could disturb the public moral. Nowadays, in some areas of Japan, for example the Shimane prefecture, women are allowed to play the Kabuki (for a detailed description of the tradition, Mezur 2005). Another interesting example is Iran, where women have progressively

15 CEDAW Committee (2002). *Concluding Comments of the Committee: Fiji*, UN. Doc. A/57/38 (Part I) (2002).

started to perform *naqāli* poetry in public, an activity which was traditionally reserved to men (Blake 2015, 183). The same could be said for the traditional Venitian gondola, which in history has traditionally been driven by men; only recently a woman passed the exam and became a 'gondoliere', or, to stress the importance of language in gender equality, the first 'gondoliera'.

The fourth scenario concerns practices which are exclusively followed by women and this fact constitutes a way to 'empower' them. For example, in Afghanistan, *landays*, a form of oral poetry of Pushtun women, provides women a social and cultural space and therefore an access to public sphere (UNESCO 2014, 55). This is a way to move beyond the limits of the private sphere, the "domestic walls", and to allow that their 'private' world is recognized as valuable. Their role in the preservation of tradition and culture of communities has been indeed of utmost importance. Furthermore, the differentiation of roles between men and women is not always a synonym of discrimination against women. It is the case of Taquile in Peru, where men use the pedal loom and needles to make garments of Spanish colonial influence, like trousers and hats, and women the plain loom to make more traditional garments, such as blankets (Blake 2015, 183).

Shifting to tangible CH, we have several examples in the world of sites whose access is prohibited to women or, *viceversa*, to men. Take as example the Sacred Sites and Pilgrimage Routes in the Kii Mountain Range, Japan, overlooking the Pacific Ocean. The three sites - Yoshino and Omine, Kumano Sanzan, Koyasan - are linked thanks to pilgrimage routes to Nara and Kyoto, ancient Japanese capital cities. Women are not allowed to enter. Another interesting example can be mentioned here. The Flemish *Béguinage* in Belgium, semi-monastic institution, was one of the few World Heritage sites dedicated to the lives of women. Only women could access the architectural complex. Compared to the previous case, the difference consists in the fact that the institution is currently open to all visitors - male and female - interested to learn *Béguines'* (women who dedicated their lives to God) history (UNESCO 2014, 63).

## 5 Striking a Balance: where Culture Meets Gender and Human Rights

Culture and rights sometimes “seem at war with each other” (Levitt, Engle Merry 2011, 81). Prohibiting women to have access to certain sites, protecting practices that put women in a subordinate position with regard to men is a clear violation of the principle of non-discrimination on the basis of sex, or – better - on gender. However, it is also extremely important to take into account the history and the culture which have determined the affirmation of certain practices. To be only open to men – or women - is undoubtedly part of the history of the sites, or is even the origin of the devoutness around these safeguarded places.

When we apply a gender-based approach, we must look at “women’s experiences vis-à-vis men and viceversa”; in other words,

we should concentrate not on the differences between these roles, but rather consider whether or not they generate the power to dominate and humiliate. (Blake 2014, 50)

It means that from a HRL perspective, traditional and apparently discriminatory practices can be accepted where they do not consist in a form of subjugation of women. The fact that women in Peru produce traditional garments and men the one of Spanish colonial influence does not constitute a way to exercise a form of control over the women. On the contrary, the system of *Devadasi* women (female servant of deity) in Southern India which turns out to be a form of forced prostitution (Sen-Nair 2005, 161) *does* amount to a severe impairment of women’s rights.

We are convinced that UN Treaty bodies, established by the main international human rights conventions, and UNESCO could play a significant role in recommending countries the best way to achieve gender equality and at the same time promoting CH. The privileged mechanism here is the system of reports presented by States in compliance with human rights conventions: the reports are then examined by the committee concerned, which produces recommendations to the State itself. The discussion which anticipates the writing of the report is extremely useful in order to start a dialogue aimed at ‘understanding’ the culture of a people. Let us propose two examples. The first one regards Zambia, which brought before the HRC information on customs concerning practices such as bride price, polygamy, and sexual cleansing. Because of its obligation to meet the requirements of the ICCPR, which established the Committee, Zambia was induced to explain how it was dealing with such violations of human rights and it replied that it had adopted adequate measures to train local judges and to promote awareness campaigns (Addo 2010, 647). Despite the efforts undertaken by the State, the HRC requested Zambia to

strengthen its action to ensure that local customary laws comply with the rights enshrined in the Covenant.<sup>16</sup> In particular, the Committee stressed the importance of the participation of women in the process of reviewing local laws and practices. The second example regards the custom of *mehrem*, mentioned at the very beginning of the article, present in Saudi Arabia and examined by the CEDAW Committee.<sup>17</sup> The dialogue on the practice showed the weaknesses inherent in the system, which is surely, as expressed by Islamic law, aimed at protecting women and preserving their dignity, but at the same time it places women in a subordinate position which concretely prevents them from denouncing episodes of violence. Therefore, even if women are free to file complaints with the authorities and ask to be released from guardianship as a consequence of domestic violence, they fail to do so, because they are not fully aware of their rights. As pointed out by an author, though, it is not clear to whom such permission must be asked, hence this is a way “to reinforce rather than to challenge the practice” (Addo 2010, 634). The Committee stressed the element of discrimination emerging from the practice, but did not seem to realize the fact that to challenge the practice was almost impossible for women, who are blocked in a male-driven system.<sup>18</sup>

In carrying out their activity, however, UN Committees should be aware of the interlinkages between different forms of discrimination – gender, age, ethnicity, sexual orientation – and to strengthen the dialogue with countries in order to understand how to strike a balance between protection of CH, traditional practices and traditions, on the one hand, and respect for human rights, on the other hand. In order to do so, UN experts must know the culture of one State, with the purpose of overcoming several criticisms, such as the biased perception of the notion of gender modelled on European/American standards (Oyewumi 1997).<sup>19</sup>

According to Engle Merry, it is possible to integrate human rights norms into certain cultures without being antithetical to the perpetuation of the integrity of certain cultures (2006, 6-10). Culture is not a valid justification for gender inequality (Moghadam, Bagheritari 2007, 12), but, equally, focusing on culture only as a barrier both ignores the extent to which change is taking place and de-emphasizes the importance of economic and political

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<sup>16</sup> HRC (2007). *Concluding Observations of the Human Rights Committee: Zambia*, CCPR/C/ZMB/CO/3.

<sup>17</sup> CEDAW Committee (2008). *Concluding Comments of the Committee: Saudi Arabia*, CEDAW/C/SAU/CO/2.

<sup>18</sup> CEDAW/C/SAU/CO/2, para. 15.

<sup>19</sup> Strathern (1988) used a feminist approach to argue that Papuan women are not exploited, but rather that the notion of gender is different in that society compared to the Western one.

factors in furthering those changes (Engle Merry 2005, 132). It ignores possibilities that are embedded in local communities, it misses alternative visions of social justice founded in ideas of sharing reconciliation, and mutual responsibility. Therefore, ICH may also provide “a space for societal dialogue which may present an opportunity for ICH itself to be harnessed in efforts to minimize gender-based discrimination” (UNESCO 2014, 52).

There are examples of the evolution of culture in the sense of gradually ensuring the respect for human rights, in particular the principle of non-discrimination. We have already mentioned the case of the Flemish *Béguinage* in Belgium, semi-monastic institution which are now open to men; or the *naqāli* poetry played in public by both women and men, contrary to the tradition that ruled in favour of men. Culture cannot justify severe violations of human rights but can, and must, take into account them and evolve, since it is not immutable: traditions change and adapt to the evolving times and to an increasing awareness of the existence of human rights.

Some considerations can be drawn from this reasoning. First, let us consider the ‘dimensions’ of CH, namely the individual and the collective one (Logan 2007, 44). According to Zagato, the safeguarding of the ICH, with its explicit reference to groups and communities as well as to individuals, is cut across by “an irrepressible tension between the individual and collective dimension of the cultural right” (2012, 49).

In our case, the collective right to CH can conflict with other individual rights, such as the prohibition of discrimination on the basis of gender or the right to health. In order to overcome this tension, it is essential to appreciate the right to CH in this twofold dimension: as collective and individual right. It means that the individual right to CH cannot be impaired by a collective dimension which affects the enjoyment of that right by virtue of the violation of other fundamental rights. As a woman, I can fully enjoy my CH only as much as the collective cultural rights do not infringe other human rights to which I am entitled. This process requires a systematic engagement in a “cultural negotiation”: “the positive cultural elements are emphasized, while the oppressive elements in culture-based discourses are demystified”.<sup>20</sup> This is a way through which it is possible to challenge the discriminatory and oppressive aspects of a local culture.<sup>21</sup>

Engle Merry and Levitt suggested a process of ‘Vernacularization’, as a way to create human rights by civil society groups or by the *community itself*, in order to “establish an aura of universalism at the same time as

20 *Special Rapporteur on Violence against Women, its Causes and Consequences* (2007), para. 52.

21 *Special Rapporteur on Violence against Women, its Causes and Consequences* (2007), para. 53.

they are tailored to fit into existing political and moral worlds” (2011, 100).

An example is provided in the study of the two feminists: in India, a street play called ‘Bandar Khel’ (Monkey show) has been written using songs and performance to address dowry violence and murder (92). Take another example: in the north of Mexico, local women’s movements have used the language of human rights to promote symbolic actions against the culture of impunity and violence against women.

The essential element here is the participation of the community both in the dialogue with international bodies and in the promotion of a change, along with the empowerment of women as actors.

Women can play an active role in this field and should be allowed to contribute to the development and implementation of national plans aimed at the promotion of gender equality. As posited by the *Special Rapporteur in the Field of Cultural Rights* Farida Shaheed, in 2014:

a key challenge is how to ensure women’s equal participation in discussions and decision-making on these issues and enable them to create new cultural meanings and practices. (UNESCO 2014, 5)

This is a way to challenge the gendered development of international human rights law, which has rested and reinforced “a distinction between public and private worlds” (Charlesworth, Chinkin 2000, 232). However, it is not enough to have access to a world that was shaped by men: it is necessary that the decision-making structures also change in order to guarantee substantive equality (Otto 1999, 115).

## **6 Women in the Promotion of Culture as Collective Memory**

We have seen gender equality as an element which must be incorporated in CH as a way to combat discrimination against women and to ensure their participation to cultural changes. Nonetheless, it seems that women can play a further role in the protection of CH, as bearers of the identity and the culture of a people. The example is taken from recent events. Women belonging to the Yazidi and Christian minorities in Syria, victims of sexual exploitation perpetrated by the ISIS, can contribute to preserve the CH belonging to their lands and their communities. For example, with regard to the Christian minority in those territories, a woman, Sister Diana Momeka, spoke in May 2015 before the US Foreign Affairs Committee and witnessed the existence of a culture in danger:

The loss of the Christian Community from the Plain of Nineveh has



placed the whole region on the edge of a terrible catastrophe.<sup>22</sup>

In their hands, there is the memory of what that land used to be. Turning to the Yazidi minority, the recent report of the UN Commission of Inquiry for Syria showed that the ISIS fighters “swiftly separated men and boys who had reached puberty from women and other children”, and that, following this separation, ISIS fighters “summarily executed men and older boys who refused to convert to Islam”.<sup>23</sup> The Commission concluded that these acts amount to genocide and recommended that the case is referred to the ICC as a matter of urgency. While thousands of men and boys have been immediately sent to death, women and girls have been facing ‘brutal’ forms of sexual violence.<sup>24</sup> They have been sold, such as chattel, to combatants, abused, tortured, and deprived of any freedom. In the future, once the conflict is over, it is in the hands and the memory of these women that the CH of the Yazidi minority has a chance to survive. The role of the UN Commission of Inquiry is and will be of utmost importance to collect witnesses and to preserve the memory of the survivors.<sup>25</sup>

In this way, culture acquires a new value, as composed of

sets of collective memories, a concept which acknowledges the aspect of culture that consists of shared ideas and beliefs of history ancestry and of life sustained in a community of individuals’ memory, lived, signified, expressed and enacted, which gives heritage and cultural practices their meaning. (Chow 2014, 614)<sup>26</sup>

In our example, the collective memory is the one of Yazidi and Christian women and girls, upon which the future of the culture of these minorities relies.

22 Sister Diana Momeka, Dominican Sisters of St. Catherine of Siena, Mosul, Iraq House Foreign Affairs Committee, May 13, 2015, *Ancient Communities Under Attack: ISIS’s War on Religious Minorities*

23 Human Rights Co, Report of the Commission of Inquiry for Syria, ‘They came to destroy’: *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras. 32-33 (De Vido forthcoming).

24 A/HRC/32/CRP.2, para. 64.

25 On collective memory in case of rape during armed conflict see De Vido 2016.

26 A gender-based approach of the notion of collective memory, related to cases of rape is the one proposed in De Vido forthcoming.

## 7 Conclusions

Despite being underexplored, the relationship between gender and CH is of extreme importance, since it

contextualizes the practices and activities of women by analysing the social relationships that women establish and the power system of the society in which they live. (UNESCO 2014, 40)

Reading this relationship from a gender perspective means first to emphasize the contribution given by women in the preservation of traditional practices and heritage sites. Preservation is the specific action taken to prolong the useful life of individual objects or entire collections within a particular institution. We have several examples, such as the WRDS at Ibadan in Nigeria, which is a centre for research, training, and dissemination of information, established in 1986 at the university of the Nigerian city (Falola, Aderinto 2010, 85). This centre demonstrates that CH also, and predominantly, has an educational role, which can be developed in universities. Another case is the Vietnamese *Women's Museum* in Hanoi, which aims to improve the knowledge of the historical and CH of Vietnamese women. It is a

gender museum with functions of research, preservation, and display of tangible and intangible historical and cultural heritages of Vietnamese women and Vietnam Women's Union.<sup>27</sup>

Secondly, gender should be *mainstreamed* in the protection of CH, which means that women should be actors rather than vulnerable subjects in need of protection, in order to empower women and gradually combat discrimination against them. "The promotion of cultural diversity must be tempered with a gender-based awareness", as pointed out by an author (UNESCO 2014, 54). An interesting example of mainstreaming is the *Waanyi Women's history project*, an oral history project established and led by Aboriginal women in Australia. The purpose is to recognize heritage relevant for them and to address the biases operating in heritage identification and management. This is a strategy to make women's voices heard in the negotiations about the future of their heritage (UNESCO 2015, 10). In other words:

Understanding the relationship between gender and intangible cultural heritage is significant for effective safeguarding in two ways: it can open

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27 From the mission on the museum's website <http://www.womenmuseum.org.vn/>.

new avenues to safeguarding and can strengthen steps towards gender equality. Mainstreaming gender in safeguarding is therefore not only an opportunity, but an ethical imperative. (UNESCO 2015, 10)

In this process, the participation of local communities must be ensured with the purpose of preventing any forms of imposition. As we tried to show, gender and CH are mutually reinforcing, and they should be read together in order to protect women and the heritage they are the bearers.

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# **The Right of Access to and Enjoyment of Cultural Heritage**

## **A Link Between the Protection of Cultural Heritage and the Exercise of the Right to Participate in Cultural Life**

Michele D'Addetta

(Centre universitaire du droit de l'art, Université de Genève, Suisse)

**Abstract** The present paper argues that the right of access to and enjoyment of CH is an emerging right under international law and can play a pivotal role in linking the protection of human rights, in particular the one to take part in cultural life, to the safeguard of CH. It will analyze the provisions of the international legal instruments which make reference to the concepts of access to and enjoyment of CH, the practice of the international monitoring bodies and human right courts which have played an important role in the definition of the right of access to and enjoyment of CH, and it will briefly examine the practice of some States.

**Summary** 1 Introduction. – 2 The Protection of CH in Relation to Human Rights. – 3 The Right to Participate in Cultural Life in Relation to CH. – 4 The Right of Access to and Enjoyment of CH. – 5 The Practice of the International Human Rights Courts and Treaty Bodies with Regard to the Right of Access to and Enjoyment of CH and Some Examples of State Practice. – 6 Individual Communications to the CESCR as a Way to Monitor the Implementation of the Right to Take Part in Cultural Life. – 7 Conclusions.

**Keywords** Access. Cultural heritage. Right to participate in cultural life.

### **1 Introduction**

The present work aims to show that the right of access to and enjoyment of CH is an emerging right under international law and can play a pivotal role in linking the protection of human rights, in particular the one to take part in cultural life, to the safeguard of CH.

The paper will provide, first of all, an analysis of the provisions of the international legal instruments which make reference to the concepts of access to and enjoyment of CH, such as the CoE Faro Convention and the ICESCR, read through the interpretation given by the CESCR General

Comment no. 21 on the right of everyone to take part in cultural life.<sup>1</sup> It will then examine the practice of the international monitoring bodies, such as the UN HRCO, and human right courts, especially the ICtHR, which have played an important role in the definition of the right of access to and enjoyment of CH, in particular for what concerns indigenous peoples. Furthermore, some examples of State practice related to the protection of the right of access to and enjoyment of CH, which demonstrate that such right has been increasingly recognized by domestic legal systems, will be briefly illustrated.

In the last paragraph, it will be explored how the individual communications system under the 2009 Optional Protocol to the ICESCR represents a way to monitor the conduct of States in case of alleged violation of the right of access to and enjoyment of CH as a component of the right to participate in cultural life.

## 2 The Protection of CH in Relation to Human Rights

Throughout the past six decades, a well-developed body of international law instruments has been set up in order to regulate the protection of CH. These instruments, in most of the cases developed within the framework of UNESCO, cover an extensive range of aspects related to heritage, including its protection during armed conflicts, the prohibition of the illicit circulation of cultural objects, the protection of underwater and ICH.<sup>2</sup>

Yet, some international legal instruments have only recently incorporated a human rights approach to CH. In this regard, the 2003 UNESCO Declaration states that:

CH is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights.<sup>3</sup>

Additionally, the Declaration emphasizes that other norms linked to human rights can be violated in the case of intentional destruction of CH.<sup>4</sup>

1 UN CESCR, General comment no. 21, *Right of everyone to take part in cultural life*. Art. 15(1)(a) of the CESCR, 21 December 2009, E/C.12/GC/21.

2 See, *inter alia*, 1954 Hague Convention, and its two Protocols; 1970 UNESCO Convention; 1972 UNESCO Convention; 2001 UNESCO Convention; 2003 UNESCO Convention.

3 Recital 4 of the Preamble.

4 In applying this Declaration, "States recognize the need to respect international rules related to the criminalization of gross violations of human rights and international hu-



This statement underlines the acknowledgement of the existence of a link between protection of CH and human rights.

While other international legal instruments, such as the 1954 Hague Convention or the 1972 UNESCO Convention, insisted on the importance of CH for mankind or humanity, the 2003 UNESCO Convention has adopted a more community-based concept of heritage. For the Convention:

[t]he ICH means 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 CH.<sup>5</sup>

The 2003 UNESCO Convention has thus included in the definition of heritage valid within its purposes a description that validates the value that CH has for communities, groups and even individuals. This is, indeed, inextricably linked to the concept of ICH, which revolves around the importance of the process of creation and transmission from generation to generation and is intimately related to its so-called ‘source communities’.

The same article of the Convention underlines another aspect of the relationship between intangible CH and human rights. The Convention considers and thus recognizes protection solely to such intangible heritage that is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals. This provision is fundamental, since it sets forth possible limitations to the enjoyment of CH.<sup>6</sup>

However, the legal instrument that more extensively recognizes a relation between CH and human rights is the Faro Convention. The Convention underlines the need to put people and human values at the centre of an enlarged and cross-disciplinary concept of CH.<sup>7</sup> In art. 4 the Convention states that the Parties to the Convention agree to:

recognise that rights relating to CH are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights.

manitarian law, in particular, when intentional destruction of cultural heritage is linked to those violations” (art. 9).

5 Art. 2(1) of the Convention.

6 Other human rights issues related to CH include, among others, the extent to which individuals and communities participate in the identification, selection, interpretation, preservation and safeguarding, the possible limitations to the right and how to resolve conflict and competing interests over CH.

7 Para. 2 of the Preamble of the Convention.

Interestingly, the Convention, instead of setting out a unique and autonomous right, identifies a plurality of rights relating to CH. These rights are, among others, those to benefit from CH and to contribute towards its enrichment,<sup>8</sup> to participate in the process of identification, study, interpretation, protection, conservation and presentation of the CH<sup>9</sup> and to have access to it.<sup>10</sup>

Analysing this process of cross-fertilization between human rights and international CH law, the UN Independent Expert in the Field of Cultural Rights,<sup>11</sup> Farida Shaheed, stated that:

a shift has taken place from the preservation/safeguard of cultural heritage as such, based on its outstanding value for humanity, to the protection of cultural heritage as being of crucial value for individuals and communities in relation to their cultural identity.<sup>12</sup>

As a result of these evolutions, the various intersections between CH and human rights have been the object of extensive analyses by many legal scholars (Vrdoljak 2013; Blake 2011).

One of the main issues that emerge from these investigations is whether an autonomous right to CH could be considered as existing under international law. The answer to this question is central to providing content for cultural rights, in particular for the right to take part in cultural life, as enshrined by the ICESCR at its art. 15(1)(a) and by the UDHR at its art. 27(1).<sup>13</sup> In addition, the recognition of the existence of such a right could entail the possibility to monitor the conduct of State Parties in relation to the implementation of this right through the mechanisms offered by international law, such as, as it will be further explained, the 2009 Optional Protocol to the ICESCR.

At international level, there is a tendency towards recognizing the im-

8 Art. 4(a).

9 Art. 12(a)-(b).

10 Arts. 12 (d) and 14. See, on this point, Zagato 2015.

11 The HRco, through resolution 10/23, decided to establish, for a period of three years, a new special procedure titled "independent expert in the field of cultural rights". The mandate was extended in 2012 for a period of three years, conferring to the current mandate holder the status of Special Rapporteur in the field of cultural rights (resolution 19/6). This mandate was further extended in 2015 for a period of three years through resolution 28/9 of 10 April.

12 'Report on the Right of Access to CH, UN Doc. A/HRC/17/38.

13 The UDHR mentions the right to participate in cultural life. However, as the General Comment underlines in para. 14, the terms 'to participate' and 'to take part' have the same meaning and are used interchangeably in other international and regional instruments.

portance of the right(s) to CH. One of the most significant steps in this regard was the adoption of a binding legal instrument, such as the above-mentioned Faro Convention, which explicitly recognizes certain 'rights' related to CH and to 'heritage communities'.

However, despite the fact that a regional treaty identifies the existence of such rights, their universal value remains questionable. In those States which ratified the Faro Convention some rights to CH can be considered as existing, though not enforceable,<sup>14</sup> while this cannot be assumed with regards to other States.

None of the UNESCO Conventions on CH contain a provision which protects the right to CH *per se*. Furthermore, the only provisions which have reached the status of customary law are those which prohibit the intentional destruction of heritage - if not in case of imperative military necessity<sup>15</sup> - or other specific acts taking place during armed conflict; and, for some authors, those protecting the cultural rights of specific groups, in particular of indigenous peoples (Milligan 2008).<sup>16</sup> However, these provisions do not cover all the other aspects associated to the rights to CH, such as, for instance, that of participation in the process of study, interpretation, protection, conservation and presentation of the CH or that of access to heritage of society at large.

### 3 The Right to Participate in Cultural Life in Relation to CH

If a norm which explicitly recognizes a right to CH as such cannot be identified, as underlined by the Independent Expert,<sup>17</sup> one cannot disregard the interpretation of art. 15(1)(a) of the ICESCR provided by the CESCR General Comment no. 21 on the right of everyone to take part in cultural life.<sup>18</sup>

Art. 15(1)(a) of the ICESCR states that the States Parties recognize the right of everyone to take part in cultural life. Para. 16 of the General Comment suggests that there are some necessary conditions for the full

<sup>14</sup> See art. 6(c) of the Faro Convention.

<sup>15</sup> For the definition of imperative military necessity see art. 4(2) of the 1954 Hague Convention and art. 6 of its Second Protocol.

<sup>16</sup> Some authors have argued that States have the obligation to protect CH also in time of peace: Francioni, Lenzerini 2003. For an overview on this point see Francioni 2011. Some authors have investigated the possibility that other norms have reached the status of customary international law; see, on this point, Zagato 2015.

<sup>17</sup> Para. 21 of the Report.

<sup>18</sup> UN CESCR, General comment no. 21, *Right of everyone to take part in cultural life*. Art. 15(1)(a) of the Covenant on Economic, Social and Cultural Rights, 21 December 2009, E/C.12/GC/21.

realization of this right on the basis of equality and non-discrimination. The first of these conditions is that of the 'availability' of cultural goods and services, including elements of both tangible and intangible CH.<sup>19</sup>

The Comment specifies another aspect related to the right of everyone to take part in cultural life – as well as to the other rights enshrined in the ICESCR – which is the set of obligations States parties need to comply with. These obligations are:

- a. the obligation to 'respect': it requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. It includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group;
- b. the obligation to 'protect': it requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life;
- c. the obligation to 'fulfill': it requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in art. 15(1)(a), of the Covenant.<sup>20</sup>

The Comment underlines how, in many instances, the obligations to respect and to protect freedoms, CH and diversity are interconnected.<sup>21</sup> Consequently, the obligation to protect is to be understood as requiring States to take measures to prevent third parties from interfering in the exercise of rights. In addition, it is reaffirmed that States parties are obliged to respect and protect CH in all its forms – in times of war and peace, and natural disasters.

The General Comment continues stating that CH must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such ob-

<sup>19</sup> Availability is defined as: "the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces essential to cultural interaction, such as parks, squares, avenues and streets; nature's gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities."

<sup>20</sup> See General Comments no. 13 (1990), paras. 46 and 47, no. 14 (2000), para. 33, no. 17 (2005), para. 28 and no. 18 (2005), para. 22. See also the Limburg Principles on the Implementation of the ICESCR, para. 6.

<sup>21</sup> Para. 50 of the General Comment no. 21.

ligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others.<sup>22</sup>

As suggested by these considerations of the Committee, States' obligations related to the right to take part in cultural life imply the respect and protection of CH in all its forms. In other words, although the General Comment does not explicitly mention a right to CH, it identifies the preservation and transmission of such heritage as a *conditio sine qua non* for exercising the right to take part in cultural life.

#### 4 The Right of Access to and Enjoyment of CH

The Independent Expert in the field of cultural rights, nominated in accordance with HRCo Resolution 10/23, drafted the 'Report on access to and enjoyment of cultural heritage' in 2011.

From the very outset of the Report, it is specified that considering the access to and enjoyment of CH as a human right is a necessary and complementary approach to the preservation/safeguard of CH, since it obliges to take into account the rights of individuals and communities in relation to such object or manifestation and, in particular, to connect CH with its source of production.

The Report of the Independent Expert clearly states that the right of access to and enjoyment of CH forms part of international human rights law, finding its legal basis in the right to take part in cultural life.<sup>23</sup> Other legal bases of this right are identified with the right of members of minorities to enjoy their own culture and with the right of indigenous peoples to self-determination and to maintain, control, protect and develop CH. However, the latter refer only to specific communities, such as minority groups and indigenous peoples.

It must be borne in mind, nevertheless, that the right of access to and enjoyment of CH is set forth by a Report, which is not, in itself, a primary legal source. On the other hand, General Comment no. 21- an authoritative source of interpretation of a binding legal instrument, such as the ICESCR - considers the preservation and transmission of heritage necessary in relation to the right to take part in cultural life. In this framework, the Report of the Independent Expert helps define and understand the relation between the protection of CH and the right to participate in cultural life. In particular, it shows that the concepts of access and enjoyment are fundamental in order to understand the right to participate in cultural life in relation to CH.

22 UNESCO Declaration on Cultural Diversity, art. 7.

23 Para. 78 of the Report.

According to the Independent Expert, access to and enjoyment of CH are interdependent concepts.<sup>24</sup> They convey an ability to, *inter alia*, “know, understand, enter, visit, make use of, maintain, exchange and develop CH, as well as to benefit from the CH and creations of others”, without political, religious, economic or physical encumbrances. Individuals and communities cannot be seen as mere beneficiaries or users of CH. The Independent Expert stresses that effective participation in decision-making processes relating to CH is a key element of these concepts.<sup>25</sup>

Previously to the drafting of the Report, General Comment No. 21 had already elaborated on the concept of access, as a component of the right to take part in cultural life.<sup>26</sup> More specifically, it stated that:

Access covers in particular the right of everyone – alone, in association with others, or as a community – to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity. Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the CH and the creation of other individuals and communities.<sup>27</sup>

The concept of access has been developed in detail by the CESCR.<sup>28</sup> Applied to CH, the following must be ensured: a) ‘physical access’ to CH, which may be complemented by access through information technologies; (b) ‘economic access’, which means that access should be affordable to all; (c) ‘information access’, which refers to the right to seek, receive and impart information on CH, without borders; and d) ‘access to decision making and monitoring procedures’, including administrative and judicial procedures and remedies.

According to the Report of the Independent Expert, all - including in-

24 Para. 58 of the Report.

25 This approach is reflected in the UNESCO Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It (1976), which defines, access to culture as “concrete opportunities available to everyone, in particular through the creation of appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding, and for enjoying cultural values and cultural property”.

26 The other two components are participation in and contribution to cultural life.

27 Para. 51 of the Report.

28 Access is part of the so-called 4A scheme (availability, accessibility, acceptability and adaptability) which is systematically used by the CESCR in its General Comments.

dividuals and groups, the majority and minorities, citizens and migrants – have the right to access and enjoy CH. As stressed by General comment no. 21, the right to take part in cultural life may be exercised alone, in association with others, or as a community. Therefore, according to these sources, the right of access to and enjoyment of CH must be considered both as an individual and a collective human right.

The Independent Expert underlines that varying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and groups according to their relationship with specific CHs. Distinctions should be made between: a) originators or ‘source communities’, communities that consider themselves as the custodians/owners of a specific CH, people who are keeping CH alive and/or have taken responsibility for it; b) individuals and communities, including local communities, who consider the CH in question an integral part of the life of the community, but may not be actively involved in its maintenance; c) scientists and artists; and d) the general public accessing the CH of others.

This distinction has important implications for States, notably when establishing consultation and participation procedures, which should ensure, in particular, the active involvement of source and local communities.<sup>29</sup>

It is important to note that some references to the concepts of access to and enjoyment of CH can also be found in several international instruments. The abovementioned Faro Convention explicitly recognizes the right of access to CH and links it to democratic participation.<sup>30</sup> The 2006 Charter for African Cultural Renaissance, at its Article 15, calls on States to “create an enabling environment to enhance the access and participation of all in culture”. Furthermore, the 2000 ASEAN Declaration on CH, apart from referring to the human rights dimension of cultural heritage, mentions the need to ensure that traditional communities have access, protection and rights of ownership to their own CH.<sup>31</sup> Both of them are re-

29 Para. 62 of the Report.

30 According to art. 12 of the Convention, the Parties undertake to:

“a) encourage everyone to participate in:

- the process of identification, study, interpretation, protection, conservation and presentation of the CH;
- public reflection and debate on the opportunities and challenges which the CH represents;

b) take into consideration the value attached by each heritage community to the CH with which it identifies;

c) recognise the role of voluntary organisations both as partners in activities and as constructive critics of CH policies;

d) take steps to improve access to the heritage, especially among young people and the disadvantaged, in order to raise awareness about its value, the need to maintain and preserve it, and the benefits which may be derived from it”.

31 Art. 9 of the Declaration.

gional instruments with non-binding force. However, they demonstrate the increasing importance of the concepts of access to and enjoyment of CH.

## 5 The Practice of the International Human Rights Courts and Treaty Bodies with Regard to the Right of Access to and Enjoyment of CH and Some Examples of State Practice

Some references to the concepts of access to and enjoyment of CH can also be found in the practice of the international treaty bodies and human rights courts. A consistent body of jurisprudence, especially of the IACTHR regards indigenous peoples and their particular relation to CH, which is strictly linked to their ancestral lands. Other judgments, such as those of the ECtHR which will be presented further below, have touched upon issues connected to the right of access to and enjoyment of CH.

One of the most ground-breaking case in relation to indigenous peoples and their culture has been the UN HRC *Lubicon Lake Band v. Canada*.<sup>32</sup>

In this occasion, the HRC stated that:

historical inequities[...] and certain more recent developments[...] threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 [of the ICCPR] so long as they continue.<sup>33</sup>

While, like in this case, the rights of indigenous peoples have sometimes been protected through the rights of minorities, the IACTHR has developed a body of case-law about indigenous people's CH, which includes elements that can be related to the right of access to and enjoyment of CH.

In general, the Court has shown a tendency to address indigenous people's cultural rights by taking into account the vital link between indigenous communities and their ancestral lands, as well as the recognition of their right of collective property on those territories.<sup>34</sup>

The inextricable relation between access to ancestral land and to CH in its broadest sense is clearly dealt with by the *Awes Tingni* case.

Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis

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32 Communication no. 167/1984, 26 March 1990.

33 Para. 33 of the Communication.

34 In particular, the Court interpreted art. 21 of the American Convention - which protects right to property - in a fairly broad sense, affirming that this provision "protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property".



of their cultures, their spiritual life, their integrity, and their economic survival.<sup>35</sup>

In other words, guaranteeing access to the ancestral territories, due to the link between CH and land, is necessary to guarantee, also, indigenous peoples' access to and enjoyment of CH.

In the *Yakye Axa Community*, the Court concluded that any denial of the enjoyment or exercise of the territorial rights of indigenous peoples is detrimental to values that are very representative for the members of said peoples, who are at risk of losing or suffering irreparable damage to their cultural identity and life and to the CH to be passed on to future generations.<sup>36</sup>

The *Saramaka People v. Suriname* and *Kichwa Indigenous People of Sarayaku v. Ecuador* cases defined the concept of effective participation by the members of indigenous communities in decision-making process, which should be considered one of the most fundamental aspects concerning access and enjoyment of CH.<sup>37</sup>

It shall be borne in mind that, in all the cases presented above, the concepts of access to and enjoyment of CH have been investigated in relation to indigenous peoples, representing a particular group of certain societies. Therefore, if the definition of such concepts has been pivotal for the recognition of the rights of indigenous peoples to their CH- and for the development of a human rights perspective on CH in general - this is cannot be entirely applicable to other situations.

Despite of the exclusion of cultural rights from the ECHR, the ECtHR has dealt with the topic of the rights to CH or, more specifically, with issues related to the right of access to and enjoyment of CH.

Unlike the IACtHR, in cases concerning indigenous peoples, the ECtHR has failed to guarantee the basic rights of access to and enjoyment of

35 *Awás Tingni Indigenous Community of Mayagna v. the State of Nicaragua*, Inter-Am Court HR, Series C, No. 79, 2001, Para. 149.

36 *Yakye Axa v. Paraguay*, Int-Am Ct. HR, Series C, No. 125, 2005, Para. 135.

37 *Saramaka People v. Suriname*, Int-Am Ct HR 2007. Series C, No. 172, Para. 187; *Kichwa Indigenous People of Sarayaku v. Ecuador*, Int-Am Ct HR 2012, Series C, No. 245, Paras. 165-6. It is interesting to note that the jurisprudence of the IACtHR on this point has been recalled by the ACHPR, for instance in the *Endorois case (Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Case No. 276/2003)*: "human rights went beyond the duty not to destroy or weaken minority groups, but required respect for, and protection of, "their religious and CH essential to their group identity, including buildings and sites such as libraries, churches, mosques, temples and synagogues". The Commission recalled one of its statements about art. 17(2). This provision was held to require governments: "to take measures aimed at the conservation, development and diffusion of culture, such as promoting cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions; promoting awareness and enjoyment of CH of national ethnic groups and minorities and of indigenous sectors of the population" (paras. 140-2).

CH.<sup>38</sup> The Court has, instead, embraced an economic approach to ancestral lands, without taking into account the particular value which these territories have for indigenous peoples, thus failing in guaranteeing, also, their basic cultural rights (Francioni 2011, 12).

However, the Court has dealt with issues related to access to and enjoyment of CH also in other occasions. For instance, the judgment *Akdaş v. Turkey*<sup>39</sup> concerned the sentencing of a publisher to a heavy fine for the publication in Turkish of an erotic novel by Guillaume Apollinaire and seizure of all the copies of the book. The Court enshrined the concept of a European literary heritage and set out, in this regard, various criteria for the assessment of the value of a literary work.<sup>40</sup> What is interesting from the perspective of the right of access to CH is that the Court concluded that the public of a given language – in this case Turkish – could not be prevented from having access to a work that is part of such a heritage.<sup>41</sup>

In the case of *Beyeler v. Italy*<sup>42</sup> the ECtHR recognized that, in relation to works of art lawfully on its territory and belonging to the CH of all nations, it is legitimate for a State to take measures designed to facilitate wide public access to them, in the general interest of universal culture.<sup>43</sup> The Court referred to the concept of ‘universal culture’ and ‘CH of all nations’ and linked it to the right of the public at large to have access to it.

In *Debelianovi v. Bulgaria*<sup>44</sup> the applicants had obtained a court order for the return of a house that had belonged to their father and had been turned into a museum in 1956 after expropriation. The National Assembly introduced a moratorium on restitution laws with regard to properties classified as national cultural monuments. Although the Court found a violation of the right to property, on the ground that the situation had lasted for more than 12 years and the applicants had obtained no compensation, it held that the aim of the moratorium was to ensure the preservation of national heritage sites. The Court referred to the Faro Convention and the importance of access to CH.

Besides, with regard to States practice, it should be underlined that the

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38 See, inter alia, *Hingitq 53 and Others v. Denmark* (No. 18584/04, ECtHR 2006-I).

39 No. 41056/04, 16 February 2010.

40 These elements are: the author’s international reputation; the date of the first publication; a large number of countries and languages in which publication had taken place.

41 European Court of Human Rights, Research Division, Cultural Rights in the case law of the European Court of Human Rights, available at: [http://www.echr.coe.int/Documents/Research\\_report\\_cultural\\_rights\\_ENG.pdf](http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf), 8. (2017-12-15).

42 [GC], No. 33202/96, ECtHR 2000-I.

43 Para. 113 of the Judgment.

44 No. 61951/00, 29 March 2007.

right of access to and enjoyment of CH have been increasingly recognized by several domestic legal systems.

Apart from the fact that many national constitutions set forth the obligation for the State to protect and promote CH, some legal systems guarantee the involvement of individuals and communities, groups and individuals in the process of identification and classification of CH. A number of States go even further, providing the participation of the public at large in CH identification processes.<sup>45</sup>

Another important aspect – which will require further analysis – is that of remedies in case of alleged violations of the right of access to and enjoyment of CH. Just to name a few, as underlined by the Independent Expert, in Burkina Faso, citizens may commence proceedings or petition against acts endangering public heritage.<sup>46</sup> Complaints in case of denial of access to CH may be lodged before the Ministry of Culture in Spain, and the courts in Mauritius.

Complaints can also be lodged with the Ombudsman of Portugal in case of lack of participation of concerned communities in the determination of protected cultural landscapes. In Canada, indigenous peoples may also seek redress.<sup>47</sup>

## **6 Individual Communications to the CESCR as a Way to Monitor the Implementation of the Right to Take Part in Cultural Life**

With regard to enforcement measures, it is interesting to focus on the system of individual communications established by the Optional Protocol to the ICESCR. This instrument, if ratified by a State, allows individuals to submit to the CESCR communications in cases of alleged violations of economic, social and cultural rights recognized by the Covenant. It is, indeed, a monitoring mechanism that plays a function of control and that does not lead to any coercive measure in the event that the state is held liable for infringement, in line with the tradition of the treaty bodies of the UN. However, this instrument permits to monitor the conduct of the State Parties in relation, among others, to the right to take part in cultural life.

If a communication regarding the violation of the right to participate in cultural life would ever be submitted to the Committee, the latter should take into account also the obligations of the States related to the right of access to and enjoyment of CH, following the indications contained in General Comment no. 21 and in the Report of the Independent Expert.

<sup>45</sup> Para. 52 of the Report.

<sup>46</sup> Para. 57 of the Report.

<sup>47</sup> Para. 58 of the Report.

In this way, the conduct of the States would be monitored also in those cases in which the exercise of the right of access to and enjoyment of CH is deemed to have been denied.

It is not the purpose of the present work to present the different aspects related to the admissibility and the consideration of an individual communication by the Committee in case of alleged violation of the right of access to and enjoyment of CH. Important aspects concern, for instance, the exhaustion of domestic remedies<sup>48</sup> or the definition of the concept of *clear disadvantage* in relation to the right of access to and enjoyment of CH.<sup>49</sup>

However, the profile that appears to be more problematic for appreciation by the Committee is that of the examination of the conduct of a State. In fact, the Committee would have to consider, in many cases, the lack of intervention by a State, whose appreciation is certainly not easy.<sup>50</sup>

## 7 Conclusions

The concepts of access to and enjoyment of CH, in all the aspects identified by the Report of the Independent Expert and by General Comment no. 21, affirm their significance in the contemporary legal systems. This is shown, as seen above, not only by international treaties, but also by the judgments of the international courts and, to a certain extent, by States practice.

Indeed, these concepts represent fundamental components of the right to take part in cultural life, in the view of guaranteeing the respect the human rights of individuals and communities for which a certain CH is valuable. The General Comment and the Report of the Independent Expert represent authoritative sources of interpretation of these concepts.

The definition of the content of the right to take part in cultural life is of particular importance after the entry into force of the Optional Protocol to the ICESCR in 2013, which allows to file individual communications to the Committee in case of alleged violations of economic, social and cultural rights. In this regard, there are some aspects of the individual communi-

48 Art. 3 of the Protocol.

49 Art. 4 of the Protocol.

50 In a statement to its thirty-eighth session, the Committee listed several criteria that it will apply when evaluating whether steps that states have taken to progressively achieve full implementation of rights contained in the ICESCR are reasonable. These include, among others: "a. The extent to which the measures taken were deliberate, concrete, and targeted towards the fulfilment of economic, social, and cultural rights; [...] c. Whether the state party's decision (not) to allocate available resources was in accordance with international human rights standards. Committee on Economic, Social and Cultural Rights, 'Statement - An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol To The Covenant'" (UN doc. E/C.12/2007/1, 10 May 2007).

cations filed in case of violation of the right of access to and enjoyment of CH which will be interesting to explore, in particular how the CESCR will determine whether a measure affecting CH adopted by a State could constitute a violation of art. 15 of the Covenant.

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# **Sephardic Jewish Heritage Across the Mediterranean**

## Migration, Memory and New Diasporas

Dario Miccoli

(Università Ca' Foscari Venezia, Italia)

**Abstract** The chapter discusses processes of heritage-making by Jews of Algerian and Egyptian descent that migrated to France and Israel respectively, focusing on migrant associations and the activities that surround them. By looking at how these two diasporas frame a post-migratory heritage, I explain that despite the differences, both point to the existence of a process of postcolonial rediasporisation that puts together Jewishness, the Arab past, Europe and Israel. Moreover, this process brings about the formation of new Sephardic diasporas that cut across the two shores of the Mediterranean, in which selected memories of the past are memorialised to confront challenges of the present.

**Summary** 1 Introduction. – 2 An (In)tangible Heritage? Egyptian Jewish Associations in Israel. – 3 The Jews of Algeria and the 'Difficult Heritage' of Postcolonial France. – 4 Heritage as Borderland.

**Keywords** Sephardic Jews. Memory. Mediterranean.

## **1 Introduction**

Following the birth of the State of Israel (1948) and the outbreak of the Arab-Israeli conflict – as well as the process of regional restructuring in the aftermath of decolonisation and the emergence of more radical forms of Arab nationalism – most North African and Middle Eastern Jews left or were expelled from their countries of birth and migrated to Israel, Europe, the US, Latin America and elsewhere (Simon, Laskier, Reguer 2003). In many cases, these men and women had been living in the Middle East and the Maghreb since ancient times, making Judaism an essential component of the region's heritage. However, especially since the advent of colonialism many embarked on a process of cultural rapprochement with Europe and the European Jews (Chouraqui 1965; Rodrigue 1990, 2003; Bar-Chen 2003). This could be seen in aspects of everyday life such as clothing and material culture, but also in new approaches to religiosity and schooling. By the time the Jewish mass-migration began, their heritage then had become a multifaceted one in which local habits and languages blended with

European influences and persistent Jewish traditions.<sup>1</sup> Such heritage was to face still other challenges when the Jews of the Middle East and North Africa resettled in the Western world and in Israel and were confronted with new national contexts. While this initially meant the silencing or the relative oblivion of the pre-migratory identity, over the last three decades a Sephardic identity<sup>2</sup> revival started to occur (cf. Ben-Ur 2009; Trevisan Semi, Miccoli, Parfitt 2013; Linhard 2014; Miccoli 2016, 41-49), showing the vitality of these diasporas and the willingness to transmit heritage from one generation to the other.

As regards the Jews of Algeria and Egypt, whereas in the '60s almost all of the former, around 140,000 people, resettled in France (Allouche-Benayoun 1994; Sussman 2002), the Jews of Egypt dispersed over several countries: from France (Baussant 2015) and Italy to Brazil, the US and last but not least Israel - where the largest post-migratory Egyptian Jewish community came about (Miccoli 2015, 167-176; also: Beinin 1998, 70-72). These trajectories depended on the historical vicissitudes that the two communities had gone through since the nineteenth century. The Jews of Algeria, on the one hand, had lived in that country for centuries but in 1870, forty years after the beginning of the French colonial rule, were naturalised French with the so-called Crémieux decree (Schreier 2010; Allouche-Benayoun, Dermenjian 2015; Charbit 2015). This provoked the distancing of the Jews from the Muslim majority, which was further accelerated by a process of cultural and social 'Frenchification'. Even though the Jews never were completely estranged from the Algerian Muslim context and in the '50s and '60s some even got involved in the anti-colonial struggle (Le Foll Luciani 2015), the Algerian War (1954-1962) determined their departure for France together with the French settlers, the *pièds-noirs* (Stora 1993; Jordi, Temime 1996). The Jews of Egypt, on the other hand, in the '50s were around 80,000 and for the most part descended from people migrated for economic reasons, in the second half of the nineteenth century and the beginning of the twentieth, from the Eastern Mediterranean, Southern Europe and the Balkans (Landau 1969; Krämer 1989). A largely Francophone and middle-class community (Beinin 1998; Miccoli 2015), they did not experience historical ruptures as traumatic as the Algerian War or anti-Semitic measures similar to those enforced in French Algeria during the Vichy years (1940-1944). Nonetheless, the Arab-Israeli conflict, the Nasser Revolution (1952) and the Suez War (1956)

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1 This reflects a wider process of post-Ottoman modernisation that invested North African and Middle Eastern societies as a whole (Watenpaugh 2006) and not just the Jews.

2 For reasons of brevity and as customary in the literature, I utilise the term Sephardic - which in a narrower definition indicates only the Jews expelled from the Iberian Peninsula in the sixteenth century and their descendants - to refer to the Jews of the Middle East and North Africa as a whole.



increasingly put them at the margins of the national arena. Their juridical and political status was made further problematic by the fact that many did not have Egyptian citizenship but were either stateless or protégés of European powers (Laskier 1992; Shamir 1986).

Keeping this in mind, the chapter discusses processes of heritage-making by Jews of Algerian and Egyptian descent that migrated to France and Israel respectively, focusing on migrant associations and the activities that surround them. By looking at how these diasporas frame a post-migratory heritage, I explain that despite the differences, both cases point to the existence of a shared process of postcolonial Jewish ‘rediasporisation’ (Valensi, Wachtel 1991; Bordes-Benayoun 2002; Linhard 2014) that puts together Jewishness, the Arab past, Europe and Israel. This brings about the formation of new post-migratory Sephardic diasporas that cut across the two shores of the Mediterranean, and in which selected memories of the past are preserved in order to confront challenges of the present (Harrison 2013, 166-202; Sather-Wagstaff 2015).

## 2 An (In)tangible Heritage? Egyptian Jewish Associations in Israel

Migrant associations have long been regarded either as spaces that lead to further social segregation or, on the other hand, mediating institutions that ease the process of integration into a new national context (Moya 2005). In the case of Israel and in the aftermath of the ‘*aliyot*<sup>3</sup> from the Middle East and North Africa, some sociologists believed that “when the gaps in income or education [between *mizrahim* and *ashkenazim*] are eliminated, ethnic associations or expressions will also cease” (Weingrod 1985, XVI). Yet, this assumption proved to be incorrect, as showed by the resilience of Israeli associations and museums that refer to the *mizrahim*<sup>4</sup> (Shohat 1988; Shenhav 2006; Miccoli 2016, 16-22), as well as to other diasporas that have been better-integrated in the national narrative and for longer than the Middle Eastern Jewish migrants. Think, for example, of the museums founded in northern Israel by German- and Hungarian-speaking Jews (Katriel 2013, 11-14). So, even though expressions of *mizrahi* identity and heritage surely have to do with the enduring marginalisation of the *mizrahim* and the socio-economic cleavages between them and the *ashkenazim*, more generally they reflect the limits of the Israeli *mizug galuyiot* (melting pot) ideology, according to which the diasporic past and identities were to be put aside to forge a new and unified Jewish-Zionist nation (Ben-Rafael

3 Pl. of ‘*aliyah*, lit. ‘ascent (to Zion)’, therefore ‘migration’.

4 Pl. of *mizrahi*, lit. ‘Oriental’, that are the Israelis of Middle Eastern or North African descent.

1982; Ben-Rafael, Peres 2005; Shuval 1963).

As regards the Egyptian Jewish associational culture, in 1958 a group of people among which was the former chief rabbi of Alexandria Moshe Ventura founded the 'Irgun nifga'ey ha-radifot ha-'anti-yehudiyot be-Mitzrayim (Association of the victims of anti-Jewish persecutions in Egypt). Its goals were:

- 1) to assist members of the Organization in order to facilitate their integration in Israel and their settlement in the country. 2) to represent members at the central Government Institutions [...]. 3) to act in order to obtain [...] organization for the moral and material damages [...] suffered in Egypt.<sup>5</sup>

At the time, a Jewish community of around 9,000 people still lived in Egypt. On the other hand, the Israeli Egyptians counted about 28,000 individuals (Della Pergola 2008, 34 table 1 and 37 table 3).<sup>6</sup> As opposed to the Algerian Jews that settled in '60s France, and were faced with a French *ashkenazi* Jewry largely made of Holocaust survivors going through a moment of profound reshaping (Hobson Faure 2013; Schpun 2012), the Egyptians were among the thousands of Oriental and European Jewish migrants arriving in the newly-born Israel for a variety of reasons that went from Zionism, to the impact of the Arab-Israeli conflict in the Arab countries or the wish to leave post-war Europe. It is therefore unsurprising that many saw themselves both as '*olim*'<sup>7</sup> eager to integrate and take part in the construction of the state, and refugees worried about the properties and assets left in Egypt (Shenhav 2006, 136-83; Zamkanei 2016). Among the 'Irgun's activities were the celebration of the *bar mitzvah* of indigent Egyptian Jewish boys, the assignment of student scholarship and the organisation of hikes aimed at improving the younger generation's *yediyat ha-'aretz*<sup>8</sup> (Duah leshnat 1971, 'Tqasey bar-mitzvah', 62). Even though the 'Irgun primarily was a mutual aid society to support the Egyptian '*olim*, the association also intended to spread knowledge of the culture that the Egyptian Jews had brought to Israel, as well as to highlight the role some of them had played as members of the Zionist movement (Krämer 1989, 182-204; Miccoli 2015, 148-9).

As time went by and especially from the '80s, the 'Irgun and other simi-

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5 Archive of the Yad Ben-Tzvi Institute, Jerusalem (henceforth YBZ) XIV B 1701.9, 'Irgun nifgaey-ha-radifot ha-anti-yehudiyot be-Mitzrayim: Duah leshnat 1971/ Association des ex-vic-times des persecutions anti-juives en Egypte (henceforth Duah leshnat 1971), 'Memorandum'.

6 The numbers are indicative, as there are great discrepancies in the figures available.

7 Pl. of '*oleh*: 'Jewish migrant to the Land of Israel'.

8 Lit. 'knowledge of the Land of Israel'. [YBZ XIV B 1701.9](#).

lar mutual aid societies shifted towards the cultural domain and more or less transformed themselves into associations devoted to the preservation of the Egyptian Jewish heritage. But “why only now?”, asked in 1985 one of the very first issues of the *‘Alon moreshet yahadut-Mitzrayim* (Bulletin of the heritage of the Jews of Egypt), published in Haifa by the association *Goshen* (Beinin 1998, 216-7). The answer was that “the difficulties of the migration, the time of the integration, the worries over earning an income, building a home in Israel, the daily commitments of working and bringing up children, all this did not leave us time to think”, but “now, thirty-seven years after the independence of Israel in her homeland, we want to pass the heritage of the Jews of Egypt to this generation”.<sup>9</sup> At a distance of twenty years since the *‘aliyah*, the bitter moments and the socio-economic difficulties that the Egyptian migrants – like all other *mizrahim* and not only – had gone through, were put aside for celebrating their contributions to Israel and remembering the good old days spent in Cairo and Alexandria. Thus, *Goshen* asked its readers “to contribute with texts, comments and portrayals of how life in Egypt was, so as to enrich our testimonies and our magazine”.<sup>10</sup> Since the ‘80s, the bulletin – written half in Hebrew and half in French – has published autobiographical essays, poems and letters by Egyptian Jews living in Israel and in the Diaspora. In its pages, the Egyptian Jewish heritage is presented as characterised by multiculturalism and cosmopolitanism and, sometimes nostalgically, as the remnant of a quasi-magical world (Starr 2009, 1-28; Halim 2013, 1-55), come to an end with the advent of Nasser and the migration of the Jews and foreign communities like the Greeks and Italians. Egypt was a country characterised by “the joie de vivre, [...] even when two world wars were putting Europe on fire”.<sup>11</sup> For *Goshen*, that bygone Egypt can be reconstructed through the preservation of a both tangible and intangible heritage made of written memories, recipes, photographs and old objects that bespeak the rich identity of the Jews of Egypt.

In addition to what has been said above, the increased emphasis placed on the cultural realm depends on the ideological and societal shifting that Israel underwent since the late ‘70s: from the gradual weakening of Socialist Zionism following the victory of the rightist party Likud in 1977, to the increased participation of the *mizrahim* in the political sphere and the reappraisal of ethnicity as something to be valorised. This can be seen in the success since then encountered by novelists, musicians and filmmakers of North African and Middle Eastern Jewish origin (Mendelson Maoz 2014; Miccoli 2016, 41-49). At the same time, studies showed that the

9 YBZ VI 68, *Goshen*, September 1985, 1.

10 YBZ VI 68, *Goshen*, September 1985, 1.

11 YBZ VI 68, *Goshen*, December 2002, 1.



Figure 1. Front page of an issue of *Goshen – 'Alon moreshet yahadut-Mitzrayim* (Archive of the Yad Ben-Tzvi Institute, Jerusalem)



Figure 2. Cookery column of *Goshen – 'Alon moreshet yahadut-Mitzrayim* (Archive of the Yad Ben-Tzvi Institute, Jerusalem)

socio-economic problems of the *mizrahim* and the cleavages between them and *ashkenazi* Israelis are not yet solved (Haberfeld, Cohen 2012; Dahan 2013). This, together with the echoes of the Palestinian-Israeli conflict, can be noted by looking at the case of the Hitahdut 'Olei Mitzrayim (Union of Egyptian migrants).

The Hitahdut, which is the more or less direct continuator of the 'Irgun, is based in Tel Aviv, where its members gather on a regular basis for book presentations and lectures and is the largest among the Egyptian Jewish heritage associations. In its siege, one can visit a small exhibition of memorabilia, historical documents, paintings and photographs about life in Egypt from the time that is remembered as *tor ha-zahav* (the golden era) of the Egyptian Jews. The Hitahdut also publishes a magazine called *Bney Hayeor* (Sons of the Nile) and organises World Congresses of Jews from Egypt.<sup>12</sup>

12 Interviews of the Author with Levana Zamir, President of the Hitahdut 'Olei Mitzrayim, Tel Aviv, 9 April 2014 and 13 December 2015.



Figure 3. The World Heritage Centre for Egyptian Jewry, Tel Aviv  
(photo by Dario Miccoli)

Similarly to *Goshen's* bulletin, also *Bney Hayeor* – which subsequently changed its name into *Yetziat-Mitzrayim shelanu* (Our exodus from Egypt) – consists of texts informing on the activities of the association, articles, short stories and poems by the association's members. Here and in other texts and autobiographies by Egyptian Jewish Israelis (Miccoli 2014a), heritage is evoked both through monuments and places, as well as feelings: “the Kasr-El-Nil bridge [of Cairo], the Japanese garden, the Café Groppi on the corner, the Pyramids where we went every week [...] the pleasant life, the happy youth, the dynamic and cosy family life, [...] the exotic perfumes, the sound of Eastern music...” (Azriel 2014, 30-31). As in the case of other diasporas (Bahloul 1983), cookery seems to be an essential component of the community's heritage, as it allows reconnecting to lost flavours and memories of domestic life. So, the Hitahdut's president published a book entitled *Mi-ta'amei Mitzrayim* (The flavours of Egypt), dedicated “to my mother [...] who taught me not just the taste of good food, but also the substance, beauty and essence of life. And to my two *sabra* [i.e. Israeli]

daughters [...] who love their mum's Egyptian food" (Zamir 2004, 1).<sup>13</sup>

The most important activity organised by the Hitahdut is the World Congress of Jews From Egypt. The congress is a way to keep in contact with people living in different parts of the world, but also acts as a platform for the economic and legal demands that the *'olim* and their descendants have. Property claims, far from being a purely economic matter, also bespeak emotional and personal concerns: "My father owned three buildings in Cairo, three entire buildings. He was a jeweller, a very rich one. And myself, here in Israel I have to work hard to make a living. Is this fair?", a woman asked at the congress held in Eilat in 2014.<sup>14</sup> There, several people argued – reiterating an assumption shared by other *mizrahim* – that beneath the difficulty to get their properties back, lay the Arab-Israeli conflict and the political and economic consequences that labelling the Jews from the Middle East as refugees entails vis-à-vis the rights of Palestinians (Fishbach 2008; Miccoli 2015, 175). During the 2014 Congress, members of the Hitahdut also discussed the issue of the Jewish buildings still extant in Egypt: from the cemetery of Bassatine and the Sha'ar hashamayim synagogue in Cairo, to the Nebi Daniel synagogue of Alexandria. In the last years, such issues triggered various initiatives, for example a 2016 appeal to the Egyptian President Al-Sisi, sponsored by French-based Egyptian Jewish associations and also signed by Israelis of Egyptian origin, asking for the authorisation to:

1. digitise the Jewish archives, particularly the civil and religious status registers [located] in the synagogues [...]. 3. the restoration of the extant synagogues and cemeteries [...]. 5. the creation of a Jewish heritage museum inside one of the extant synagogues... (Appeal "Allow Implementation and Preservation of Jewish Heritage", *Collectif des Associations Nationales des Juifs d'Egypte* 2016)<sup>15</sup>

On the whole, the case of the Jews of Egypt shows the manifold identity connections that exist between Israel and the Diaspora, the Arab past and the Israeli present, tangible heritage and intangible yet incredibly vivid

13 Other Egyptian Jews wrote cookery books or include recipes in their memoirs: for example – as noted by Naguib (2006) – the Cairo-born Claudia Roden since the late '60s has written a dozen of books on Mediterranean (Jewish) cuisine, whereas Colette Rossant in 1999 authored the memoir *Apricots on the Nile: A Memoir with Recipes* and Nissim Zohar the autobiographical novel *Ha-molokhiyah shel 'ima'* (Mother's molokhiyah, 2006).

14 Interview of the Author to an attendee to the 2014 World Congress of Jews From Egypt, Eilat, 13 May 2014.

15 <https://www.change.org/p/president-sisi-allow-implementation-and-preservation-of-jewish-heritage-autorisez-la-mise-en-oeuvre-de-la-pr%C3%A9servation-du-patrimoine-juif> (2017-12-15).

memories and feelings. It also sheds light on the inextricable relation between politics and the outside world on the one hand, and the home on the other, as aspects that altogether come to create a new post-migratory identity, which becomes visible on the pages of the associations' publications or during the congresses organised by the Hitahdut and to which Egyptian Jews living in different parts of the world participate. This, and the difficulty of distinguishing clearly the tangible dimension from the intangible one (Pratt 2013; Violi 2014, 101), points to the existence of a heritage that always is 'on the border' of contrasting spaces and times and that, in order to be transmitted and lived, first has to be remembered. If so, what happens when the past from where such heritage originates is perceived as being a 'difficult' one, characterised by traumas that involve not just a community, but an entire nation?

### 3 The Jews of Algeria and the 'Difficult Heritage' of Postcolonial France

The Jews of Algeria are said to be *à cas apart* among the Jews of the Arab Muslim world and those subject to French colonialism. Due to the specificities that Algeria had in comparison to all other territories of the French Empire, the Jews that lived in the country faced a process of cultural Frenchification and juridical and social emancipation that – for example – differs from that of the Jews of Morocco or Tunisia. In the course of the nineteenth and early twentieth century, most adopted “a ‘French identity’ [...] that coexisted up to their departure for France [in the '50s and '60s] with their ‘religious identity’” (Allouche-Benayoun 2015, 17). However, after the migration, Algerian Jews rediscovered a very multifaceted heritage which includes different memories and pasts: “French citizens, they cultivate their Jewishness within a Sephardic context, that is permeated of *Berber-Arab* culture, and they share with the other Algerian repatriates their feelings for a past, today largely idealised” (Allouche-Benayoun 2015, 17; see also: Allouche-Benayoun, Bensimon 1989). Moreover, whereas in Israel the Egyptian Jews reconstruct their heritage vis-à-vis issues such as Zionism, the *mizrahi* question and the Palestinian-Israeli conflict, here one finds a different scenario dominated by the memory politics of contemporary France and by two events in particular: the Algerian War and the Holocaust.

As said, in the '60s almost all of the Algerian Jews settled in France, mostly in Paris and its region or in the *Midi* (Allouche-Benayoun, Bensimon 1989, 337). As regards associational culture, the first French-based Algerian Jewish association – the Association des Juifs Originaires d'Algérie – was founded in 1962, as a successor to the Comité Juif Algérien d'Études Sociales. Established at the beginning of the Algerian War, it maintained

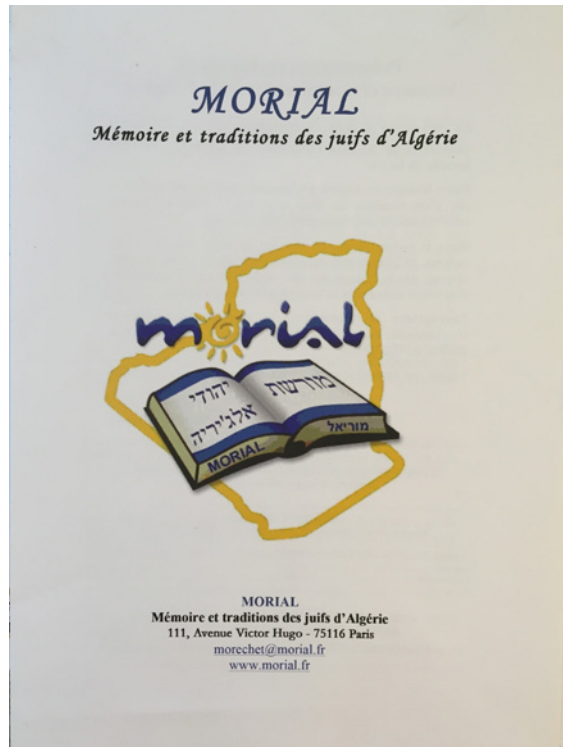


Figure 4. Brochure of Morial- Mémoire et traditions des Juifs d'Algérie (courtesy of Didier Nabot)

neutrality by both expressing gratitude to France and underlining the bonds between Algerian Jews and Muslims. After the migration to France, the Association embraced a less conciliatory position. This brought about a collective memory that, according to Ethan Katz (2015b), is based upon two overarching historical narratives: that of “*progrès et patriotisme*” under French patronage, and of “*violence et vulnérabilité*” – both due to Muslim anti-Jewish feelings, think of the infamous Constantine riots of 1934, and *pieds-noir* anti-Semitism.<sup>16</sup>

Morial-Mémoire et traditions des Juifs d'Algérie nowadays is one of the most active among the French Algerian Jewish heritage associations. The goal of Morial (which stands for the Hebrew *Moreshet yehudei Algeria* ‘the heritage of the Jews of Algeria’) is “to preserve and transmit the cul-

<sup>16</sup> The Constantine riots (often called *pogrom*) occurred in 1931 in the city of Constantine, in Eastern Algeria, when a Jewish man insulted a group of Muslims near a mosque. This prompted riots against the Jews that lasted for several days and in the end caused the death of twenty-five Jewish men, women and children and the destruction of around 200 Jewish-owned properties (Dermenjian 2015, 116-121; cf. Cole 2012, for an analysis of the socio-political motivations that triggered the violence).



tural and traditional memory of the Jews of Algeria".<sup>17</sup> Founded in 1995 under the impulse of the twin Israeli association Moriel, it has around 400 members and 2,000 sympathisers. It is not the only Algerian Jewish association: suffice here to mention the Association des Juifs de Constantine, the Association des Israélites d'Oranie en France or the Association de l'Exode des Français Juifs d'Algérie.

In its brochure, Moriel presents the Algerian Jews' heritage as a complex one connected to the many spaces where they lived: "our ancestors [...] came from Cyrenaica, Judea or Spain. [...] They lived together with Berbers, they had moments of happiness and despair. Oftentimes, they bent their back under the yoke of the law of the 'dhimmi' [...]. And France arrived [...] the homeland of the 'droits de l'homme'. But then, the 'déchirement'. [...] We are the last generation of the Jews of Algeria that knew and loved this country" (undated brochure of Moriel). Similarly to the Hitahdut, also this association organises lectures and conferences on cultural heritage and history. As said, the identity of the Algerian Jews is described as a blending of the Arab-Berber tradition and the French-driven process of emancipation begun in the nineteenth century. The latter is generally viewed in positive terms as something that improved the status of Jews, without taking into account the 'longue durée' consequences that it had: first and foremost, as Mandel (2015) and Katz (2015a) showed, the progressive estrangement from a juridical and political point of view between Jews and Muslims in colonial Algeria. This led to differences in the process of postcolonial integration of Algerian Jewish and Muslim immigrants to France: whereas the Jews were 'rapatriés' and members of "a 'religion', compatible with French citizenship, [...] to be Muslim was a 'nationality', thus necessarily foreign" (Shepard 2006, 243). As regards the relation to the *pieds-noirs*, in the first phase after the migration there had been a sort of 'piednoirisation' of the Jews of Algeria that highlighted precisely their being French repatriates (Bordes-Benayoun 2012). On the other hand, nowadays the connection between the two groups is downplayed by evoking "the anti-Semitism of the *pieds-noirs*, the racism", or is limited to folkloric aspects, like cookery and music.<sup>18</sup> The Jewish ethno-religious component became dominant, and this made the memory of the Algerian Jews closer to that of all other French Jews - for example when it comes to the centrality assigned to the Holocaust (Lambert 2016).

The legacies of the Algerian War and the Vichy period - during which the Jews of Algeria, as those of metropolitan France, were deprived of French nationality - surely embody France's most 'difficult heritage': "a past that is recognised as meaningful in the present but that is also contested and

17 <http://www.morial.fr/index.php/l-association/presentation-de-l-assoc> (2017-12-15).

18 Interview of the author with Didier Nabot, President of Moriel, Paris, 23 March 2016.

awkward for public reconciliation with a positive, self-affirming contemporary identity” (MacDonald 2009, 1). This makes the Jews of Algeria the protagonists of “a carnal and visceral relation to the *Terre*, its environment, [...] but also [of] subsequent shocks, coexistence and, oftentimes, fierce withdrawals and ancestral concerns”.<sup>19</sup> As a result, this diaspora – similarly to the *mizrahim* in Israel or to non-Jewish French colonial repatriates – initially silenced its identity, which began to be expressed more freely from the '80s (Zytnicki 2005, 97). From then onwards, dozens of books were published by professional and amateur writers such as Albert Bensoussan and Jean Cohen (Watson 2012; Eldridge 2012; Tartakowsky 2016), and singers like Enrico Macias set to music the theme of Algeria as a vanished *pays du soleil*: “I left my country | I left my home | [...] Oh sun! Sun of my lost country | of the white cities I loved | of the girls I once knew”. A process of identity remaking took place and led to the emergence of a new French Sephardic diaspora (Siney-Lange 2001), a label that nowadays comprehends the whole of North African Jews. This parallels what happened in Israel where the specificities of the Middle Eastern and North African *'olim* were put aside to invent the *mizrahim* (Shohat 1988): a new Oriental collective opposed to the Israelis of European descent.

The acknowledgement of the Algerian Jewish heritage as an important component of French Jewishness continued through the years, reaching a peak in 2012 – year of the fiftieth anniversary of the end of the Algerian War. 2012 saw the organisation of many activities, as for example the exhibition *Juifs d'Algérie* at the Musée d'art et d'histoire du Judaïsme of Paris, where one could see historical documents and objects, from *ketubot* (Jewish marriage contracts) to family portraits, religious items from the Algerian synagogues and listen to pieces of Jewish traditional music (Hoog 2012). The exhibition had the goal of “understanding [...] what Algeria represented” for the Jews, and showing “how they resent, in France, both the disappearance of the Jewish community *là-bas* and the ruptures and echoes of the difficult history between France and Algeria”.<sup>20</sup>

To mark the commemoration of the mass-migration, Morial organised a *Grand concours national* for children and adolescents between eleven and sixteen years old around the theme *Papy, mamy, racontez-moi votre Algérie*. Students with an Algerian Jewish background were asked to write a short story that took cue from the family memory. The winner of the competition was a sixteen-years-old girl that told the story of her grandfather, born in the city of Constantine:

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19 Brochure of Morial's conference *L'Algérie: l'Amour de la Terre Natale*, 2014.

20 “Dossier de Presse” of the 2012/2013 exhibition *Juifs d'Algérie*: <http://www.mahj.org/documents/dossier-de-presse-Juifs-d-Algerie.pdf> (2017-12-15).



Figure 5. Brochure of the *Grand concours national* "Papy, Mamy, racontez-moi votre Algérie..." (courtesy of Didier Nabot)

For sixteen years, I have been listening to stories, anecdotes. All brighten his face with a precious flame [...]. Others sadden him, still others make him laugh [...]. And it is because of all these happy memories that, for his seventieth birthday, my grandfather went back to Algeria. But he could not recover this kind of moments and it is perhaps upon reading about them, that he will be able to live them again. (Brochure of *Papy, mamy, racontez-moi votre Algérie*, 2012)

As in some of the poems published on the Egyptian Jewish bulletins, here one finds the nostalgia for a joyful past tinged with the sadness of exile, the longing for a very immaterial heritage lost forever and that bears little resemblance with what remains in today's Algeria.

In fact, when it comes to the Algerian Jewish heritage sites, the president of Morial talks about "a catastrophe [...]: lost properties, synagogues transformed into mosques or shut down" and underlines the difficulty for

the association to go back to Algeria on an official mission.<sup>21</sup> So as to find a solution to that, the internet becomes an alternative tool to preserve what remains of the community's heritage. The website of *Morial* hosts sections on history, literature, folklore, gastronomy and a *musée virtuel* with photographs that portray cities, street life and families, with the aim of "finding and preserving material testimonies of the period when the Jews lived in Algeria".<sup>22</sup> The section *Patrimoine* instead includes descriptions of folkloric rites – such as throwing a glass of water on the ground when someone leaves on a journey – and preserves the everyday vocabulary of the Jews of Algeria:

Baracallah! Blessed be the Lord, it expresses satisfaction, for example after a meal. [...] *Ya Khashka!* Ah! That was long ago! The number of exclamation marks depended on the level of nostalgia! The past of Algeria, before the exile, so nice [...].<sup>23</sup>

One may argue that such interaction could open up spaces of contact between the Franco-Algerian Jews and Muslims, showing what they and their descendants still share and "undermining any attempt to maintain absolute [North African] Jewish distinctiveness", at least when it comes to heritage and popular culture (Arkin 2014, 212-4). Yet, reading the comments left on the website guestbook, the Algerian Jewish heritage emerges as a divisive and traumatised component of one's identity:

I was born in Lavayssière (near Tlemcen) and spent my adolescence in Oran, my beloved city. You are right in evoking this drama [of Algeria], all religions included, so as not to forget our tragic history. We need to insist and spread the knowledge of this 'genocide'; a thousand times thank you for making me cry upon reading the sayings that my parents and grandparents back in Algiers often utilised.<sup>24</sup>

As in the case of the Jews of Morocco or the *pieds-noirs* (Miccoli 2014b; Sciolto-Zürcher 2012), the internet functions as a tool for virtually going back to a world that is no more and for countering the hardships of the present:

all that remains of Algeria are cooking recipes, grandmothers walled in their silence that refuse to transmit their memories, which they buried

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21 Interview of the author with Didier Nabot, President of Morial, Paris, 23 March 2016.

22 <http://www.morial.fr/index.php/musee-virtuel> (2017-12-15).

23 <http://www.morial.fr/index.php/communautes-et-traditions/89-dialecte> (2017-12-15).

24 <http://www.morial.fr/index.php/livre-d-or?limitstart=0> (2017-12-15).

in the traumas of exile and are unwilling to dig up [...]. And I, a young 'française juive algérienne' I do not know who I am, where I come from.<sup>25</sup>

In comparison with the Egyptian Jews, the Algerians share a more difficult history, exacerbated by the impact in France of the Palestinian-Israeli conflict (Debrauwere-Miller 2010) and recent acts of anti-Semitism, often committed by French citizens of North African Muslim origin. Yet, the Algerian Jewish heritage, which aims to rescue lost threads of the past, seems to still bring with it:

the tenacious certainty that it is possible to be at the same time French and Jewish, 'républicain' and sympathetic toward religious rites, Western-oriented but forever marked by the East, by Algeria. (Stora 2006, 182)

#### 4 Heritage as Borderland

As migrants that - due to a series of historical constraints - cannot return to a homeland that is no more and that often do not possess many tangible 'things' from the past, the heritage of the Jews of Egypt and Algeria nowadays is a largely imaginative construct, in which processes of individual and collective remembrance play a key role (Sather-Wagstaff 2015). If a degree of re-imagination of the past as time goes by, may "facilitate new forms of dialogue" between members of ethnic or national groups that experienced historical traumas (Guedj 2012, 153), it can also lead to biased approaches to history. In relation to this, one could argue that the Jews of Egypt tend to idealise pre-Nasserist times and, putting aside the social and national hierarchies that there existed, oppose that epoch to post-1950s Egypt, perceived in negative terms as a different country in which the Jews cannot fit. The Jews of Algeria, on their part, are inclined to skip the *longue durée* consequences of the Crémieux decree and the negative impact that colonialism had on their relations with the Muslim population. Evoking and overemphasising cosmopolitanism or Frenchness as inner components of the pre-migratory heritage helped the two groups to gain space in the respective post-migratory national arena, be it the predominantly *ashkenazi* Israel of the '60s or postcolonial France. At the same time, a more clearly Egyptian or Algerian (Jewish) heritage seems to emerge particularly in relation to an 'everyday multiculturalism', characterised - as already observed for other migrant communities (Colombo, Semi 2007; Schmoll, Semi 2013, 388) - by selected ethnic elements perceived to be politically neutral and more easily accepted by the

25 <http://www.morial.fr/index.php/livre-d-or?limitstart=0> (2017-12-15).

host society: for example food and music.

Surely, the heritage of the Jews of the Arab world is a multi-layered one, accumulated in the course of the centuries and subject to different social and political constraints: think of the identity shifting between the categories of *'olim*, refugees and *mizrahim* in Israel, or between *pieds-noirs*, Sephardis, French Jews in France. By looking at these two case-studies, heritage comes out as “our legacy from the past, what we live with today, and what we pass on to future generations”:<sup>26</sup> a landscape in which past and present intermingle and that changes depending on whether we are looking at it from the perspective of today’s Israel or ’70s France, if one belongs to the first, second or third generation of Egyptian or Algerian Jewish migrants.

This shows the importance of conceiving the Sephardic Mediterranean as a composite ‘borderland’ (Balibar 2014), where old and new memories, objects and feelings are preserved. Finally, what comes out of this borderland are new post-migratory diasporas, in which divergent cultural and national affiliations and half-forgotten memories of a shared Arab-Jewish past can be found – as if to remind us to what extent the Mediterranean heritage, and the history that lays beneath it, ruptures and continuities, frontiers and entanglements.

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26 <http://whc.unesco.org/en/about> (2017-12-15).

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# **Culturally Digital, Digitally Cultural** Towards a Digital Cultural Heritage?

Leonardo Marcato  
(Università Ca' Foscari di Venezia, Italia)

**Abstract** The focus of this paper is to try to show how we can speak of 'digital heritage' by giving some directions according to the peculiar nature of digital physis. The key aspect that drives the considerations on digital heritage can be pinpointed in the main difference between this and the traditional CH: the lack of materiality. However, digital heritage neither can be considered as a form of ICH, for lack of the traditional and historic dimension; nevertheless, what the 2003 UNESCO Convention says is a feasible way to speak on this matter. The hope of this paper is to offer some standpoints from which start to analyse the peculiar form of internet culture, a content that is emerging in, for and from the web and that might pour in the physical world.

**Summary** 1 Introduction. – 2 A Brief History. – 3 Can Information Have Culture? – 4 Culture In/Of the Web. – 5 Dark Side of the Net. – 6 Conclusion.

**Keywords** Digital heritage. Digital culture. ICH.

## **1 Introduction**

It is a recurrent joke, on image boards, forums and chat, that when future archaeologists or alien scholars will discover the last remnants of our age they will describe our society as one of deep veneration to cats – thanks to YouTube videos. A joke no doubt, but with some truth in it: social networks and Internet at large are flooded with apparently useless pictures and videos of 'cute kittens' doing 'cute stuff'. It is by itself an indication of a certain need that emerged in our time: that of sharing *digitally*, for all to see, elements of our life that we consider important in some way. It is an element peculiar to that contemporary everyday element that Luciano Floridi, one of the most important scholars of the digital phenomenon, defined 'Onlife' (Floridi 2015), and that is best described by our ability to interconnect with every other 'human'. The tendency to connect with other is something that we had since the beginning of our (brief) sojourn on this wandering space rock. But Information Technologies, the Fourth Industrial Revolution, magnified our being ζῶον πολιτικόν to a bigger extent.

Who does not have any kind of connection with the digital world? Who, nowadays, in our westernized society, can say to be 'off the grid'? Yes,

social networks still allow people not to connect to them – which is a good thing. But even in the alphanumeric shape of a simple social identification number, like any kind of identity card or healthcare number, we are part of a strange, numerical and apparently immaterial world, where our beings are fractured into data for easier storage and management. Even the least connected of us is part of an interconnected society that grows larger and larger. In a certain sense, we see an advanced development stage of that ‘noosphere’ father Teilhard de Chardin (1964) foresaw in his studies, something akin to Floridi’s ‘infosphere’ (2009): the collective consciousness of the ‘human’ is creating an interwoven structure that does not put itself on top of the existing society but merges with it. The role of ‘new technologies’ and the speed by which these are developed and spread prompted many philosophers, sociologists, anthropologists, and other scholars to reflect on a crucial problem: our human nature. This has sparked a heated debate on whether we can consider ourselves still part of humanity or if we are going towards a post-human future. While it is an interesting issue per se, and can be read in the direction of a New Humanism (Marcato 2017, 350-357) rather than an escape from the ‘human’, this paper is only partially related to this debate. What will be argued, here, is a contemporary theoretical challenge that I believe will be crucial in order to understand our relationship with the very technology we developed. The first draft of this paper was presented at November 2015’s CESTUDIR Conference on the ‘Cultural Heritage. Scenarios 2015’ and tried to underline an issue rarely discussed in these specific terms: that of *digital cultural heritage*.

With this expression, I don’t want to indicate the digitalization of existing CH, but the chance that the digital dimension of our lives can have the seeds – or even buds already – of something that we can identify as a CH *per se*, something produced in, for and from the Fourth Revolution, something the ‘human onlife’ can give to our reality as a whole. It is not an issue that can have a clear answer, a precise theorization. We can describe empirical phenomena we see, but we cannot fully grasp what is constantly moving, what we are living and experiencing with mind structures still related to past worldviews. But one of the best idea of philosophy is that of a discipline not adequate to find answers: it can only clarify questions and find what is the real question from which to start to inquire reality – and ourselves. This paper will then try to clarify what are the elements that might allow, one day, to speak about a digital CH. It is important to state that the focus of this paper will not be to provide a strict definition of ‘culture’ related to the digital. The debate on the very meaning of the world ‘culture’ is a much-frequented topic in the humanities and to venture in it would mean losing the direction towards which this paper has been written. Rather than limiting the sense of ‘culture’ here presented to a somewhat honorific term focused on some of the most refined assets

of Human production through the ages, its sense can and will be understood mainly in the perspective of CH in order to propose the starting point of an ongoing research. Nevertheless, for reasons that will become manifest in part 3, a good normative definition of the world 'culture' to which adhere for the first steps of this paper can be the one proposed by Richerson and Boyd (2005, 5). According to them, culture is "information capable of affecting individuals behaviour that they acquire from other members of their species through teaching, imitation, and other forms of social transmission".

## 2 A Brief History

With the words 'culture' and 'digital', contemporary studies on the subject usually want to point out the digitalization of an already existing culture in the form of images, texts, music, video or 'virtual tours'. Piracy and intellectual property damage are also an issue in these kind of studies, since the digital revolution brought forth a number of different ways to illegally copy and distribute cultural products. From the big music labels and movie companies to the single deviantart user that sees its freely distributed creative work stolen and sold for profit, it is something that encompasses a number of different situations. Legal and illegal fruition, open or restricted access are only a few of the various options available to those who want to dabble in the digital cultural production - options that defy the 'traditional' way to comprehend culture production and fruition.

These are questions and issues cardinal for the relationship between culture and the world of Information Technologies. We can safely say that everything started with the '60s hacker ethics, at the Massachusetts Institute of Technology (Levy 1984; Pekka 2001): the proposal of a modern society where information is freely distributed, where technology can be accessed by everyone and a lot of idealistic processes that, unfortunately, were not a bright example of self-fulfilling prophecy. Nevertheless, what were the dreams of those first pioneers of information society are now formalized in the Creative Commons licenses. Thanks to those, the possibility of open-access reached a kind of 'stable' reality that prompted father Antonio Spadaro to describe Wikipedia both as a "cathedral of information" and a "babel tower" (Spadaro 2005), and Linux as a "constantly self-writing Bible" (Spadaro 2010). If we approach this evolution of the culture in the age of information from a philosophical perspective, a number of critical points comes to the surface. These are similar to Benjamin's reflection on immateriality and synchronicity of the work of art (Benjamin 2013). Due to its nature, a work of art that uses the digital to be known to beneficiaries far away sees its nature mixed with that of the means by which it is known. The apparent lack of uniqueness of an artistic piece if conceived in

the traditional sense that saw the birth of Warhol's pop-art, in the digital dimension more often than not becomes a betrayal of what *open access* wants to be, both in its ideal and its fulfilment.

Let's see the issue from a more colloquial understanding of the concept of culture. A piece of art created with a physical (or musical) medium is always enjoyed primarily through that medium. When digital media are involved, they are merely the medium through which the art piece is experienced. If I experience a painting by standing in front of it, my experience is direct; whereas if I experience it through a VR-enhanced medium, or an Augmented Reality system, I see it through that medium. It might be enhanced, maybe even presence-like, but it is still an experience of art through a medium - not so different, from a theoretical perspective, from what I could have experienced through a video, or a picture.

The same can be said if we shift from art *per se* and we take a broader perspective. A piece of CH can be experienced 'live' and through different media, from videos to books. Aikanã people paint their bodies, Claude Lévi-Strauss sees them and writes about them in *Tristes tropiques* and anthropology scholars see this element of their culture. Now a quick Google Image search can show hundreds of pictures of their body painting styles: again, the digital is a medium.

But can we consider the digital not only as a medium but something from which and in which peculiar forms of culture are born and find development *before* they are communicated?

Is there some form of digital cultural 'heritage', and not the mere passing of information Richerson and Boyd mentioned in their definition of culture?

Since its mass diffusion in the general population, Internet had forum, websites, boards, newsgroups and the like. Points of contact between users, digital places where those who inhabited the first virtual landscapes were filled by netizen culture's first examples. In these places, those who dabbled in the Web created codes and contents according to the rules that these nodes provided. Much like in the 'meat world', who spent time in these places acquired peculiarities proper of that places. With the astonishing speed of technological evolution, the web and its citizen evolved: boards became newsletters, newsletters became instant messaging programs. From the personal computers up to smartphones, what can be found on the net moved from the first ASCII art to the latest trending meme. But even if the main factor for the success of an 'expression of the web' is quantity over quality, that is, how many 'likes' and 'shares' it attracted, there are some kind of contents that stand out amidst the magmatic mayhem that is the sea of data in the Web. Those who conceive the Net not only as a medium to stay in touch with distant relatives or to participate mindlessly in the last social network trend but as a way to express fully their Human nature, have the chance to create something



more. What seems to be a cyberpunk utopia is, in fact, a well-known theoretical and philosophical mind experience. Pierre Levy (1997) presented the notion of *collective intelligence* in order to show how digital 'life' can create notions and concepts, feelings and ideas capable of being shared among those who participate of it. A decade after that, Clay Shirky's cognitive surplus wanted to show how the 'free time' spent in the net is a well-defined reserve of potentiality that can help every aspect of Human research and development (Shirky 2010).

Web's very nature allows those that want to provide interesting content to do so - and to earn a living with it. YouTube, deviantart, Patreon, Kickstarter, multimedia narrative, image boards are only few of the different ways that a 'content creator', that is someone who presents its work to Internet's audience, can use to push forward its creation. The cardinal dimension of these platforms, if we take into account the economic aspect, is no longer the mere producer-consumer dialectic but that of *interactivity*: content creators and spectators are in an interrelation similar to that established *temporibus illis* between patron and artist in the Renaissance. To summarize the mechanisms of these platforms: a content creator proposes its work, and if it is considered valid the public pays for it. If the result is commendable, or at least meets the patrons' desires, the funding is granted or extended, according to the differences between platforms. Between content creators and spectators, the relation bonds can be direct, establishing a community instead of an economic system. All of them speak, discuss, propose, interacts; the creator keeps authorial and artistic decision, but welcomes what comes from its community. Slowly (for internet standard, obviously) the sense of community grows stronger - up to the point that a shared system of cultural reference is established.

I am not referring to the bonds that can be identified in a primitive tribe or a well-defined ethnic minority or modern subculture. What I'm speaking about are cultural forms that without Internet *would have never been born*. They are established in the Web and its peculiarities of synchronicity, ubiquity and interrelation, in these are born and thanks to these they are spread. Contemporary society feels their influence well beyond the mere everyday aesthetic dimension; they mix with contemporaneity, with everydayness, but are easily discerned. Recognized, but not separated. And, most of all, go well over any boundary of space, time, culture. A culture that is born on the Web, on the Internet - and I stress 'born', since a lot can be forged and manufactured by spin-doctors and 'social media gurus' - is not confined by that. A single cultural piece made by a content creator can be experienced and appreciated by spectators on the opposite sides of the world.

And this is a very interesting point when, with an interdisciplinary castling move, we take into account the CH rights. UNESCO, in its 2001 Universal Declaration of Cultural Diversity, in the very first article states that "culture takes diverse forms across time and space. This diversity is

embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. Source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature". Further down the declaration, article 8 states that "particular attention must be paid to the diversity of the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods". Now, a cultural good, a cultural piece of work, even a work of art, when it is fully that and not conceived as a consumer good carries with itself a big or small freckle of the creator's living and identity - be it a single artist or a heritage community. It has been a focus of discussion exactly what constitutes an 'heritage community', and to what extent the physical and immaterial manifestations of the spirit of the Human are considered fully 'culture'. It has been and still is, as usually it is in these kind of Human inquiries, a matter of conventions. But can we see something like that in the communities and the productions that arise from the web, in this Fourth Revolution of Information? Or, to formulate the question in a more direct expression, can we properly speak of CH in the digital, a world where 'information' is the matter on which everything stands? I believe this is a question we have to approach, rather than try to answer. We are dealing with a phenomenon too liquid to have the chance, now that we are living it, to be answered correctly - or even critically. This is why I want to propose the question of digital CH and digital HCs not from an historic point of view or a legal framework, but as a philosophical problem, one that might start socio-anthropological inquiries in order to have a better clarification. But as every voyage begins with a decision to depart, every inquiry start with a question.

### **3 Can Information Have Culture?**

The most important step to take in order to understand this question is to clarify first that this is not an issue related to media but to something that is more intimately connected with the digital dimension *per se*, and secondly what we mean when we speak about information in the digital dimension - thus expanding the definition of 'culture' that was given in the Introduction. Usually, this word is used as an abstract term for every kind of data, from texts to images to audio. Using the word 'information' in this way means to infer to it a quantitative meaning, useful to deal with Big Data or with more traditional IT issues. But it carries a broader meaning: information is also the 'data' inside our genome, for example, or the content of a phrase. We can safely assume two ways to conceive the term 'information'. The first sees the term 'information' as a wide container for every meaning

that can be somehow conveyed through a medium. This way to conceive information shows culture to be both media and meaning conveyed: culture can push forth information about communities that created it and it can be the content of a medium. But this mechanism of transmission enhances the risk to see culture transformed into a consumer good to be exchanged and shared. We often see superficial attempts to convey cultural elements in the digital, be it budget websites or programs or smartphone apps, that fails to be effective. If a cultural content is not different, in its transmission, to a spam e-mail, then information is a medium on which we should act to allow culture to be safeguarded and preserved. In this direction moves the necessary and highly valuable attempt at a *digitalization* of existing culture to safeguard it from its loss - be it at the hands of time or during war-torn moments of our civilization. Thanks to the help of contemporary information technology, it might happen to have a Palmira site re-vitalized and experienced one day. What was destroyed by fundamentalist iconoclastic fury might live again, albeit in a different form. But this paper's main goal is not to endorse digitalization of existing culture to preserve it, nor the restoration of now gone cultural elements thanks to computing power. These are worthy goals, deserving to be endorsed, but to stress the already outlined question the goal here is different. As a matter of fact, philosophically speaking, this is the point where the differences between traditional culture and digital content start to blur. It all revolves around the second way to conceive the term 'information'. As Floridi's *Philosophy of Information* argues, this term can convey a stronger ontological sense than its (not denied, but enhanced) dimension of media and meaning conveyed (Floridi 2012, 10-17). Information can be conceived as the ground on which digital ecosystems grows and expand. If with that word we mean something theoretically stronger and ontologically defined, then 'information' is no longer medium or meaning conveyed but environment, *milieu*, framework in which culture grows and expands. One could even say that, due to the all-pervading nature of internet and wireless connection, digital is now immaterial part of that bioregion where, according to Panikkar, "men and gods have residence" (2001, 38); or that we now live in a constant interrelation with a wired version of Teilhard de Chardin's noosphere (1964). In our contemporaneity, we live and die tied to Information, and those who were born in a world with Google are already in their teens. For a considerable number of countries this means that the future generations will have a concept of immateriality different from that traditionally defined in contemporary ruler's and intellectual's mindset, for which digital's immateriality will be more *essential* than material forms (Hayles 1999, 19). Furthermore, the speed on which these changes happens is such that we cannot legitimately say how future generations will relate to the cultural production of their age - or ours, for what matters. This is another point in favour of digitalization of CH; but must be borne in mind when approaching the issue of a CH

that might be digital *per se*. The reason for such a warning is that CH that might emerge from the digital is not material in its original status; it might become so only in a second stage. Artists create digitally, with the help of proper programs and tools, their work of art. Only in a later moment 3D printing, HQ digital prints and the like transpose in the physical dimension what starts as a series of bytes. It might be said that the digital cannot exist without the physical supports that allows it to actually *exist*, but as has been argued, the nature of digital being (or *digisein*) resides in that hybrid nature of partial existence (Kim 2001). Those works of art exist thanks to a *relation* between themselves, their meaning, their media and the Human dimension that gives them value - a relation that, in the digital, becomes *interactivity*. And to reiterate a crucial point of the present argument, what is born from the digital without interaction is a mere consumeristic good, unidirectional presentation from producer to consumer. A sizable number of digital goods are of this kind: just think of the endless YouTube videos specifically created to cash thanks to that platform's monetization mechanism, or the so-called 'viral' commercial campaigns that to a trained eye and a critical mind are exposed in their venality. Here lies the difference: mono-directional relation versus conscious mutual interaction - or, in a word proposed by Panikkar, *inter-in-dependence*, that is the, mutual correlation of every shard of a whole (Panikkar 2012, 358-359).

Where 'traditional' CH sees this *inter-in-dependence* in the physical due to the constant re-enactment of said heritage, even when it is immaterial, the chance to see a digital CH must be conscious of its lack of materiality. In other words, to summarize the last paragraph's point, materiality's role in the digital falls on the shoulders of *relation* between users. Communities build their own cultural products, and have been since the net was born. If this will become a proper CH it remains to be seen; the chance is here, but not if it is ignored. But to limit the issue on art would be easy - after all, aesthetic disciplines already have the tools and native mindset to approach such changes in their field. This paper wants, again, to bring the problem on a wider scale, on culture at large. Thus, the questions: can Information have culture? And what are the peculiarities of this possible CH? I think we can say that what we are seeing now is only Fourth Revolution's latest act. We still have to see where this will bring us, as Humans and part of the world. With such a widespread diffusion of internet and informatics, Human sees its immaterial face changing in that mirror itself built not more than twenty-five years ago.

Immateriality is then a crucial point in inquiring about the chance of a digital CH. And I believe the 2003 UNESCO Convention, while focusing on the traditional ICH, can help in establishing the theoretical framework needed to understand the question that prompted this paper. The following points will try to give some indications on this, without providing a definite question for something that is intrinsically liquid and dynamic.

## 4 Culture In/Of the Web

One of the focus of the 2003 UNESCO Convention was to establish an operational definition of ICH to proceed on its purposes and goals. ICH, to be defined so, must have the following tracts according to art. 2(1): 1) intergenerational transmission, 2) re-enactment by communities and groups in response to their environment, 3) be a signal of communal and individual sociocultural belonging, 4) it must promote cultural diversity and human creativity, 5) must respect basic human rights and sustainable development for its country or countries.

According to these tracts, it appears obvious that the chance of digital CH cannot be considered fully part of ICH. But through these points we can have a starting ground from which develop an understanding for the question at hand. Theoretically speaking they can give the backbone for the comprehension of how the empirical phenomenon of Internet generated content's impact on our society can be considered a new form of CH - albeit more liquid, instable, and harder to comprehend.

Let's start by dealing with the obvious: intergenerational transmission does not nor will ever happen in the traditional sense. Digital culture is thirty years old. Only now we can see the first generations born with Internet already fully available, and we might say that we are not dealing well with the phenomenon. The global aging of ruling classes affects both the understanding of digital native's mindset and the law-making process. The speed at which the change happens it's like Hammurabi and Guttenberg would have been only one generation apart. But now the first gamers are in their forties, the first Web-dwellers have married, the first content creators have children. Who was a young IT specialist during Silicon Valley's golden age is now a family man, and who grew up with analog modems sometimes find hard to relate with the internet of things. In some years, those who were born with broadband connection will be adults, and those who always lived with wireless will start high school. The mental framework is already different in these two population groups, just imagine the differences with their analogical forefathers. Who will remember, twenty years from now, that the 'save' icon comes from the first Floppy Disks? But, then, even now someone still invokes the 1990's Godwin's Law, also called *reductio ad hitlerum*. Humorous but true rhetoric formula first formulated by Leo Strauss (1976, 42-43) and then given an Internet life by Mike Godwin (1994) according to which the longer an internet thread goes, higher are the chances that Hitler or Nazi are mentioned, it is a recurrent truth in some most politicized comments sections. Furthermore, some late '80s memes are still around and returns when someone from Internet's 'old guard' reacts to new content with old ones. They resurface and are took up again by younger generations of users, finding new life in a cycle of forgetfulness and renewal.

I might present a lengthy list of these occurrence, but it would be just a catalogue, a collection of examples. But do return, they do come back - and sometimes, they just never go away and are somehow re-enacted continuously by users of both young and old generations. Just think about the classic smiley face: ':)'. The simplest of all icons in the digital expression, a colon and a closing bracket that looks like a sideways smile. For all its pervasiveness, we have a precise date on which it was created - or better, born: 12 September, *Annus Domini* 1982. Its father, Scott Falham, originally created it to help the transmission of humour in the first discussion groups in the Web.<sup>1</sup> The original thread presents a rather interesting account on what really happened during that golden age of primitive Internet diffusion and how politely creative were those pioneers.<sup>2</sup> That spirit is still present in some forums, but for the larger part of the Web the situation, as will be said in the last paragraph, is rather saddening. The continued use of that smiley can nevertheless be considered more as an element of, shall we say, how our written language is gaining a more ideographic format - but this is another question, that does not pertain to this paper. In order to better express how the re-enactment of digital CH might be considered a more structured example is in order. The last Star Wars movie, Episode VIII, marked the return of a traditional science-fiction saga - and a resurgence of new and old fan base. Since its announcement, an old still frame of the third movie (1989) of a famous character and his catchphrase ('It's a trap!') saw a massive increase of its usage - already well-established. Old fan already knew its meaning, new fans rediscover it, and all participate of its usage in the Net with full knowledge of its history. We have, here, some kind of *re-enactment* - albeit of that peculiar form that memes already have.

But memes and smileys are not the only kind of digital culture; they are just the ones more easily exploited by profit seeking and converted into commercials. Narratives, novels, design styles, artwork, image elaboration; but also, ways to play a game or even approaches to life as a whole. Each one of these can be more or less encompassing, more or less shared by communities that establish themselves online, and from their online dimension they take their *raison d'être* offline. To make another example, in the last years a new video category appeared on YouTube: 'gameplays'. It consists mainly in the *youtuber* playing videogames, maybe with some curious element like the speaking tone or the different approaches to games. A considerable number of these are simple entertainment for the watchers, not much different from a movie, or a theatre, or a football match in case of e-Sports gameplays. Not much of these can be defined as 'culture'; sub-

1 <http://www.cs.cmu.edu/~sef/sefSmiley.htm>.

2 <http://www.cs.cmu.edu/~sef/Orig-Smiley.htm>.

culture maybe yes, but hardly part of the digital CH. But some of them, in relation to particularly deep and elaborate videogames, have developed a peculiar way of proposing their gameplay. They go beyond the mere act of playing a game, maybe funny; they approach aesthetics, philosophy, social messages, narration stiles, references. What they propose is a cultural content. They approach videogames not as a mere ludic instrument that might take from other arts to propose its own. What this approach underline is the paramount peculiarity of videogames as digital cultural products: the interactivity. Interaction between player/spectator is cardinal not only for their nature but also for the chance that they have in order to be fully considered Multimedia Interactive Operas. This interactive dimension of the videogame seep through YouTube videos to the spectators and create a sense of belonging. These communities of video gamers follow the content creator and their videos in adopting a different approach to the game. Different interpretations, different way of playing the same game and most of all the sharing of their impression and strategies cooperate in building a universe that might go over the original programmer's intent. Furthermore, players start to recognize themselves as part of a bigger community that shares the same values and approaches - or spectrum of approaches (Horde or Alliance, Blue Sentinel or Darkwraith, Hardcore, Casual or Conscious gamers and so on).

The almost endless possibility to access various sources of digital contents gives a new point of view on the promotion of diversity and creativity. This stems from the level of interaction that the Fourth Revolution allowed between digital denizens. Content creators interact with their spectators directly on a higher level than professionals from the more traditional media like cinema and television - with hilariously negative consequences when said media try to enter in the new digital field, as already said. That of web-comics is an equally interesting phenomenon. Not only a story's success or lack thereof but also its very development often depends from the constant interaction with readers. Readers that came from various cultural, national and religious backgrounds and that participate not only in the reading but also, to a certain extent, in its creation. Thanks to the rising of crowd funding platforms like Patreon and Kickstarter, this kind of support and interaction materialize an economic dimension for the creators that might arrive to gain an income from their activity in the Web. Thus, an Australian youtuber like Vaatividya interacts with European users and receive funding from American spectators, or an Italian cartoonist like Simone Albrigi started his career while in Japan. But I believe best example of these last two points, that is, how to conceive videogames, communities, interaction between spectators and content creator, and the rising of a different culture, is Italian youtuber Sabaku no Maiku. Since the first videos he declared that his ideal of community would be a cultural change towards a more conscious approach to videogames as interactive art - and he still stands behind this ideal.

## 5 Dark Side of the Net

But if the most noticeable difference between the chance of digital CH and ICH is through human right's issues, broadly understood. On one side, we have the chance to share and communicate without limits of space and time: this gives contemporary netizens the chance to explore different cultures and ideas. But, as Umberto Eco recently said, 'internet gave voice to stupid people'. It is what I call the 'dark side of the Net'. It is something very distant from being the bogeyman that the attempt at a web governance are trying to control. It can be that crusades against actual and real problems of Internet, like cyberbullying, discriminations, hoaxes etcetera, fails because they tend to forget that even the digital is made and lived by and for the 'human'. But the same virtues that animate the digital can give birth to its worst flaws. The immediacy of information and discourses and the chance for everybody to let their voice heard mean that every opinion can be heard. Freedom of speech transforms into freedom to insult, hoaxes and anti-scientific movements gains power and resonance, and even a small number of voices can raise so much ado about nothing that government bodies follow their complaints. It is something almost self-evident if we consider the comment sections I mentioned briefly: those cannot be considered some form of culture in any way. They are no more than a clique for a political or social ideology, that must be examined and (in a way) respected but without confounding what is a more or less controlled discontent container with a proper element for culture. There might be a high number of examples in this fifth point too, as studies have shown that is a phenomenon strictly tied with how phenomena peculiar to television are now spreading on social networks (Mintz 2002). I will limit myself to only a case: the so-called *Men's Right Movement*, a mindset lately on the rise. According to this way of thinking, feminist movement's conquests in civil rights, from the right to vote to abortion, from the fight for equal opportunities to birth control programs, are nothing more than a way to repress, control, and subdue male sex. Those who follow this mindset are usually characterized by an unusually high verbal violence tendency and they operate discrimination and personal attacks towards those who identify as their 'enemies'. These attacks and violent tendencies are limited to the Web, usually, and are almost never brought on directly - but can create heavy discomfort to the targets that will see their personal information divulged and privacy shattered. I believe this is the higher problem that we can face when approaching the issue of a digital CH: what we can see is only the start of something different. For now, we have the same errors - amplified beyond space and time limits, with a resonance that pervades all the Web. But there are glimpses of a different landscape, at the end of the trolls' lair.



## 6 Conclusion

This paper started by forwarding a question: can we talk about a digital CH, a proper cultural dimension that pertains to the Fourth Revolution *per se*? In all fairness, an unambiguous answer to this question cannot be expressed - yet. The speed is such that maybe the next generations will be able to identify correctly what are now the first sprouting buds of something that we cannot even imagine. But these radical seeds are nevertheless harbingers of problems that we face now. In order to examine these issues, the difference between information as medium and meaning transmitted and information as ontologically defined has been laid out. This last concept of information is the one that can help the understanding of digital CH: an information ontologically defined by interrelation and interaction between users and an environment where space and time are no longer restrictive qualities. It is here that digital culture is born and it is here that its first buds are present; but crowd funding platforms, narrative newsgroups, video gaming communities still cannot be example of a proper digital culture and digital heritage. This is why this paper tried to express five cardinal points of discussion on which a philosophical analysis of the question can be grounded in its first steps. Points of discussion born from the 2003 UNESCO Convention, the first clear formulation of a CH that is not limited to materiality, like the digital. It does not want to be nor it can never be, now, a proper answer to the question; it is only a proposal, the first lineaments of a larger argument. But approaching this issue, this argument, must be a critic and conscious effort, far from being influenced by technophobic thought or plastic and silicon utopias. It is a continued effort, but that nevertheless it must be done; maybe, one day, the future archaeologists will look at our attempts to understand what we are living now and laugh at our naivety. Or maybe, they will appreciate what we tried to do to proceed on our human path.

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## **(In-)tangible Cultural Heritage as a World of Rights?**

Lauso Zagato

(Università Ca' Foscari Venezia, Italia)

**Abstract** In the first part of the paper, the widespread negative attitude towards cultural rights (and even more towards the right to CH) by a number of scholars and specialists of human rights, as well as the reasons of such attitude, are carefully analyzed. In the author's opinion the concern about the possible upshots of cultural relativism is the key to understand these misgivings. The central part of the essay offers a precise and articulated critic of such attitude, in the light of the recent international legal instruments, but also giving space to the inspired Report of the UN Independent Expert in the Field of Cultural Rights, Farida Shaheed (2011). The sixth and last paragraph is dedicated to the role of identity and HC in the area of human rights.

**Summary** 1 Introduction. – 2 A General Frame of Reference Shadowed by Disconcerting Features. – 3 An Illusory Conflict: Collective Rights v. Individual Rights. – 4 Relativism as the (Alleged) Original Sin of Cultural Rights. – 5 The Contribution of the Shaheed Report. – 6 Is the Right to (In-)tangible CH a New Dimension of Human Rights?.

**Keywords** Cultural rights. Heritage community. Right to the (I)CH.

### **1 Introduction**

In the author's view, the intangible dimension of CH is not intended to be in opposition to the tangible one; rather, it is the element for understanding CH as a whole. Moreover, ICH is the key for opening the treasure chest of a world of rights: it establishes a two-way relationship between CH and human rights, avoiding the elitist trap characterizing the WHC, a Convention which only refers to CH "of outstanding value". A line of reasoning is thus offered us: the value of CH for individuals, communities, groups, the whole humanity can become the object of a thorough analysis.

Besides, a consistent number of scholars agrees that CH is always, to a certain degree, intangible. Some of them are but too cautious (Deacon, Bazley 2007, 93), and observe that "ICH is probably best described as a kind of value indicating non-material aspects of heritage that are significant, rather than a separate kind of non-material heritage"; others are more explicit (Ahmad 2006; Silvermann, Ruggles 2007; Kirshenblatt-Gimblett 2004; Pocock, Collett, Baulch 2015). According to the author, a

rigid division between the material and the intangible dimensions of CH is not only artificial,<sup>1</sup> but “is a dichotomy that has served hegemonic, ‘Eurocentric’ interests in international cultural policy -making in the past” (Blake 2011, 203).

This interpretation is confirmed, at international level, by the increasing dialogue among international legal instruments,<sup>2</sup> in particular throughout the activity of the Treaty Bodies charged of controlling their application (Addo 2010; Stamatopoulou 2012; Zagato 2014a, 2014b).

## 2 A General Frame of Reference Shadowed by Disconcerting Features

In other occasions (Zagato 2007, 2012a), the central role played by cultural rights in the context of globalization has been affirmed; on this issue, the significance of the Freiburg Declaration on CH, being the first document which affirms the existence of a human right to CH, is unquestionable.<sup>3</sup>

The right to CH is now openly affirmed in the Preamble (4) of the Faro Convention:

every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right freely to participate in cultural life enshrined in the UDHR and guaranteed by the ICESCR.

It is confirmed by the said Convention in arts. 1 - “The Parties [...] agree [...] to recognize that rights relating to CH are inherent in the right to participate in cultural life, as defined in the UDHR” - and 4(c):

1 Kirshenblatt-Gimblett 2004, 52-53; in the author’s opinion (60), “tangible heritage, without intangible heritage, is a mere husk or inert matter, and intangible heritage is not only embodied, but also inseparable from the material and social world of persons”. This is the starting point for Pocock, Collett, Baulch, who observe (2015, 966) that, “without recognition of social or intangible values, sites can be misrepresented or misunderstood and therefore fail to be adequately managed and protected. On the other hand, the effective continuity of practices and knowledge that constitute ‘intangible’ heritage is dependent on the availability of material resources and spaces”.

2 I refer on one side to the relationship among the UNESCO’s legal instruments: besides the WHC, the other two pillars of the UNESCO system being the 2003 UNESCO Convention and the 2005 UNESCO Convention. On the other side I take into account the CoE instruments, in particular the ELC and the Faro Conventions (para. 3), and the relationship between them, but also among them and the UNESCO’s just mentioned Conventions.

3 *Fribourg Declaration on Cultural Heritage* announced on 7 May 2007. It is a revised version of a Document originally drafted for UNESCO ([www.culturalrights.net/en/documentos.php?l=14&p=161](http://www.culturalrights.net/en/documentos.php?l=14&p=161); <https://www1.umn.edu/humanrts/instree/Fribourg%20Declaration.pdf>).

exercise of the right to cultural heritage may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others.

Indeed, the Faro Convention (Alderman 2013, 75) “goes beyond any earlier international agreement toward making the relationship between people and cultural materials and sites a human rights issue rather than a property issue”. Authors who have closely examined this legal instrument agree (Blake 2011; see also Zagato 2015; Pinton, Zagato 2016).

As to the fact that cultural rights are in any case collective rights, the principle has been authoritatively established in 1996<sup>4</sup> by the WCCD (“cultural freedom, unlike the other freedoms, is a collective freedom”)<sup>5</sup> at the universal level, and by the CoE’s ECRML and FCPNM at Regional Level. In recent years, in the General Comment no. 21 on the interpretation of art. 15(a), the CESCR reached the same conclusions.<sup>6</sup>

Still, a consistent number of authors expresses an attitude of hostility towards this interpretation framework. Some among the human rights’ specialists, in particular, criticize not only the new ‘entry’ (the right to CH) but also the general category of cultural rights (Silverman, Ruggles 2007). Notwithstanding a clear evidence, many scholars maintain that cultural rights are a residual category (critically, Stavenhagen 1998), and they ought to remain “neglected or underestimated and...treated as ‘poor relatives’ of other *human rights*” (Symonides 1998). One author (Logan 2007) takes a paradigmatic position: cultural rights are collective rights, and for this reason they are righteously marginalized by the human rights system.

Following Logan’s view, cultural rights are human rights only in a broad sense. He takes up (Logan 2007, 34) the position of Stamatopoulou (Chief of the UNPFII Secretariat) who suggests that human rights experts and international law specialists tend to avoid discussions on cultural rights:

lest the lurking issue of cultural relativism appears, implicitly, or explicitly, to undermine the delicate and fragile universality concept that has been painstakingly woven over the last five decades (Stamatopoulou 2004).

4 See also the Follow-up to the 1986 Vienna Meeting of the Representatives of the Participating States of the Conference on Security and Cooperation on Europe, held on the basis of the Final Act relating to the Follow-up of the 1989 Conference held in Vienna, *Co-operation and Exchanges in the Field of Culture*, para. 59.

5 *Our Creative Diversity*, Report of the WCCD, Paris, 1996, 16: “Cultural freedom [...] is a collective freedom. It refers to the right of a group of people to follow a way of life of its choice”.

6 CESCR, Forty-third Session, 2-20 November 2009, *General Comment no. 21, Right of Everyone to take part in cultural life (art. 15(1)(a)) of the ICESCR*, 21 December 2009.

But Stamatopoulou, herself an advocate supporting the safeguarding of indigenous cultural identity, does heavily criticize - even with a sarcastic, to some extent, accent - the inclination of a great number of human rights experts to leave aside any consideration of cultural rights. In other words, Logan seems to misinterpret the Stamatopoulou's opinion. Moreover, he overlaps two different problems: the collective v. individual rights, and the relativism v. universalism of rights, being these questions interrelated but different in principle.

It is time now to develop an in-depth analysis of the latter issues.

### 3 An Illusory Conflict: Collective Rights v. Individual Rights

Let us consider first the problem of collective rights. Many human rights theorists are skeptical about the existence of cultural collective rights. Often they try to distinguish the individual from the communal (group) dimension of the cultural right (Donnelly 2003; Nickel 2007; Prott 1998), the status of a human right pertaining - in their view - only to the individual dimension. Meyer-Bisch (2014, 2), himself a qualified member of the Freiburg Group, is of the opinion that the holder of a cultural right "is unconditionally an individual person, but in order to fulfil its rights, it may claim membership in one or many communities, groups or organized communities". The group, the community, are characterized only by a "conditional legitimacy, to the extent in which it promotes human rights". Donnelly is even more rigid (2003, 214) in rejecting the very notion of group rights. In his opinion "groups identities, however, are not now" and they "ought not to become, subject to international human rights protection. Only individual autonomy gives rise, and value, to identities that must be respected by others".

This approach cannot be shared.

First of all, the dichotomy between individual and collective rights doesn't affect cultural rights only; rather, it pertains to a number of the s.c. second generation of human rights. In addition, collective rights are present in both the Human Rights Covenants, namely the ICCPR and the ICESCR, that in common art.1(2) read:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

No doubt that the right to self-determination (as studied by Arangio-Ruiz 1988; Brownlie 1995; Cassese 1994; Palmisano 1996, 1997; Tomuschat 1993) is a collective right, as clearly acknowledged *de plano* in the first

version of the HRC General Comment on art. 1 of the ICCPR:<sup>7</sup> “unlike most of the provisions of the Covenant, art. 1 enshrines a collective right” (Palmisano 1996, 398 ff.). In both Covenants, the right to self-determination - the collective right par excellence - is thus placed at the very beginning, taking precedence over any individual human right. In turn, in the ICCPR a special relationship is established between art. 1 and art. 27 on minority rights (Palmisano 1996, 1997; Zagato 2006).<sup>8</sup>

It is time now to explain what a *collective right* does mean when cultural rights, in particular the right to CH, are at stake. Referring to the right of persons belonging to ethnic, religious or linguistic minorities “to enjoy their own culture, to profess and practice their own religion, or to use their own language” in community with the other members of their group (art. 27 ICCPR), a qualified author (Salerno 2009, 212) notes that

i diritti concernenti i gruppi minoritari hanno una intrinseca dimensione collettiva, sicché la relativa tutela è effettiva se è data l’opportunità al gruppo in quanto tale di poterla mantenere.

So far we have distinguished between the individual right in a proper sense – the right of individuals belonging to minorities not to be discriminated, above all and by reason of their belonging to the minority<sup>9</sup> – and a ‘qualified right’ (Zagato 2012a), which considers the ‘group’ and thus the ‘communal’ profiles *per se* of the right.<sup>10</sup> A collective right to CH, however,

7 HRC, General Comment no. 12, art. I, adopted at its twenty-first session, 1984. Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 12 (1994).

8 Art. 27 ICCPR: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”. As for the ICESCR, various of economic and social rights present relevant collective aspects. See, for instance, the Millennium Declaration (UNGA 8 September 2000, United Nations Millennium Declaration, Resolution 55/2), which establishes the MDG

9 See also the DRPBNERLM – UNGA 92<sup>nd</sup> plenary meeting, A/RES/47/135, 18 December 1992. Art. 1 privileges the collective dimension of rights the State should ensure: “1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. 2. States shall adopt appropriate legislative and other measures to achieve those ends.”. Only in the following provisions the Declaration refers to “*persons* belonging to National or Ethnic, Religious and Linguistic Minorities”, thus calling into play to the individual dimension of these rights.

10 Palmisano (1996, 388) stresses that the right to internal self-determination cannot coincide with the sum of individual and political rights of the members of a group: art. 27 calls upon States to protect the group identity of minorities and groups which live within their territory.

may presents a further profile: it could mandate the safeguarding of the specific minority group, or community, as heritage belonging to humanity.<sup>11</sup> In the end, following the last perspective, the object of a collective right is precisely

the preservation of cultural heritage of identity as a collective good of humanity to be enjoyed by present and future generations of that group and (then) by humanity itself. (Salerno 2009, 212; Zagato 2012a, 48)

It is worth underlining that at the heart of the enjoyment of that collective right we find again a group and/or community entitled to manage their CH: to share it, or even to forbid its disclosure. The limit is that the right to CH has to develop in a framework of due respect of all other different human rights.

The collective profiles of the right to CH deserve to be the object of an autonomous research.<sup>12</sup> For the aims of the present paper, in any case, we can conclude that the collective dimensions of cultural rights in general, and of the right to CH in particular, are not in conflict with the individual one. The collective dimensions develop through and thanks to the individual one; besides, recent international legal instruments, at both the universal (2003 and 2005 UNESCO Conventions) and regional level (Faro Convention) are clear on this issue, thus sheltering the notion of a human right to CH from the feared attack of 'organismic drift'.

In conclusion: there is no reason for the citadel of human rights to fear 'a barbaric invasion' from the collective right to CH.

#### **4 Relativism as the (Alleged) Original Sin of Cultural Rights**

In the author's opinion, the reason for suspicion regarding cultural rights held by many human rights' specialists has to be found in the concern about the upshots of cultural relativism. Cultural rights in general, and the right to CH in particular, are strongly connected to the issue of identity, and thus seen as a menace to the idea of universalism, favouring, as such, a potential fragmentation of the international system of human rights

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**11** The Faro Convention introduces the innovative notion of "Heritage Community", thus strengthening our point. See: Zagato 2012a, 2012b, 2013, 2015; Pinton, Zagato 2016. See also papers by De Vita, Pinton, Wanner in this volume.

**12** In particular, with reference to the 'communal' profiles of the right, are we talking of an intermediate dimension which participates of both the individual and the collective right, or the 'communal' profile must be thought of as an autonomous profile, intermediate but still a *tertium quid* between the individual and the collective rights? And in the latter case, which could be its relationship with the debate on common goods?



protection. This concern is shared by many specialists of this area and has been straightly expressed at the end of the twentieth century:

If cultural tradition alone governs State compliance with international standards, then widespread disregard, abuse and violation of human rights would be given legitimacy. (Ayton-Shenker 1995)

In other words: cultural rights mean cultural relativism, the consequence of which is a State discretion in implementing its obligations under the relevant universal legal instruments. Therefore each State would be legitimized to build its own standards of compliance with those international norms.

Let us analyse the approach set forth in recent international instruments. Art. 2(1) of the 2003 UNESCO Convention states:

For the purpose of this Convention, consideration shall 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”, thus shaping the relationship between ICH and international law of human rights on the alternative “between compatibility and exclusion. (Zagato 2012a, 29)

More articulately, the 2005 UNESCO Convention considers the relationship between human rights instruments and the protection of cultural diversity as a two-ways relation (Zagato 2012a, 30; see also Mucci 2012, 379). Art. 2(1) thus envisages the full guarantee of human rights as a prerequisite for the protection of cultural diversity while, symmetrically, point 4 of the Preamble indicates “the importance of cultural diversity for the full realization of human rights and fundamental freedoms”.

As for art. 27 of the UDHR, it refers to the right of individuals to “freely participate in the cultural life of the community”. This word, *community*, has not been included in any other international legal instrument until the 2003 UNESCO Convention and, most pertinently, the Faro Convention. Both art. 2 of the latter – a HC consists of people who value specific aspects of CH “which they wish, within the framework of public action, to sustain and transmit to future generations” – and art. 12(b) are actually dedicated to *heritage communities*. Art. 12(b), in particular, relates to access to CH and democratic participation, and calls on the Parties to take into consideration “the value attached by any heritage community to the cultural heritage with which it identifies”.

This renewed focus on community is in itself a great progress, but it is partly neutralized by the failures produced by the approach criticized here. For instance: there is no doubt that, in the light of the (UNDRIP and of the

interpretative practice developed by the UNPFII, the very safeguard of these peoples' rights is to be found in their communal dimension (Stavenhagen 1998). Yet, the rigid universalistic approach produces a contradictory, even dangerous, outcome in this connection. The distinction, that is, between on one side indigenous peoples, for whom only communal/ groups' human rights would exist, and the remaining part of humanity, on the other side. For this latter part only human rights would be absolutely indivisible.

The result is a contribution to the discrimination of indigenous peoples, seen as human agglomerations of a residual nature, bound to disappearing in the next future. The rigid universalistic approach shifts thus into its opposite, that is in a process of separation/ghettoization of some human communities, namely the epiphany of cultural relativism.

Some authors see a possible solution to the just mentioned contradiction in the *inherent flexibility* of the human rights system (Ayton-Shenker). These rights imply a minimum universal standard of guarantee of human dignity, leaving at the same time enough space to different cultures and legal orders to reorganize and differentiate themselves in the implementation mechanisms/tools. In this way, cultural rights, and among them the right to CH, could be recognized as human rights ... albeit rights with 'a limited autonomy'.

Even this interpretative theory raises concerns. Firstly, and primarily, it is overtaken by most recent international instruments, the Faro Convention *in primis*. Secondly, it doesn't take into due account the growing influence of the CESCR understanding of the economic, social and cultural rights: since the '90s, the CESCR clearly recognized in its General Comments the cultural component of the rights to food, to health, and to housing (Donders 2010, 29).<sup>13</sup>

## 5 The Contribution of the Shaheed Report

By Resolution 10/323,<sup>14</sup> the HRCo established an Independent Expert in the Field of CH; the first mandate was assigned to the sociologist Farida Shaheed of Pakistan who presented the final thematic report two years later.<sup>15</sup>

<sup>13</sup> CESCR: General Comment 4, *The right to adequate housing* (6th Session, 1991), UN Doc. E/1992/23, Annex 3; General Comment 12, *The right to adequate food* (Twentieth Session, 1999), UN Doc. E/C.12/1999/5 (1999); General Comment 14, *The right to the highest attainable standard of health* (twenty-second session, 2002), UN Doc. E/C.12/2000/4 (2000).

<sup>14</sup> HRC, 10th Session, Resolution 10/23 of 26 March 2009, *Independent Expert in the Field of Cultural Rights*, A/HRC/Res/10/23.

<sup>15</sup> As we shall see in the above text, the thematic Reports are two: *Report of the Independent Expert in the Field of Cultural Rights*, Ms. Farida Shaheed, Submitted pursuant to

According to the said Resolution, the mandate of the Independent Expert was: a) to identify best practices in the promotion and protection of cultural rights at the local, national, regional and international levels, b) to identify possible obstacles to the promotion and protection of cultural rights, and to submit proposals and/or recommendations to the HRCo on possible actions in that regard. No reference at all was made to CH, and to the right to CH.

In spite of such hardly encouraging premise, the Shaheed Report marks a very important step in the matter. This outcome became evident from the beginning once the Independent Expert overstepped the strict limits of her mandate, issuing a double thematic Report: the first one relating to the interpretation of her mandate with particular reference to the meaning of cultural rights in relation to human rights, the second one being specifically dedicated to the CH issue. Our attention will then focus on the second Report.

On one side, a precise understanding of the movement in progress emerges from this Report, namely where it reads (para. 20)

In recent years, a shift has taken place from the preservation/safeguard of cultural heritage as such, based on its outstanding value for humanity, to the protection of cultural heritage as being of crucial value for individuals and communities in relation to their cultural identity.

Consistently, in para. 23, the Report catches a central point:

A shift can be seen from the preservation/safeguarding of cultural heritage for the public at large to the reservation/safeguarding of cultural heritage of and for communities, involving them in the process of identification and stewardship.

Following the approach by the Pakistani scholar, it is reasonable to conclude that (para. 22), although the right to CH

does not appear per se, references to cultural heritage have emerged in international human rights instruments and in the practice of monitoring bodies.

The present writer would beg to dissent from the initial point: at least one

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Resolution 10/23 of the HRCo, HRCo, 17th Session, Agenda Item 3, UN Doc. A/HRC/14/36 (2010), and Report of the Independent Expert in the Field of Cultural Rights, Faria Shaheed, HRCo, 17th Session, Agenda Item 3, UN Document A/HRC/17/38 (2011), 21 March 2011, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed.

regional instrument, the Faro Convention, already establishes the right to CH. Yet, the merit must be recognized to the Independent Expert to emphasize the relevance of the practice of monitoring bodies. Precisely the dialogue among the s.c. treaty bodies may explain the strengthening of the link among CH, cultural diversity, cultural rights, and among all of them and human rights law on the whole (Zagato 2014a, 2014b). In addition, the Shaheed Report

acknowledges both the individual and the collective or group aspects of cultural rights and their significance for the expression of identity. (Stamatopoulou 2012, 1188)

Thus, it puts an end to the question of the existence or not of group rights in the human rights system.

On the other side, the Report provides a detailed and up-to-date overview of the legal framework and the initiatives in the field of CH at regional level: the CoE instruments<sup>16</sup> but also the Charter for African Cultural Renaissance,<sup>17</sup> the Asean Declaration on CH,<sup>18</sup> the Model Law for the Protection of TK and Expressions of Culture endorsed by ad the Pacific Community.<sup>19</sup> The Report highlights the relationship between the regional instruments and the UNESCO Conventions, in particular the C2003 – but also the UN DRIP – underlining also the elements of novelty contained in the 2008 Guidelines relative to the application of the WHL (para. 12: “the nominations should be prepared in collaboration with and the full approval of local communities”).

In conclusion, the Shaheed Report follows up the recent trend – traced by legal instruments and scholarly works – which underscores how positive the *growing level of participation by the communities to the interpretation/safeguarding/preservation of CH* is, rather than a risk for the ‘human rights edifice’ (Silberman 2012, 3, where he talks of “various overlapping

**16** On the correct recognition of the Faro Convention’s innovative character, in relation both to heritage communities and to the participative processes by the different *stakeholders*, see points 62 e 63 of the Report. In particular the independent expert underlines how relevant the notion of heritage community (art. 2(b) of the FC) is: “this implies that concerned communities may reunite people from diverse cultural, religious, ethnic and linguistic backgrounds over a specific cultural heritage that they consider they have in common” (point 62).

**17** Charter for African Cultural Renaissance, adopted by the 6th ordinary Session of the Assembly, African Union, held in Khartoum, Sudan, 24 January 2006.

**18** Held in Bangkok, Thailand, 24-25 July 2000.

**19** SPC, Model Law for the Protection of Traditional Knowledge and Expressions of Culture, 2002, [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_4/wipo\\_grtkf\\_ic\\_4\\_inf\\_2-annex2.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_4/wipo_grtkf_ic_4_inf_2-annex2.pdf).

memory communities”). This confirms the current tendency – originating from the CoE’s ECRML – “a far emergere il multiculturalismo come valore proprio dell’ordinamento internazionale” (Salerno 2009, 212).<sup>20</sup>

## 6 Is the Right to (In)-tangible CH a New Dimension of Human Rights?

The concluding considerations are dedicated to the role of identity and HC profiles in the area of human rights.

Again, attention has to be called on the effects of a construction based on a rigid theory of the indivisibility of human rights. The construction can work, at most, in the context of first-generation rights, and of a given geopolitical situation, such as it existed in the climax of the post WWII period marked by the opposition between the two political blocks. At present, economic, social and cultural rights take (increasingly) the stage: such rights do not require a rigid, static application. Even more, in the last decades many States – even of ancient democracy – show attitude to balance respect for human rights with those security needs that they promote to a sort of meta-law holding the same value as the *jus cogens* obligation on the respect of fundamental human rights. The actual international scenario sees various scholars ready to challenge the existence or at least the scope even of *jus cogens* law;<sup>21</sup> in such a situation, the widespread hostility towards making room for identitarian rights in the framework of human rights results disconcerting.

More than a generic respect for cultural diversity, the recognition of the role of cultural identities/diversities, as defined by the above surveyed new international legal instruments, is of help in mastering the complex issues of cultural relativism. To master these issues means to prevent drifts and to recognize cultural relativism as the possible source of a wide range of rights, and not (or not by necessity) as a cause of fragmentation.

There are two main justifications for this opinion. The first one is that in the new legal instruments, namely in the Faro Convention, HCs are “defined in the absence of societal parameters, national, ethnic, religious,

20 At the beginning of 2016 the new Special Rapporteur on cultural rights, Karima Benounne, submitted to the HRC a preliminary Report, fully consistent with the Shaheed report’s approach from the perspective of the present contribution. The 2016 Report, dedicated, as it is, to a large extent, to the intentional destruction of CH from the point of view of the human rights system, and to some extent also to the question of gender inequalities in relation to cultural rights/CH – these issues were not at the core of the Shaheed Report – deserves in any case an attentive examination.

21 Some States, and part of the doctrine, have dared to assert that, in the face of terrorist emergencies, also the imperative prohibition concerning torture may be derogated. On the issue, see Zagato 2010.

professional or based on class” (Dolff-Bonekämper 2008). They refer to *flexible*, or even *fluid identities*, partly shaped on a voluntary basis, beyond the parameters characterizing the traditional minorities (Zagato 2015; Pinton, Vecco, Zagato 2016; Pinton, Zagato 2016. See also in this volume: De Vita; Pinton). If the inalienable right of the community to have and to maintain its identity and its CH (including the right of the minority to positive cultural discrimination) is at the core of cultural rights, it is not less true that any individual “may ascribe to one or more cultural identities” (Blake 2011, 205).<sup>22</sup> Human societies based on one singular memory, one singular heritage, one single identity, never existed. Moreover, and the recent international legal instruments are clearer than the old ones on this point, a cultural identity cannot be imposed on persons who do not want to identify with it. Far from producing a fragmentation of the human rights in their whole, the diverse CHs the different communities identify with move in the opposite direction.

This leads to a first conclusion: identitarian rights have not to confront with human rights as an external limit. Rather, a *self-elective profile* (the right to self-identification) is emerging as a key facet of cultural rights (Pinton, Zagato 2016; see also Pinton, in this volume).

The second conclusion is that the inevitable process of inventorying/cataloguing is *per se* a constitutive process. The act of inventorying different expressions of CH contributes to the creation of the structural elements of an ICH; rather than a mere recording instrument of what is already done, it contributes to the creation of new communities (or levels of) community. In other words

il processo di patrimonializzazione [...] per un verso contribuisce alla creazione e ri-creazione delle comunità e dei gruppi, per l'altro verso può creare (e finisce inevitabilmente per creare) nuovi prodotti culturali e sociali. (Zagato 2014a, 372)

More generally, the *heritagization* processes help to create a second level of cultural reality based on the representation, interpretation and re-interpretation of tradition. Being part of a HC implies:

un livello di aggregazione di collettività che mette in luce la natura costruita di ogni comunità i cui membri, dispersi su uno spazio che può essere transnazionale o discontinuo riaffermano costantemente e

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<sup>22</sup> See also Blake 2015, 275, where the author discusses “the role of cultural heritage in constructing cultural identity”.

volontariamente la loro adesione. (Bortolotto 2012)<sup>23</sup>

The promise of a viable *world of rights*, thus, materialize. If the international order evolves towards considering multiculturalism as one of its own values, this means that, to a certain extent and effect, and in a patchy way, a particular phenomenon is taking place: that is the “saldarsi di frammenti di comunità universale – a livello di opinione pubblica, di *élites*”, HC included, capable of acting as successful lobbying actors in relation to national governments (Picchio Forlati 1998, 412-413), while taking advantage of the thrust of local authorities.<sup>24</sup>

This is the great challenge: not only to build communities, but to create a plot of communities and a community of communities;<sup>25</sup> in short, a network acting at local, national and transnational level, in which communities and groups directly mirroring a CH (intangible and not), namely HC, NGOs, association of (also academic) experts, all, here and now, represent fragments of a universal society involved in a (difficult and complex, but) possible ‘welding’ process.

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<sup>23</sup> According to Bortolotto, the community did not live before the exercise of those practices and stops to exist when the same practices break apart.

<sup>24</sup> The same author (relating to Arangio-Ruiz 1954; Falk 1980) affirms (Picchio Forlati 1998, 46-47): “Il diffondersi.. delle organizzazioni internazionali non governative, quali formazioni sociali transnazionali, delinea una scorciatoia possibile se e in quanto gli apparati delle organizzazioni internazionali governative si saldino con tali formazioni, atte a fornire ai primi quella base sociale di cui i primi mancano per ipotesi”. The relationship established, in relation to the implementation of the 2003 Convention, between the UNESCO ICSICH and a wide range of associations, either national or transnational, united through an international network (<http://www.ichngo.forum.org>. See Lapicciarella Zingari, in this volume), then represents, at least under certain profiles, a positive exemplification in the desired perspective.

<sup>25</sup> See the Charter of Venice on the Value of Cultural Heritage for the Venetian Community, adopted at Forte Marghera (Venice) on 7 May 2014.

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### **III**

## **Cultural Heritage Condenses**



## **An Evergreen Lesson in Cultural Heritage: Ruskin, Tintoretto and the *Scuola Grande di San Rocco***

Clive Wilmer  
(University of Cambridge, UK)

**Abstract** John Ruskin was a writer on a wide variety of subjects, notably art, architecture and questions of social justice, which he always saw in relation to one another. His book *The Stones of Venice* (1851-53), associates the skill of the medieval Venetian craftsman, his attention to natural forms and his care for his material, with Christian humility in the face of God's work. The quest for beauty was an ethical matter and art reflected the society that created it. Ruskin had been led to the study of Venice by his discovery in 1845 of the then-neglected painter, Jacopo Tintoretto, whose work in the *Scuola Grande di San Rocco* overwhelmed him. Tintoretto was not, of course, a medieval artist, but Ruskin believed he was trying to maintain the values of medieval Venice against the pressures of a decadent era. Moreover, Tintoretto had been working for an institution that combined care for art with social responsibility. This paper argues that, when in 1871 Ruskin founded a utopian charity called the Guild of St George, he had the Venetian scuole in mind. 'Guild' served as a rough translation of scuola. By this time, he was much preoccupied with Vittore Carpaccio and his work for the *Scuola di San Giorgio degli Schiavoni* as well. St George is the patron saint of England and Carpaccio's painting of him at war with a fire-breathing monster provided Ruskin with a perfect image of his struggle against the dragons of industrialisation and ruthless competition.

**Summary** 1 Ruskin, Venice and the ethics of architecture. – 2 Ruskin's discovery of Tintoretto in the *Scuola di San Rocco*. – 3 The Guild of St George. – 4 The Venetian Scuole.

**Keywords** Ruskin. Guilt. Tintoretto. Social justice.

### **1 Ruskin, Venice and the Ethics of Architecture**

In Venice the name John Ruskin is a famous one. He is known as a writer on art and architecture, perhaps as a champion of Venetian art in particular, perhaps as one of those nineteenth century writers who juxtaposed the culture of their time with that of the high Middle Ages to the detriment of modern civilisation. In a number of books, most notably *The Stones of Venice* (1851-3), he raised the status of medieval architecture in Venice, at that time widely despised in comparison to the work of the Renaissance, and called for the preservation of the surviving buildings, many of them then in a ruinous condition but threatened by a more sinister kind of destruction: misguided restoration.

When he died in 1900, his younger friend, the Venetian nobleman Alvise Zorzi caused a plaque to be raised to his memory on the hotel where he had lived during his last long visit to Venice. It appeared a matter of days after Ruskin's death and reads as follows:

JOHN RUSKIN  
ABITÒ QUESTA CASA (1877)  
SACERDOTE DELL'ARTE  
NELLE NOSTRE PIETRE NEL NOSTRO S. MARCO  
QUASI IN OGNI MONUMENTO DELL'ITALIA  
CERCÒ INSIEME  
L'ANIMA DELL'ARTEFICE E L'ANIMA DEL POPOLO  
OGNI MARMO OGNI BRONZO OGNI TELA  
OGNI COSA GLI GRIDÒ  
CHE BELLEZZA È RELIGIONE  
SE VIRTÙ D'UOMO LA SUSCITI  
E RIVERENZA DEL POPOLO L'ACCOLGA  
IL COMUNE DI VENEZIA RICONOSCENTE  
P.  
XXVI GENNAIO MDCCCC<sup>1</sup>

I think this succinctly conveys the importance of Ruskin as Zorzi thought of him: not just an art critic, not just a historian, but *sacerdote* – a 'priest' of art, a champion of the craftsman, of the *craftsman's soul* as expressed in the work of his hand, and of the sacred value of great art and good workmanship: not matters of taste so much as matters of religion and ethics. Zorzi does not say, but perhaps implies, that Ruskin was – in the fullest sense of the word – what we should call a conservationist. The two men had stood shoulder-to-shoulder in defence of the Basilica of San Marco when in 1878 its western façade was threatened with rebuilding, which in Ruskin's mind meant destruction. A work of architecture, for Ruskin – indeed, any work of honest craftsmanship – bears witness to the spirit of its making in the preciousness of its unique materials – 'precious' is very much Ruskin's word – and the careful skill of its workmanship. The material *thing* is irreplaceable, but its *value* is beyond materiality.

There is a sentence in *The Stones of Venice* where Ruskin contrasts the meanings communicated by architecture with those by other arts. He says:

A picture or poem is often little more than a feeble utterance of man's admiration of something out of himself; but architecture approaches more to a creation of his own, born of his necessities and expressive of

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1 The plaque is on Pensione Calcina, Zattere, Venice.



his nature.<sup>2</sup>

There is a Platonic resonance to this, one that is at once profound and practical: the irreducible *material* of which a building is made, touched by the physical hand and tools of the workman and shaped to the needs of his society, speaks to us of their *spiritual* condition. In a later book on Venice, *St Mark's Rest* (1877), Ruskin says this:

Great nations write their autobiographies in three manuscripts; the book of their deeds, the book of their words and the book of their art. Not one of these books can be understood unless we read the two others; but of the three, the only quite trustworthy one is the last. The acts of a nation may be triumphant by its good fortune; and its words mighty by the genius of a few of its children: but its art, only by the general gifts and common sympathies of the race. (24.203)

And in *The Seven Lamps of Architecture* (1849) – in many ways a prelude to *The Stones of Venice* – he denounces the nineteenth century practice of restoration in similar terms:

Neither by the public, nor by those who have the care of public monuments, is the true meaning of the word *restoration* understood. It means the most total destruction which a building can suffer: a destruction out of which no remnants can be gathered: a destruction accompanied with false description of the thing destroyed. Do not let us deceive ourselves in this important matter; it is impossible, as impossible as to raise the dead, to restore anything that has ever been great or beautiful in architecture... [T]he life of the whole, that spirit which is given only by the hand and eye of the workman, can never be recalled. Another spirit may be given by another time, and it is then a new building; but the spirit of the dead workman cannot be summoned up, and commanded to direct other hands, and other thoughts. [8.242]

This understanding of architecture – and indeed, of visual art in general – has made an incalculable contribution to modern thought: not just for practical designers – though it is worth noting that Ruskin was admired by such surprising figures as Le Corbusier, Frank Lloyd Wright and Walter Gropius, to name but three – but for theorists and practitioners of conservation. It is very clear that the great Venetian architect and craftsman Carlo Scarpa (1906-78), for instance, looked to Ruskin for his principles

<sup>2</sup> Cook Wedderburn (1903-2), 10.213. Future references to this edition will be given inside the text in the form '10. 213'.

when, after the destruction of the WWII, he masterminded the architectural restoration of the Veneto. This is especially clear in Verona, a city Ruskin loved as much as Venice, and often discussed and described in Venetian contexts. Scarpa does not replicate and never seeks to suggest that all is now well – that the ruin wrought by war has never happened. Anyone looking with an educated eye at (for example) the Castelvecchio in Verona can see how the scars of war have been incorporated into the living building and how its ‘restoration’ has meant adding things to it that are juxtaposed to the surviving parts of the original building. Paradoxically, Scarpa’s modern modification of the building contributes to its meaning, enhances it, and yet conducts that meaning into our own time.

Scarpa’s taste is not like Ruskin’s taste. One would not expect that of a student of Le Corbusier’s, an artist steeped in the culture of Modernism. But one of the important things about Ruskin as a thinker is that it is possible to separate his *taste*, which is sometimes dogmatically expressed, from his *principles*, which often turn out to be adaptable to the changed conditions of modern life. The charity I work for, the Guild of St George, which was founded by Ruskin in 1871, is a case in point. We today describe the Guild – referring back to Ruskin’s original project – as “The charity for arts, crafts and the rural economy” and we see ourselves as giving expression to our founder’s values in the context of modern life. Created to deal with the problems created by mechanisation, industrial expansion and increased social mobility, it has survived, in my judgement, because we act according to Ruskin’s principles and not according to the accidents of nineteenth century taste. The difficulty of imitating what is imagined to be the taste of past eras is well illustrated by Ruskin’s role in a key movement of his day, the Gothic Revival. Few influenced that movement to the extent that he did, yet with a few exceptions, there was hardly a Gothic building of his lifetime that Ruskin felt able to praise. It is possible to think that he was excessively critical and yet broadly concur with the case he made. His aversion to such buildings arose in part from his own experience of working on one: the splendid, but flawed and incomplete, Oxford Museum of 1858. Now called the Oxford University Museum of Natural History, it was designed by the brilliant Irish architect Benjamin Woodward (1816-61), whom Ruskin did much to encourage. What Ruskin hoped to do with the museum was to combine his understanding of medieval methods of workmanship with a modern account of geological periods, such that the stonework of the building was itself an object of knowledge for the student and the system of carved decoration taught the orders of natural growth. He discovered that it was impossible to revive an artistic style without the way of life that gave rise to it, and that it was precisely that fact that made the ‘book’ of a nation’s art ‘wholly trustworthy’ in representing its past. Moreover, by an extraordinary irony that underlines the problems of thinking unhistorically, the Museum began to function in precisely the year,

1859, when the biblically inspired account of natural order embodied in its ornament was broken apart by the publication of Darwin's *On the Origin of Species*. Indeed, it was in the Oxford Museum that the famous debate on evolution between T. H. Huxley and Bishop Samuel Wilberforce took place.

## 2 Ruskin's discovery of Tintoretto in the *Scuola di San Rocco*

But Ruskin had been brooding on the relation between art and social order for some time – particularly since 1845. He had spent much of that year touring Italy and studying Italian art in preparation for the second of the five volumes of his first work, *Modern Painters*. A chance recommendation led him into the *Scuola Grande di San Rocco*, then in a sad state of neglect and dilapidation, and he was overwhelmed – in his account, unexpectedly – by the fifty-two great canvases of Jacopo Tintoretto. He had seen and thought well of Tintoretto before but had had no idea of the ambition, scope and accomplishment of his work. Judgements of Tintoretto in the mid-nineteenth century tended to concur with the account given of him by his contemporary Giorgio Vasari in his *Lives of the Painters*.<sup>3</sup> For Vasari the great Venetians were anyway inferior to the Florentines: he quoted Michelangelo as saying that Titian could not really draw, and himself spoke of Tintoretto as a careless painter who had undertaken ambitious schemes he lacked the skill to sustain. Ruskin in 1845 was a precocious and unshakably self-confident 26 year-old who, having published the first volume of his book to great critical acclaim less than two years before, was inclined to trust his own judgements against any sort of orthodoxy. His response to the pictures in the Scuola strengthened his belief in his 'own gift and function as an interpreter' (4.354), but his faith in his own powers of perception somehow coexisted with a surprising humility in the face of spiritual stature.

The first volume of *Modern Painters* had been primarily concerned with English painting – in particular, with that of J. M. W. Turner, which Ruskin wanted to champion and defend, as well as with several of his minor contemporaries. He praised these artists at the expense of the seventeenth and eighteenth century painters most admired in early nineteenth century England – in particular Claude Lorraine, Salvator Rosa and the Dutch landscapists. But between that first volume of 1843 and the second volume of 1846, Ruskin had come to know a body of art he had not before been aware of or had not sufficiently attended to, and this discovery now substantially modified the message of *Modern Painters*. The art in question was the Italian art which preceded Michelangelo and Raphael, and was

3 *Le Vite de' più eccellenti pittori, scultori, e architettori* (1550).

still absurdly known (and judged) as 'primitive'. Ruskin began to study what he was to call the *Age of the Masters*, the Italian art of the Quattrocento. He began to value it much above the art he had been taught to admire: Raphael's, for instance, and Titian's (though he never lost his love of Titian the colourist). But having experienced this change of heart he was hugely discomfited when, on 23 September 1845, he entered the Scuola Grande di San Rocco, severely damaged by Austrian guns and generally disregarded, to discover a painter of a spiritual intensity comparable to Fra Angelico's but with the skill and dynamism of Titian and Michelangelo combined. Ruskin's editor E. T. Cook was surely right to suggest - though oddly Ruskin never said it himself - that he found in Tintoretto something of the bravura power, the broad spontaneity of execution, he had also seen in Turner: in Cook's phrase, "a spiritual and technical affinity" (4. xlv). It was a mystery. "I have been overwhelmed today", he wrote to his father, "by a man whom I never dreamed of - Tintoret. I always thought him a good & clever & forcible painter, but I had not the slightest notion of his enormous powers" (4: xxxvii). The following day he wrote again:

I never was so utterly crushed to the earth before any human intellect as I was to-day - before Tintoret. ... He took it so entirely out of me... that I could do nothing at last but lie on a bench and laugh. ... Tintoret don't [sic] seem able to stretch himself till you give him a canvas forty feet square, and then - he lashes out like a leviathan, and heaven and earth come together. (4. xxxviii).

Ruskin had begun to think that Italian art was falling into decay by the mid-sixteenth century but here was a giant who had lived and worked till 1594. This revelation led him to the next stage of his life's work:

Tintoretto swept me away at once into the 'mare maggiore' of the schools of painting which crowned the power and perished in the fall of Venice; so forcing me into the study of the history of Venice herself; and through that into what else I have traced or told of the laws of national strength and virtue. (35.372)<sup>4</sup>

As a result, he put *Modern Painters* on ice for several years and settled down to write, first, *The Seven Lamps of Architecture* and then *The Stones of Venice*.

The precise words Ruskin uses are important: *the laws of national strength and virtue*. In other words, Ruskin became convinced that the

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4 "È faticoso lo studio della pittura, e sempre si fa il mare maggiore", said he[Tintoretto], who of all men was least likely to have left us discouraging report of anything that majesty of intellect could grasp, or continuity of labour overcome" (4:27).

beauty of Venice had its roots in the virtues of Venetian *life*. Not the life of contemporary Venice, which he saw as demoralised and impoverished, but the life of the people who had built and lived and worshipped in the buildings he admired, the Byzantine and Gothic houses and churches of the Middle Ages. The special value of Tintoretto, surely – though to my knowledge Ruskin nowhere explicitly states this – was that he had achieved what he did, a religious art of deep conviction and intensity, in a Venice that had begun to lose the spiritual virtues that spoke to him from the walls of the Frari or San Marco. It is possible to argue that there is a great deal in the life of medieval Venice that will not bear moral examination – the whole saga of the siege of Constantinople, for a single and significant instance – but I shall defer that issue for a while.

Ruskin saw in Tintoretto a struggle not unlike the one he had written of in regard to Turner and was feeling in himself: the need to hold on to an innocent Christian faith and goodness in a society increasingly turning towards materialism, greed and – to use a favourite word of his – infidelity. I suspect that by ‘infidelity’ he meant not only a betrayal of Christ and his teachings but, more broadly, an abandonment of the truths of good craftsmanship and accurate observation. He seems indeed to have thought of these disciplines, spiritual and vocational, as two sides of the same coin. It should be stressed that he considered Tintoretto, despite his best endeavours, damaged by this infidelity. He did not think him uniformly successful and, lavish as his praise of the painter is, he can also be disarmingly severe with him when he fails to live up to his own standards. Anyone who looks at a lot of Tintoretto’s paintings knows that they are – to use an English colloquialism – very ‘hit-or-miss’ and there are probably more failures than triumphant successes. But when he *is* successful, Ruskin’s praise knows no bounds. For instance, when in an appendix to *The Stones of Venice*, having given a thorough account of every Tintoretto in the Scuola, he comes to *The Crucifixion*, he simply declares:

I must leave this picture to work its will on the spectator; for it is beyond all analysis, and above all praise. (11.428)

### 3 The Guild of St George

Tintoretto’s *Crucifixion* was beyond analysis and praise partly because its value was as much moral and spiritual as artistic. He was conscious of Tintoretto as contributing – with commitment and some passion – to a charitable institution. Unfortunately, Ruskin’s observations on the Venetian *scuole* are scattered and hardly coherent. It is nevertheless beyond doubt that the historic presence in the city of corporations of lay people dedicated to charitable works and at the same time acting as patrons of

major art impressed him greatly and inspired him in his hopes for a better world - in particular a better England, as he saw it, freed from its industrial and commercial bondage. It seems almost certain that he had the *scuole* in mind when, in 1871, he founded St George's Company.

It was not till 1878 that St George's Company became the Guild of St George. For the rest of the nineteenth century and well into the twentieth, Guilds now become a feature in the cultural landscape, mainly but not exclusively in the Arts and Crafts Movement, which looked to Ruskin as its prophet and progenitor. From the 1880s on, we hear of the Art Workers' Guild, founded by the architect W. R. Lethaby and others, A.H. Mackmurdo's The Century Guild and C.R. Ashbee's Guild of Handicraft. In the early twentieth century, there is the Catholic Guild of St Joseph and St Dominic founded by the sculptor and designer Eric Gill, and some craft Guilds are still active today - for example, the Gloucestershire Guild of Craftsmen, founded in the 1920s from some of the earlier groupings. All these Guilds were concerned with the discipline and well-being of the workman in an industrial age. There were also Guilds that were entirely social and charitable in their orientation. There is, for instance, a radical movement in the Church of England called the Guild of St Matthew, which was founded by the Christian Socialist Stewart Headlam. Very much influenced by Ruskin, it worked for the poor and destitute in cities and, like the Guild of St George, is still active today. And in the early twentieth century a syndicalist movement in the British Labour Party, acknowledging the influence of Ruskin and William Morris, came to be known as the Guild Socialist movement. Certain key thinkers in English ethical Socialism were associated with it: G. D. H. Cole, R. H. Tawney and J. A. Hobson.

The word had not been much used since the Middle Ages, when Guilds were a key feature of daily life. According to Wikipedia,

A guild is an association of artisans or merchants who control the practice of their craft in a particular town. The earliest types of guild were formed as *confraternities* of tradesmen [my emphasis]. They were organized in a manner something between a professional association, a trade union, a cartel, and a secret society.<sup>5</sup>

The early medieval universities were regarded as guilds or confraternities of scholars, and something of that character is still to be found in England in the Fellowship system of Oxford and Cambridge Colleges. It is clear that *confraternità* is also the word commonly used to this day to describe the Venetian *scuole*. The *scuole* were, as one editor of Ruskin puts it,

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5 <https://en.wikipedia.org/wiki/Guild>.

lay confraternities, [which] had much in common with other European guilds, although they flourished longer. Membership was based on a common craft or nationality, a particular religious cult, or a charity to which the members devoted themselves.

Members were bound by their *scuola*'s code of rules, pledging themselves, in particular, to come to the aid of fellow members in distress. An annual subscription provided the necessary funds, and where a surplus was available this was frequently put towards refurbishing the premises. Many of Venice's leading artists contributed to this end and thus the *scuole* came to play a very important role as patrons of the arts. (Whittick 1976)

There are several things to notice in this description. The first is that the *scuole* were brotherhoods or fellowships. They were not engaged in commerce or competition; they were dedicated to serving the societies they lived in, both the surrounding society and the membership of the *scuola* in question. This is still so in the Scuola di San Rocco today, as its current *Statute* indicate:

Scopi principali della Scuola, oltre alla manutenzione degl'insigni monumenti d'arte e della Chiesa votiva, erano e sono: la mutua assistenza fra i Confratelli, l'esercizio della carità verso i poveri, specialmente malati, l'aiuto ai carcerati o alle loro famiglie, nonché la somministrazione di sussidi dotali a donzelle maritande e ciò sempre nei limiti dei bilanci annuali debitamente approvati.<sup>6</sup>

There are considerable similarities between this and Ruskin's Guild of St George, as I hope to show.

The second thing we should notice in the brief account of the *scuole* that I have quoted is the fact that they were *patrons of the arts*. Today that is what they are mainly remembered for, but what Ruskin insists upon in his valuations of Venetian art and his plans for his own *scuola*, the Guild of St George, is the proximity (in their practices) of art, craftsmanship and charitable deeds. We tend to go to the Scuola today as if to a gallery where the work of a great painter is to be seen, and we often thereby miss the true significance of the paintings. Like the Gospels themselves, these paintings focus on the irreducibly physical expression of human need: the need for food, drink, clothing, health and healing, and relief from pain – but it is these physical facts that embody the spiritual gifts of God and call forth from the human observer – in intention, the *confratello* (or since 1977, *consorella*) of the Scuola – equivalent acts of charity. One of the key things

6 *Statuto della Scuola Grande Arciconfraternita di San Rocco in Venezia.*

Ruskin learns from Tintoretto is that 'holiness' is not a feebly ethereal attribute pertaining to the righteous, but adherence to the primary law of the universe, which he calls (in *Modern Painters V*) 'the Law of Help', the business of giving material help where it is needed by another, the help of neighbour to neighbour, such help embodying the love of God: 'the Helpful One', as Ruskin calls him. It is as far as it possibly could be from the capitalist values of free competition and enlightened self-interest:

Government and co-operation [says Ruskin in both *Modern Painters V* and his treatise on economics, *Unto this Last*] are in all things and eternally the Laws of Life. Anarchy and competition, eternally, and in all things, the Laws of Death. (7:207)

Tintoretto, of course, was a professional artist and earned money as the decorator of the Scuola San Rocco, but many of his paintings were given to the confraternity *gratis*, and, though it is clear that they were sometimes given in order to attract further paid commissions, the fact remains that Tintoretto was not notably well paid for the extraordinary haul of paintings, some of them among the largest ever painted at that date.

I do not want to force an easy connection between the *scuole* and the Guild of St George. The original purpose of the Guild was, as Ruskin says,

simply the purchase of land in healthy districts, and the employment of labourers on the land, under the carefulest supervision, and with every proper means of mental instruction ... this is the only way of permanently bettering the material condition of the poor. (30.17)

This was in response to Ruskin's frustrated sense that the country he lived in was said to be so wealthy, despite the fact that so many of its citizens appeared to be so poor.

I have listened to many ingenious persons who say we are better off now than ever we were before - he wrote - I do not know how well off we were before, but I know positively that many deserving persons ... have great difficulty in living in these improved circumstances... For my own part, I will put up with this state of things, passively, not an hour longer'. (27.12-13)

The concerns, therefore, were urban poverty and rural decline. Ruskin wanted to save agriculture from industrial conditions of labour and production and to preserve the countryside from pollution and squalor. He wanted a healthy life for those who worked on the land and nutritious food for consumers. He believed that human beings needed contact with beauty and the natural world just as they needed food and drink: that the poor



in slums and factories, deprived of such things, starved inwardly. He also associated the love of nature with our response to it in art and craftsmanship. He originally hoped that the Guild would be based on communities which would have their own schools, libraries and art galleries. It was a utopian conception, pre-industrial economically but distinctively post-Enlightenment in its sense of the human potential in everyone. It arose from Ruskin's despair at the condition of industrial England, a competitive society obsessed with profit, which, indifferent to the beneficence of nature, appeared to care nothing for the weak and unfortunate. The Guild had and has no single base, so it has never served a single community as the *scuole* can and do. But there are nevertheless similarities to the *scuole*. Ruskin seems to have thought that the first duty of any citizen – certainly of any Christian – was to deal directly with the trouble on one's doorstep, the immediate suffering of one's literal neighbour. If one could not deal with that, there was no hope of solving the large issues of society. This principle was clearly at the heart of the *scuole*, too, as Ruskin was clearly aware.

#### 4 The Venetian Scuole

Ruskin announced the inception of 'St George's Fund' in a series of "Letters to the Workmen and Labourers of Great Britain", which he called *Fors Clavigera*. The series continued, with a few interruptions caused by illness, till 1884 and was eventually published as a four-volume book. I have no time to go into the significance of the strange title or the idiosyncrasies of this extraordinary work, except to say that it is a sort of running commentary on the problems of his day as Ruskin saw them, constructed with improvisatory brilliance in the intervals of a manically busy life. In this strange context, he set down his plans for what was to become in the course of its writing the Guild of St George – its rules and principles, its accounts, news of its activities, his dreams (often wildly unrealistic) for its future. That was by no means the sole purpose of *Fors*, but anything Ruskin raised as a topic in it was likely to be interwoven with the business of the Guild.

For instance, in Letter 75, written in March 1877, Ruskin turns his attention to the first patron saint of Venice, St. Theodore, as he appears with his crocodile on one of the two columns at the entrance to the Piazzetta. Ruskin had been writing a brilliant account of those two columns in what he calls his 'little Venetian guide' (29:61), *St Mark's Rest* (also 1877), and the subject had spilt over into *Fors*. It led him in particular to the Scuola named after that early patron, the Scuola di San Teodoro, and to what he calls the *precious mariegola* (29:64n) of that confraternity, which he had been studying in the Museo Correr. A *mariegola* – *Maria regola*, I suppose – is a document including the rule and articles of association of a lay order. It is, as Ruskin expresses it in *Fors*, Venice's

Mother Rule of St. Theodore, - the Rule, from the thirteenth century down, of her chief Club, or School, of knights and gentlemen.

“But meditate a little first” he goes on, “on that Venetian word ‘Mother-Law’” something very different he implies, with heavy irony, to the kinds of law that prevail in modern capitalist England. This *mariegola*, he says, is “ever watchful, merciful, life-giving” (29:62-3), like a mother brooding over her child.

This feminine aspect finds its complement in the main purpose of Ruskin’s letter, which is to celebrate the knightly role of St Theodore, but before he goes on to that he gives an elaborate footnote, which includes a long “account of the nature of the *Schools* of Venice, of which [San Teodoro] was the earliest”.<sup>7</sup> This account is by one of his contemporaries, a man named Edward Cheney:

Though religious confraternities are supposed to have existed at a much earlier period, their first historical mention at Venice dates from the middle of the thirteenth century. They were of various sorts; some were confined to particular guilds and callings, while others included persons of every rank and profession. The first object of all these societies was religious and charitable. Good works were to be performed, and the practices of piety cherished. In all, the members were entitled to receive assistance from the society in times of need, sickness, or any other adversity.<sup>8</sup>

The ‘Confraternità Grandi’ (though all had the same object) were distinguished by the quantity, as well as by the quality, of their members, by their superior wealth, and by the magnificence of the buildings in which they assembled; buildings which still exist, and still excite the admiration of posterity, though the societies to which they owed their existence have been dispossessed and suppressed [as they were by Napoleon after his conquest of Venice].

The ‘Confraternità Piccole’, less wealthy, and less magnificently lodged, were not the less constituted societies, with their own rules and charters, and having their own chapel, or altar, in the church of their patron-saint, in the sacristy of which their *mariegola* was usually preserved. Many of the confraternities had a temporal as well as a spiritual object, and those which were composed exclusively of members

7 The account is taken, he tells us, from Cheney (1867-8).

8 Cfr. the prayer ‘for the whole state of Christ’s Church’ in the Church of England’s *Book of Common Prayer* (1662): “And we most humbly beseech thee, of thy goodness, O Lord, to comfort and succour all those who, in this transitory life, are in trouble, sorrow, need, sickness, or any other adversity”.

of the same trade regulated their worldly concerns, and established the rules by which the Brothers of the Guild should be bound. Their bye-laws were subject to the approval of the Government; they were stringent and exclusive, and were strictly enforced. No competition was permitted (29:64-65n).

When he noted this – though he makes no mention of the fact – Ruskin was engaged in a struggle with lawyers to determine what his charity should be called. It was to have been St George’s Company, perhaps “a Club, or School, of knights and gentlemen”, an army of Companions. But legally – and there was and is great irony in the fact – a Company in modern English law has nothing to do with companionship. It is a body that has combined in order to make profit in competition with other companies – precisely what Ruskin’s brothers-in-arms were not supposed to be interested in. When the following year he settled on the word “Guild” not yet widely in use as a modern category, he surely remembered Cheney’s account of the *mariegola* and “the rules by which the Brothers of the Guild should be bound”.

But to return to St Theodore as a model for Guild activity:

St. Mark is [the] standard-bearer [of the Venetians] in the war of their spirit against all spiritual evil; St. Theodore their standard-bearer in the war of their body against material and fleshly evil: not the evil of sin, but of material malignant force ... St. Theodore ... is the Chevalier, or Cavalier, of Venice, her first of loving knights, in war against all base-ness, all malignity; in the deepest sense, St. Theodore, literally ‘God gift’, is Divine life in nature .... He is first seen ... in the form of a youth of extreme beauty; and his first contest is with a dragon very different from St. George’s... (29-62)

I am not sure why St Theodore’s dragon is so different from St George’s, but both are monster-slaying saints with roots in classical mythology, connected (as Ruskin was aware) with such figures as Hercules and Theseus. In the classical world such figures stand for the power of human civilisation to drive out darkness and institute order, culture and the rule of light. In the Christian dispensation their battle is primarily with evil and their actions echo the apocalyptic battle of St Michael the Archangel against Satan, Prince of Darkness. The primary significance of St George for Ruskin is almost too obvious to mention. He is the patron saint of England and stands for England whenever she sets herself against evil or tyranny. Such a significance on its own, however, would have carried little weight for Ruskin, who wanted above all to question English values as they appeared in his own era, and the dragon is quite as much a symbol of England as the saint. As Marcus Waithe has put it, ‘he came to associate dragon-slaying with the fight against social injustice. The dragon represented not just

the enemy of mankind, but also the fire and smoke expelled by England's industrial enterprises.

St George also had other associations, and is regarded if not as the patron of Venice - no saint can challenge St Mark - then as one of the city's chief protectors along with San Rocco and San Teodoro, all three of them patrons of Venetian *scuole*. As a saint originating in the Eastern Mediterranean, possibly in Palestine, St George has come to represent the city's imperial role in the Levant: the patron of both the Greek and Dalmatian elements in the Venetian population. It was through that population and through another of the *scuole* that Ruskin's troubled patriotism, his love of Venice and his deep concern with myths and images of evil came creatively together.

In 1869 he discovered another painter who was to seize his imagination as only Tintoretto and Turner had done before. This was Vittore Carpaccio, who always gives his name on his pictures as Victor Carpathius, suggesting that he was of Slavic origin. Ruskin became obsessed with Carpaccio and in particular with the St Ursula cycle in the *Accademia*, originally yet another of the *scuole*, that of the *Carità*. But the first painting that seized him, then surprisingly little-known, was that of St George and the Dragon in the Scuola di San Giorgio degli Schiavoni - St George of the Dalmatian Slavs - a charity founded in 1451 by Slavic benefactors, to aid poor sailors who were fellow-countrymen. Few pictures provide a better mirror for Ruskin's moral vision: the death and waste created by the dragon, the desolation of the city in the background and the constant purpose of the knight. In 1872 Ruskin made a drawing after Carpaccio's picture; he followed it with a strikingly beautiful watercolour of the saint's head and shoulders, and then gave both drawings to St George's Museum, the educational collection he created for the Guild in Sheffield. Commenting on the head, Marcus Wait he goes on to note the absence of a helmet:

In *Fors Clavigera* ... [he writes] Ruskin noted of Carpaccio's representation that "His St. George exactly reverses the practice of ours", in that "He rides armed, from shoulder to heel, in proof - but without his helmet". (27:475) He explains that "the real difficulty in dragon-fights [...] is not so much to kill your dragon, as to see him; at least to see him in time, it being too probable that he will see you first". We might consider [St George's] Museum in this, symbolic, light. It is an attempt to 'see' the dragon first, to take the initiative in the fight to teach better ways of witnessing the world.

It is worth reflecting just for a moment that if you needed a translation of the words Scuola di San Giorgio you could do worse than 'Guild of St George'.

Ruskin was pleased whenever he could find or create a bond between Venice and England, even if the implications of that bond were not of the happiest. So he relished the fact that a picture by a Venetian artist he loved could be used as a symbol of ethical and spiritual good in his native country. Long before he thought of the Guild of St George, he had been preoccupied with the legends of dragons and other monsters as symbols of evil and with those heroes who slay them as the preservers and champions of civilisation. The English artist he most admired, J. M. W. Turner, has a dragon that Ruskin reflects upon in depth in the fifth and final volume of *Modern Painters* (1860). This is *The Apple of Contention in the Garden of the Hesperides*. The garden is, of course, 'protected' by this monster, and one can already see how, for Ruskin, it was going to symbolise the ills of modern society: the greed for profit, the oppression of the weak and the poisoning of divine nature. It is clear that the dragon's fire and smoke represent the mills of the polluting industrialists and that St George is anyone who resists or speaks out against a vicious economic order: in this case, St George is Turner, and perhaps Ruskin himself.

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# **Religious Heritage: Sharing and Integrating Values, Fruition, Resources, Responsibilities**

Michele Tamma, Rita Sartori  
(Università Ca' Foscari Venezia, Italia)

**Abstract** Religious heritage has a distinctive nature and presents more intrinsic critical factors than any other category of heritage. It is our continent's biggest (living) heritage, subject to a range of converging interests and extended uses, other than just devotional. An ever increasing demand for access by new stakeholders, and the lack of financial, human and technical resources, raise unprecedented challenges for this, shared space. This article sheds some light on several, mutually intertwined issues that affect management and governance of religious sites and then investigates the case of Chorus to see how preservation and enhancement of historical religious sites can benefit from a sharing-and-integration approach.

**Summary** 1 Religious Heritage: Difficulties, Opportunities, and Challenges. – 2 Intertwined Issues Affecting the Management of Religious Sites. – 3 Preservation and Enhancement through Sharing and Integration.. – 4 'Making Things Feasible': the Case of Chorus. – 4.1 The Making of a Church Network. – 4.2 How the Network Works. – 4.3 New Challenges.

**Keywords** Religious heritage. Management and governance. Sharing and integration. Chorus.

## **1 Religious Heritage: Difficulties, Opportunities, and Challenges**

A new awareness-raising process on the importance of safeguarding one country's religious heritage is being recorded worldwide. Sacred sites are attracting growing attention from scholars, policymakers and local communities, who see them more and more as a *common heritage*, hence the need to preserve their integrity and authenticity. Religious heritage is our continent's biggest living historical, architectural and social heritage. Across Europe there are over 500,000 churches, synagogues, temples and mosques.<sup>1</sup> In November 2010 UNESCO finally recognized the distinctive nature of religious World Heritage properties within the framework of the

The article is the result of a joint work; nevertheless paragraphs 1,2 and 3 can be assigned to Michele Tamma; paragraphs 4.1, 4.2 and 4.3 to Rita Sartori.

WHC both for being *living heritage* and having a *continuing nature*. Therefore, UNESCO does encourage new forms of dialogue between old and new stakeholders and new forms of action on the purpose of safeguarding religious heritage of outstanding universal value for future generations.<sup>2</sup>

Yet, only in June 2015 did the EP acknowledge religious heritage (sites, practices and objects linked to religious faiths) to be an opportunity and a challenge in the development of a true *democratic and participative narrative* for European heritage. This recognition is clearly highlighted in *Towards an integrated approach to cultural heritage for Europe*, a report by the Committee on Culture and Education:<sup>3</sup> regardless of its religious origins, religious heritage should not be disregarded or discriminated in a discourse of European CH, but preserved for its cultural value and as an intangible part of Europe's CH.

About 20% of the *cultural properties* inscribed on the World HL have a religious or spiritual nature and are labelled as *religious properties*.<sup>4</sup> They belong to different traditions and beliefs, but are about 50% of Christian affiliation and located in the northern hemisphere (Shackley 2001). The largest single category on the list, it is claimed to have distinctive characteristics and to present more intrinsic critical factors than other forms of heritage, since it is a *living heritage* (ICCROM 2005).<sup>5</sup>

Ever since the '70s the Italian Church Authorities, namely the CEI and the Pontifical Commission for the CH (now Pontifical Council for Culture), have been addressing repeated exhortations in terms of religious heritage such as: the acknowledgement of a range of diverse converging interests (liturgical, devotional, cultural, juridical, touristic, technical);<sup>6</sup> the need to

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1 See: FRH-Future for Religious Heritage - letter published by *The Guardian*, 29 October 2015, available at <https://www.theguardian.com/world/2015/oct/29/religious-buildings-are-part-of-europes-heritage-they-should-be-part-of-its-future> (2017-12-15).

2 Kyiv Statement, 5 November 2010. Available at <http://whc.unesco.org/en/religious-sacred-heritage/> (2017-12-15).

3 Report 2014/2149(INI), 24 June 2015. Available at [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0207+0+DOC+PDF+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0207+0+DOC+PDF+V0//EN) (2017-12-15).

4 See <http://whc.unesco.org/en/religious-sacred-heritage/>. The term "religious property", as used in the ICOMOS study *Filling the Gaps-An Action Plan for the Future* (2005), defines "any form of property with religious or spiritual associations: churches, monasteries, shrines, sanctuaries, mosques, synagogues, temples, sacred landscapes, sacred groves, and other landscape features, etc."

5 *Conservation of Living Heritage* - Papers from The ICCROM Forum 2003 on Living Religious Heritage: conserving the sacred. ICCROM 2005.

6 CEI, *Norme per la tutela e la conservazione del patrimonio storico-artistico della Chiesa in Italia*, 14 giugno 1974.



coin an *ad hoc* definition ('cultural properties of religious interest');<sup>7</sup> the necessity to care for them and allow 'new publics' to enjoy them to the full; the acknowledgement of further levels of interpretation and fruition,<sup>8</sup> thus evoking the idea of religious heritage having a dual, social and liturgical nature (Timothy, Olsen 2006; Olsen 2008), and being the expression of the culture and the identity of a territory.<sup>9</sup> A brand new perspective, which looks beyond their primary traditional function as places of cult and faith: what is now being highlighted is their role in educating future generations.

Religious heritage of Christian affiliation, and especially places of worship such as churches, cathedrals, monasteries and convents, is actually facing unprecedented issues and getting into increasing difficulties. A growing number of religious buildings are neglected as congregations dwindle, or the nature of one country's population changes. Secularization, the lack of faithful and volunteers, a negative demographic trend, the redistribution of the population on the territory, are the main facts explaining a significant decrease in the attendance of many places of cult, hence their redundancy. In the same way, other factors are undermining the survival of most places of cult: a remarkable drop of religious vocations, increasing safekeeping and management costs and current limited private and public resources/fundings. Their management structures are all subject to increasing pressure as the traditional implicit support for religious buildings is reduced. As a result, religious heritage is facing several major risks, including the decay of the buildings, the original worship use, the historical and artistic heritage (Cavana 2012). The lack of human, technical, and financial resources is undermining the maintenance standard requirements of the sites, their functionality and accessibility, up to their closure, change of use, or sale.

And yet, there is nowadays an ever increasing demand for access to sacred sites. There has been indeed a continuous growth of religious tourism and pilgrimages in the last decades, as well as of tourists who visit sacred sites for their historical and cultural value. According to WTO estimates, 300 to 330 million tourists visit the world's key religious sites every year, with approximately 600 million national and international religious voyages in the world, 40% of which take place in Europe. Europe's two most popular sites are both churches, and of Christian affiliation: Notre-Dame

7 *Revised Agreement of the Lateran Concordat*, 1984 - a definition adopted in the 2004 *Urbani Code*, art. 9(1).

8 Pontificia Commissione per i Beni Culturali della Chiesa, *Lettera circolare sulla necessità e urgenza dell'inventariazione e catalogazione dei beni culturali della Chiesa*, 8 dicembre 1999.

9 Pontificia Commissione per i Beni Culturali della Chiesa, *Lettera circolare sulla necessità e urgenza dell'inventariazione e catalogazione dei beni culturali della Chiesa*, 8 dicembre 1999.

(13 million visitors/year) and the Sacre-Coeur (11 million/year). In the UK, church worshipping communities are declining at exactly the same time as tourist numbers are rapidly increasing (Shackley 2005, 35) and in most European cities of art, these 'new stakeholders' are about to outnumber the faithful.

Leaving aside worship and contemplation, people access and visit sacred sites for a variety of reasons, as they are seen as a chance for a cultural and educational experience, or simply because they are part of their tour programme. On the one hand, this represents an opportunity of revitalization through the development of diversified visit experiences, and a possible source of income, so extra resources for the restoration and the keeping of the sites. On the other hand, it determines problems of compatibility since these sites become places where religious, cultural, and tourism-related practices converge - which also implies the risk of commodification of religious places for mere tourist consumption (Olsen 2003). In terms of management and governance of this living heritage, the challenge now is to find a way so as to balance different stakeholder interests and pressures, different uses of the spaces, and increasing lack of financial, human and technical resources.

The purpose of this paper is actually to shed light on the several mutually intertwined issues affecting the management and the safeguarding of religious sites, and on how their preservation and enhancement can benefit from a *sharing-and-integration approach*, as it seems to happen in the hereunder presented case of Chorus, a lay, not-for-profit organization, which has taken a number of inspiring, bottom-up initiatives in this direction.

## **2 Intertwined Issues Affecting the Management of Religious Sites**

Many places of worship across Europe are underused or considered redundant in urban areas as well as in the countryside, and are at risk of demolition or privatization (Alter Heritage 2015). These sites are not able to collect sufficient funds nor attract enough visitors as sources of extra income, although, in many cases, they harbor an artistic, architectural and historical heritage of significance. Others, on the contrary, have difficulty in addressing adequately the increasing waves of visitors brought by mass tourism. Facing a large number of people implies the planning, organization, and provision of adequate facilities and services, and therefore the need of resources to invest and of management skills to employ. Moreover, crowds of people with different fruition motivations and behaviours can jeopardize 'the sense of place':

visitors to sacred sites often complain that the sheer pressure of numbers prevents them experiencing the numinous, and some site management strategies have been developed to address this issue. (Shackley 2001, 8)

The safeguarding and the preservation of sacred spaces definitely require management strategies and practices able to face the new emerging challenges and enhance sustainability. Of course, management issues can be considered, in many ways, akin to those related to the management of CH and of tourist attractions in general, but there are several mutually intertwined issues that affect the management of religious sites, in particular of those ones that are still officiated and of great significance to their community of faithful but, at the same time, also embody an artistic and historical heritage of high value.

Firstly, management has to cope with *manifold fruitions and needs that overlap*. The presence of different, converging meanings and a manifest heterogeneity in the use of the sites, and so the need to meet different requirements simultaneously, may lead to challenging strategic and operational choices. The coexistence of lay and religious values amplifies the conflict between collective and private interests which increases the level of management complexity (Lo Presti, Petrillo 2010, 303). Places where religion and tourism overlap and commingle with one another, raise questions about the management, maintenance, interpretation and meaning of sacred sites (Olsen 2003, 100). Revenue from visitors is often vital to the maintenance of a site although the generation of such revenue (donations, admission fees, catering, merchandising) is often highly controversial (Shackley 2005, 34). Dealing with living religious heritage means having to face a range of issues concerning worship and various notions of sacredness, as the latter often defines attitudes towards ownership, access to non-devotional visitors, and co-operation with museum/heritage institutions. From a service delivery perspective, the quality of experience that both worshippers and non-worshippers receive at sacred sites poses several issues about access, layout, the way artworks and cultural properties are displayed, control and safety, considering that different motivations, expectations, and behavioral patterns need to coexist in a shared space. The perceived risk of touristification and/or museumification of their heritage and values, can make hosting worship communities more reluctant towards displaying their cultural properties and providing access to cultural visitors and tourists, and towards the principles of contemporary museology (Alexopoulos 2013).

Secondly, *responsibilities on religious heritage sites tend to be diversified and distributed*, and especially in the case of those sites of worship still in use, “two legitimate aims are at stake in the same place: ensuring effective religious freedom and preserving cultural heritage” (Fornerod 2010, 7).

These two aims, according to domestic specificities in the Church-State relationships of each country, are reflected in the ownership and in the funding systems, on the one hand, and in the heritage conservation policies, on the other. The hybrid nature of religious heritage – devotional, social, cultural – leads to the involvement of several institutions and players with different responsibilities and rights to intervention: from the State to religious authorities to private individuals. As far as Italy is concerned, churches may be owned by the State (Agenzia del Demanio), the Fondo Edifici di Culto (F.E.C.), religious orders, confraternities, or by the Church, which is the title-holder via the multiplicity of ecclesiastical entities (for the most part dioceses, parishes, and religious institutes) spread all over the national territory. In addition,

the majority, if not all, of the churches of historical value are classified nowadays as ‘cultural goods of religious interest’ and – “if belonging to entities and institutions of the Catholic Church, or other religious denominations’ – are subject to a protection regime which provides for, beside the operative duties of the Ministry of cultural affairs as well as of the Regional bodies, the necessary agreement of the religious authority ‘regarding the requirements of worship”. (Cavana 2012, 24)

Thirdly, the issue of *heterogeneity concerning location, size, attendance, historical-artistic value*. The number and the geographical dispersion of religious sites, their differences in terms of size, location and historical and artistic value, the type and degree of attendance, the visitors’ profiles entail complex issues in terms of costs of maintenance and enhancement of functions, strategies aimed to balance the needs of visitors and communities, and relationships with the other stakeholders in general. Large and famous sacred sites, with significant levels of international visitation, face the challenge of managing the waves of tourists and of preserving ‘the sense of place’ but, at the same time, they can generate a remarkable income thanks to different sources, like admissions charges, donations, commercial activities. These kinds of sites have greater opportunities than the small ones, whose visitation levels are lower and dominated by the domestic and diocesan public (Shackley , 37):

Most tourists visit only the most popular heritage religious site in a region, and as a consequence, these sites are well funded, while less popular sites lack funds for preservation and maintenance. (Levi, Kocher 2009, 20)

As a consequence, there is an emerging need to clustering and networking, especially when the religious heritage is scattered all over the territory in a number of small and medium-sized sites, most of them being the goal of just a few visitors.

### 3 Preservation and Enhancement through Sharing and Integration

The preservation of sacred spaces should have a safeguarding approach. Safeguarding is defined as

measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion and enhancement, transmission, particularly through formal and informal education, as well as revitalization of various aspects of such heritage. (2003 Convention, art. 2(3))

Such an approach requires the sustainability of each (tangible and intangible) heritage to be developed through both conservation and exploitation, which implies the use of consistent management practices.

From the perspective of their historical and cultural value, sacred sites share with the other cultural institutions that preserve and exhibit heritage the need to reach a greater accessibility, a wider participation, a deeper relationship with the territories and their social and economic communities. But at the same time, religious heritage embodies their own worship groups and communities: the bearers of a shared heritage that cannot be deprived of their devotional places, meanings, practices, respect of sacredness, and that contribute to the maintenance and vitality of the worship sites. As it is widely recognized in the notion of safeguarding, preservation and protection are combined with promotion, enhancement and transmission, with an emphasis on the need to ensure vitality. So, the issue of preserving and maintaining religious heritage sites cannot be separated from that of their 'use'. In addition, "it has been proved that the regular use of a historic monument, complying with its 'normal' use contributes to its conservation" (Fornerod 2010, 9). The extended use of religious properties, namely the development of a social and cultural use in 'co-habitation' with the worship and liturgy, seems to be a suitable way for the creation of a wider social and economic base and able to support them.

Opening up the places of worship to other uses and users, with the aim of a sustainable preservation and an enhanced vitality, is a matter of sharing and integration.

The multiplicity of visiting purposes, related to the spiritual, historical, aesthetic and cultural significance of the sites, implies the capability of welcoming visitors with different motivations, expectations, and behavioural patterns, that have to co-habit in a 'shared space'. Consistent management practices can help to preserve the integrity of the place, and avoid conflicts and inappropriate behaviours (Griffiths 2011, 65 ff). Making different interpretations, meanings, practices available within the

site can be an effective way to enhance the visitor experience and the mutual compatibility among diversified users. Preparing and organizing different types of fruition implies the use of tools in order to manage the access control (i.e.: opening time, admission fees, staggered entrance), the setting of the visitor's experience (exhibition, layout, services, kind of events), and the interpretative proposal (information, communication, storytelling, guidance), the latter being indispensable to raise awareness on visitors and provide them with codes of understanding and behaviour (Gatrell, Collins-Kreiner 2006; Goral 2011; Poria et al. 2009).

Often, due to insufficient availability of funds and resources, the skills and competencies needed to implement such policies and to operate efficiently may be missing. This occurs especially when the religious heritage of a territory is fragmented in innumerable, scattered, small and medium sites, which may trigger the need of clustering and/or joining them in networks. In this way, sacred sites can pool and integrate resources and achieve economies of scale, supporting each other. Also, the externalization and coordination of activities which are difficult to manage individually - communication and promotion being often among these - may help to overcome organisational and economic constraints. Beside this, sacred sites can even cooperate within networks with other cultural institutions, associations and businesses in order to include their heritage in the cultural and touristic offer of the destination (city or countryside). There is actually a deep relationship between cultural properties - tangible and intangible - and the local context (Cerquetti 2011). The properties, the historical churches, convents, monasteries where they are preserved, and the town which hosts them are mutually linked (Chastel 1980), and therefore connected with the other historical buildings, museums, squares, monuments that together embody a CH, which hence can be defined as capillary, contextual, and complementary (Golinelli 2008). When an area contains a large number of CH attractions, tourists tend to visit only the most popular sites, but the offer of interpretation and appropriate visit experiences, combining different forms of itinerary, can help making tourists aware of alternative sites to visit (Levi, Korcher 2009, 18). So, it becomes more and more necessary to involve the diverse stakeholders (public, private, ecclesiastical) in sharing and integrating resources and activities to preserve their heritage and enhance the visitor's experience.

## 4 'Making Things Feasible': the Case of Chorus

### 4.1 The Making of a Church Network

A case that stands out in the Italian scenario of religious heritage management is certainly that of *Chorus-Associazione per le Chiese del Patriarcato di Venezia* (Association for the Churches of the Venice Patriarchate), a lay, not-for-profit organization, established in 1997 in Venice. Chorus, a pioneer in the field, shows many traits of both the 'mutually intertwined issues' and the 'sharing and integration approach' that we have portrayed above.

In the early '90s the Venetian context was quite worrying, as clearly pictured in an article published in the *Corriere della Sera*: the opening of the over one hundred historic churches, each one both a museum and an extraordinary tourist attraction in itself, had become a *cultural hazard*.<sup>10</sup> The dwindling community of faithful as a consequence of an ongoing depopulation of the city, together with a pervasive process of secularization, had resulted in a lack of volunteers, offerings and donations within the parishes' circles. Moreover, a series of remarkable funding cuts by both the Italian State (liable for the heritage of the whole country) and the City Council of Venice (since 1990 no longer liable for granting contributions to places of cult) had made the opening, maintenance and safekeeping of historic religious buildings and their artworks just unsustainable. Hence, the shocking announcement by Don Aldo Marangoni - the then president of the Venice Parish Priests' Board ('Collegio Urbano dei Parroci') as well as the director of the Churches' Office ('Ufficio Chiese'), and a parish priest himself - who in February 1992 warned about the real threat of closing down all the churches by limiting their opening only to Holy Services.<sup>11</sup> The threat of a churches' shut-down alarmed institutions, scholars, city lovers and the tourism industry. The total and/or partial closing of most Venetian churches would almost certainly carry with it increasing acts of vandalism and thefts, a general decay with an impact also to the newly restored ones, and the strong disappointment of visitors and tour operators. The religious heritage of the city was being put at risk more than ever before.

In 1997 Venice counted around 69,000 residents and together with a steady depopulation the city was - and still is - experiencing a remarkable increase of tourist flows every year. Many visitors were also increasingly demanding easy and regular access into sacred places of cultural interest. It was clear by then that these 'other' stakeholders would soon outnumber the

<sup>10</sup> Claudio Pasqualetto. "Rubata in chiesa tela del Bellini ed è polemica sui tesori indifesi". *Corriere della Sera*, 3 March 1993.

<sup>11</sup> "Niente contributi c'è la serrata". *Gente Veneta*, n. 8, 22 February 1992.

faithful and that the Venetian churches were running the risk of becoming spaces of conflict between the few pious and the many visitors. Don Aldo Marangoni and a group of other concerned parish priests looked at the big picture, and carefully considered all the issues. Firstly, the cost factor: 50,000-60,000 euros/year were necessary for the care and the day-to-day management and safekeeping of a single church. Secondly, the context: Venice, a World Heritage site since 1987, with its historic religious patrimony of outstanding universal value to be safeguarded for future generations, was then becoming a more and more 'ecumenical' attraction, a dual space where tourism and devotion often coincide. Thirdly, the geographical location of the city churches, as an ensemble: all detached from one another and scattered throughout the territory of the city, a veritable *widespread museum*, with thousands of *in situ* artworks. Lastly, the different nature of each religious building in terms of size, fame (most visited, least visited, worldwide known, unheard of), and chance to get spotted (central or marginal to the main, signposted paths). Notwithstanding the difficult circumstances, Don Aldo Marangoni and his circle of priest-friends committed themselves in an action to the advantage of both their own buildings and their communities of faithful. An act of conciliation between the secular and the sacred, with a mission and a goal: ensure the care, safekeeping, safeguarding, conservation, restoration, extended opening, promotion and enhancement of the historic Churches of Venice and the Venice Patriarchate. Their project in a nutshell: 1) creation of a network of churches; 2) activation of a mechanism of solidarity amongst churches; 3) introduction of a fixed contribution for the extended use of the sacred space; 4) convert all contributions (entrance fees) to services. In other words: they decided to cluster religious buildings of different nature in order to spread the funds generated by the few *stars* (famous churches) across the maintenance of all. They actually agreed upon to set up a network of churches (the churches at risk involved in the project were initially 13, the network now counts 17) within the framework of a lay, not-for-profit organization, which they named *Chorus* and for which they coined the slogan "Enjoy & Preserve" ("Fruiere per conservare"). Their aim: to grant an extended and regular opening of the historic churches to the benefit of a wider range of stakeholders, thanks to an organized safekeeping service financed by thousands of small contributions (3,00 euros in 2016).

The start-up costs of the initiative (ca. 258,000 euros) were personally borne by the founder and president, Don Aldo Marangoni, who managed to get a bank credit in his own name. A regular statute was drawn, staff was hired, churches were provided with alarm devices and opened non-stop, seven hours a day (same opening times), six days a week. All the artworks were labelled and provided with an appropriate lighting; a non-invasive, indoor booth for the operator was set up in each church near the entrance; a factsheet with historical and artistic information was drawn to be handed over to visitors.



## 4.2 How the Network Works

*Chorus* is a network of churches, each one with a different status: ten are parish churches, four rectorial, and three vicarial. Also the ownership reflects their diversity: fourteen are owned by the Diocese, one by the Capuccini Friars, one by the Franciscans, and one by the Venice City Council. Responsible for every church is the parish priest. Through a signed agreement between *Chorus* and each and every parish priest, *Chorus* commits itself – free of charge and away from the Holy Service – to provide the relevant church with regular opening, safekeeping, cleaning, power and lighting, day-to-day maintenance, information to visitors, seven hours a day, six days a week, while ensuring the respectful use of the sacred space.

Each process of conciliation needs a mediation. *Chorus's* interface between sacred and profane is represented by its staff of 21 people (status: 2016), and their tasks. Four people in the backoffice, including *Chorus's* director, sixteen people in the churches (one church is presently closed for restauration, one is administered by a religious order and the opening of another one is granted by a barock orchestra using it for their rehearsals and concerts) with a four-week turn-around. They all have an open-ended contract: as a matter of fact, *Chorus's* other purpose was and still is to offer job opportunities in town. Not only does the staff take care of the safekeeping (opening/closing churches, activating/dis-activating alarm systems, checking attendance behaviour) but it is also supposed to promote the *Chorus* network and be ready to illustrate each venue.

*Chorus* was and is designed to create a virtuous self-financing system, which allows the opening and the maintenance of the buildings of the whole network (all of them being 'working' churches and some of them even parish churches), on the basis of a series of criteria, that can be briefly summed up as follows (status: 2016):

1. The involvement of the visitors in the project of safeguarding and promotion of the Venice religious heritage in general, and of that of the *Chorus* network in particular, by means of a fixed contribution: 3,00 euros for the visit of a single church and 12,00 euros for 17 churches (*Chorus Pass*, validity: one year), nonetheless granting free access to Venice residents, pilgrims, members of religious orders, disabled and accompanying carers, children under 10, members of ICOM and ICOMOS, authorised guides, group leaders on duty, school group leaders on duty, plus journalists, researchers and scholars (who need a *Chorus* accreditation)
2. The above-mentioned contribution is to be imposed only on the 'extended use' of each sacred site of the network, away from Holy Service times. It applies therefore exclusively on lay visitors (both foreign and Italian) and not on the faithful (from whichever country) or the locals (both lay and faithful). Everyone is granted reliable and

- longer opening times, an adequate lighting system, museum-like labels on artworks, a clean environment, staff assistance. *Ad hoc* contributions are required by *Chorus* from those asking to make use of one or more religious buildings – where and when applicable (as a rule, rectorial or vicarial churches) – for the organization of non-invasive, unintrusive, church-friendly events, like selected temporary art exhibitions and/or concerts.
3. The activation of a mechanism of solidarity amongst churches: all contributions given to access/use the well-known (and most visited) churches of the network are also intended to finance the management of the least known (and less visited) ones. Every church plays a distinctive role in the network, each one serving the purpose of the network, and adding more value to the network, each one also shaping the structure and providing continuity to the network. The least visited benefit of a share of the wealth collected by the most famous (or geographically most favoured) ones, the famous/most favoured ones willingly accept to transfer a part of their share to serve the common good, and pride themselves to be the network's flagships.
  4. The idea of providing an effective contribution to a more effective distribution of the tourist flows – one of the main issues of the city – by supplying the city guests with a map showing the location of all the 'Chorus-churches' (that are scattered all over Venice), implicitly suggesting new routes across the maze of streets and canals, and so inviting the curious travellers to explore and experience the beauty of less crowded surroundings, away from the so called 'must-see' destinations (Piazza San Marco, Rialto).

In this sense, *Chorus* appears to have been all the more innovative and far-sighted already from the beginning (1997), when, showing uncommon pragmatism and excellent problem-solving qualities, a group of citizen-priests decided to conciliate lay and religious needs – meanwhile rescuing 17 churches – by exploiting the potential and the power of a virtuous network, which other Venetian churches might need to join in the future, and by bringing forward a possible form of enhancement and safeguarding of CH in the territory through an innovative approach in the management of sacred spaces as common goods (*common heritage*), which aims at a conciliation between lay and religious needs, thus reducing the risk of conflicts among stakeholders.

*Chorus* proves to be a sustainable, virtuous network, a bottom-up initiative which can pride itself of a series of outcomes: the extended opening times of historic churches; the safekeeping and safeguarding of the buildings; an easily accessible and valuable cultural offer; a comfortable, enjoyable visiting experience (and thus the enhancement of the religious herit-

age value); a sustainable way to promote and divulgate culture (through the creation of an economy of scale); the enhancement of less known historic churches (otherwise at risk of marginality); concrete benefits for the Venetian community (faithful and laypersons); a steady job for twenty-one operators; an impulse to gain a different perspective on CH (a new discerning public); a renewed social engagement.

### 4.3 New Challenges

A peak of visitors (322,224) was registered in 2008, and never matched again. In 2014 one of the leading churches broke the *Chorus's* solidarity pact and quitted the network, undermining the sustainability of the latter. As a consequence, there was a drop of 60,000 visitors. Then, another church which was rented out for years as a venue hosting a pavilion of the *Biennale* exhibition, lost this prerogative, and also the income deriving from it. On the top of this, and despite the steady increase of tourist flows, the year 2014 registered a declining number of visitors in all museums of Venice, and subsequently, a substantial decrease of *Chorus's* visitors up to a total of 191,491 in 2015, which had a serious impact on *Chorus's* virtuous self-financing system.

*Chorus* is now facing new challenges. One for all: trying to raising a renewed interest on visitors and enhancing their churches' network by improving their communication skills (a new website) and using networking strategies (a Facebook account with over 5,000 thousands 'fans').

*Chorus* also strives for a deeper integration of their heritage within the city tourist policies as a veritable must-see, aiming at making it a more inclusive network, in harmony with its 'ecumenic' nature. In this respect, it has signed an agreement with Ve.La. S.p.A., a society of the AVM group, that deals with the marketing and the selling of 'Venezia Unica City Pass', a city card which can be customized by uploading different services (public transportation tickets and/or admission tickets to the major city attractions and/or events) at will. The *Chorus Pass* is in the list and has been uploaded by many users, along with the other city museums.

*Chorus* also favours any respectful, yet awareness-raising initiative that may be useful to change the mainstream perception of historic religious buildings and favour different levels of identification in what should be considered - at all times, regardless of any personal credo - a common heritage at risk. Indeed, *Chorus* has recently joined in a project by Venezia Arte Cultura & Turismo, a not-for-profit association based in Venice, whose members are all qualified guides of its heritage and work in synergy with *Chorus* and other organizations in order to promote a sustainable approach and facilitate the interaction between the visitors and the tangible and intangible heritage. 'Venezia ExtraOrdinaria by Venezia Arte Cultura

& Turismo' is a program of walking experiences, with a special focus on the over one hundred churches of Venice and their past relation with the hundreds of *Scuole* (fraternities and guilds), expressively designed so as to change in the visitors their patterns of perception of CH in general and that of religious heritage in particular, in order to bring to life the invisible threads between churches and the many fraternities that, for centuries, attended to their altars and often erected outstanding premises in their surroundings. Each walk provides a social-anthropological perspective, other than just a mere description of the artifacts, and an insight into unheard of aspects of the past 'extended-use' of the Venetian churches, and their former great importance, at any level, for each neighbouring community. This program was launched with much success in June 2016 on the occasion of the yearly event 'Art Night Venice 2016', under the label of 'Venezia ExtraOrdinaria/ExtraOrdinary Venice, Churches & Fraternities, Passion and Devotion', with Chorus and the Management of Arts and Culture Lab (m.a.c.lab) of the University Ca' Foscari as partners of the initiative. In order to maximize audience enjoyment and effectiveness of the guides' narration, availability was limited to 200 participants. The sold-out crowd praised 'Venezia Extraordinaria by Venezia Arte Cultura & Turismo' as "one of the best events in the "Art Night Venice 2016's' list" and as an experience that "has changed one's perception of religious heritage forever" (comments collected from the participants on the day of the event).

The issues and the approach presented in this work may suggest something relevant also in terms of safeguarding of CH in general. At a closer look, it is apparent that almost any artistic, historical, cultural sites is subject, to different degrees, to diverse interpretations, uses, stakeholders' interests. A lot of important pieces of our CH are at risk of conflicting interests, such as: conservation versus mass tourism; *patrimonialisation* and museumification of CH, yet at the expenses of the communities – those that in the past have created it and/or have benefited from it as an important part of their culture; resource allocation dilemmas between the preservation of the many CH sites and the shortage of public funds. Lastly, two critical aspects can be underlined: the ability to manage CH as a *shared space* within which one needs to conciliate different, sometimes conflicting, demands and interests; the need to cooperate within networks as a way to both overcome economical and organisational constraints and help visitors to fully enjoy a cultural experience otherwise fragmented in innumerable, scattered, small and medium sites, yet of a great importance.

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# **The Scuola Dalmata di San Giorgio e Trifone**

## **A Place for the Dalmatian Community in Venice**

Silvia Zanlorenzi  
(Università degli Studi di Padova, Italia)

**Abstract** The largest part of references available until today, on the Scuola dalmata di San Giorgio e Trifone tend to emphasize the role of Venice' Dalmatian community with respect to the courageous contribution given in the course of the long-time' conflicts against the Turks. The aim of this paper is to show instead, through the personal stories of the Scuola's members and chiefs (Guardian grande), how they were able to distinguish themselves in other type of occupations which gained them a relevant position in town, as solid contributors not only to the economic life of Venice, but also to the cultural and spiritual one. Moreover, it will be shown how, at the end of Republic independence, in the conclusion of the XVIII century, their gradual integration as 'Venetians' made them suitable for a larger commitment as "trainers of italianity", even in other regions of Italy ready to unify into a national State.

**Summary** 1 Introduction. – 2 The Scuola Dalmata: a Confraternity of Warriors for the Crusades?. – 3 The Dalmatians in Venice: Their Lives, Their Accomplishments. – 4 Conclusions.

**Keywords** Dalmatia. Venice. Scuola dalmata di San Giorgio e Trifone.

### **1 Introduction**

This paper will present and discuss the case of one *Venetian Scuola* belonging to the group of so-called 'Scuole minori'. The *Scuola dalmata di San Giorgio e Trifone* has received until today, a relatively limited attention by scholars. The peculiar concept of its establishment, i.e. the common nationality and background of its members, marks it as *Scuola di nazione*, where religious devotion was certainly a feature required to the *confratelli*, but whose priority was to gather in Venice, the Dalmatians who arrived in town for mainly professional matters, i.e. their employment as skilled sea men in the Venetian fleet. Mutual support and aid, including welfare' needs and medical care, were among the expected duties, but despite the size and somehow specific scope of the brotherhood, the case stands well as a 'citizenship' case within a European framework (Picchio Forlati 2014). In fact, by a methodological point of view, as one trace back the biographies, the historical contexts and the diverse experiences of the Dalmatians, what

come out is going across three different countries of today' Europe, such as Italy, Croatia and Montenegro with some further references to Greece, Serbia and Turkey.

As a matter of fact, the 'teleri' painted by Vittore Carpaccio until 1507, showing, among other subjects, the heroic episodes of Saint George' saving of the city of Selene from the dragon, remain the main cue of interest of this minor *Scuola*. Moreover, one of the most recent titles (Gentili 1996) attempt an iconographic analysis which emphasizes the references to the underlying political propaganda of the artistic project, with respect to Venice commitment against the Ottomans. Within such a view, the Dalmatians appear like a community invested with a special mandate for the defense of their native land, involved in the whole series of conflicts that occurred in the Adriatic Sea, in order to preserve the borders by the Turks' advance, along a time' space lasting until the end of the Republic. In the course of such an effort, i.e. centuries of sea' conflicts against the Turks, it is plausible that the military value of courageous ones, couldn't but stand out and increase the fame of the Venetian value. The accomplishments of many admirals, captains, etc. are easily available in the than chronicles: it is also the case of the exploits of the Admiral Pietro Mocenigo in the 'East', dating to the second half of the fifteenth century, that were preserved in the report compiled by the Dalmatian Coriolano Cepione from Traù (today Trogir) (Gentili 1996, 73-4), "sopracomito di galera".<sup>1</sup> But what remains in today' popular unconscious about the Dalmatians and their involvement in Venice events either as individuals as well as a community, is the scene represented by Giuseppe Lallich' painting *Il Bacio di Perasto al Gonfalone di San Marco* painted in 1930. The well-known picture representing the Captain of Perast Count Giuseppe Viscovic bestowing his last, touching tribute to Venice along with the local notables and citizens, acquired popularity when Gabriele D'Annunzio choose "Ti con nu, nu con Ti", as a quotation from the final speech Viscovich held on that same day 23 August 1797: the Italian poet in 1918, flew with his squadron 'Serenissima' on Vienna with his team of aviators, by flooding it with Italian tricolored leaflets. Two years later, in Fiume, D'Annunzio used the same sentence to finish his speeches.

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1 The office was on use especially between Middle Age and Renaissance, to point the role of the galley' captain. In the case of Venice' fleet, only members of aristocracy were listed for it, as it was considered a good start to a brilliant career.





Figura 1. Giuseppe Lallich, *Il bacio di Perasto*. (ca. 1930). Oil on canvas, 90 × 120. Roma, Associazione nazionale dalmata. © Cace 2006

The aim of this paper isn't a discussion on why and for what reasons the Italian historiography debate on Fascist rethoric propaganda has pushed apart the history and the CH of the Eastern Adriatic into a sort of *limbo*, still today approached mainly by specialized scholars. References to the complex history of this region might still remain somehow confused, in a way that we also should stress that Perast is located in today Montenegro. The small town was where Venice gonfalon' standard was guarded, preserved by twelve *Gonfalonieri* whose vow of allegiance, implied death rather than having it lost by the enemy.

In 1444, *La Serenissima*, with the sole exception of Ragusa, current Dubrovnik, achieved the peak of its dominance on Dalmatia, after the self-donation of the Republic of Poljica. However, the tight connections between Venice and its province, passed through across a series of hard-fought border conflicts, which the drawings of three different boundaries across time, i.e. the Linea Nani of 1671, the Linea Grimani of 1699, and the Linea Mocenigo of 1721, clearly show. Evidence on the Venetian commitment not only on the military side but also on the bureaucratic effort to govern the Dalmatian territories, is provided by the reports of the Rectors (*rettori*) appointed at a number of cities, town and islands, for

administrative and judiciary ruling. (Passarella 2016).<sup>2</sup> Still, the reasons why such papers might provide just a limited portrait of the Dalmatian people, their culture, habits, traditions, etc., might be partially recognized by the administrative nature of the reports. What will be rather aimed in this paper, will be to present a few examples of some relevant members of the *Scuola dalmata*, by showing instead how their individual existence became interwoven with Venice economic, devotional and cultural life.

## 2 The Scuola Dalmata: a Confraternity of Warriors for the Crusades?

As largely known, the first meeting of two-hundreds Dalmatians in the current location of the *Scuola*, dates back to 24 March 1451, whereas the approval of the Council of Ten was given just few months later, on 19 May. However, the very first news concerning the possibility for the Venice' Dalmatian community to gather, is the indulgence granted by Cardinal Bessarione on 10 February 1464, by which a total of one hundred days of divine absolution ('divina remissione') could be granted to the visitors of the church where the *societas Sclavorum* was found, to be done during the fests of the saints George, Jerome and Trifone, on the *Corpus Domini's* day and during the first Sunday after the Ascension.

With respect to wider geopolitical analysis, it is interesting to note that these dates somehow correspond to more than one relevant event of the Eastern Adriatic area which, among other consequences, must have provoked huge movements of people. First, the settling of the crusade of 1458 promoted by Pope Pius II, after Constantinople definitive fall of 1453; secondly, on the mainland side, the battle of Kosovo Polje of 1389 already marked the beginning of the long geopolitical control by the Ottomans on the Balkans, pushing also a wide number of Orthodox Christians such as the Serbs, to repair in the Dalmatian, i.e. Christian, coast. To such refugees, the Venetian territories and Venice' geopolitical position stood by the upper Adriatic Sea as the strongest and closest Christian power, in control of the sea routes leading to the newly established Muslim Near East. In this sense, Venice might appear to be a peaceful and tolerant State, where a multicultural environment could provide new opportunities for social, business and cultural emancipation. On the other hand, in this paper, the birth of an approved community such as the Dalmatian one, will be

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2 The peculiar mandate on the provinces of the Eastern Adriatic 'coast, might be read in the reports available at [http://www.statodamar.it/content.php?lang=1&txt=2&sid=\(2017-12-15\)](http://www.statodamar.it/content.php?lang=1&txt=2&sid=(2017-12-15)), starting by the time each single province, district, area started to be part of the "Stato da Mar".

inscribed within a specific case that is the flourishing of the *Scuole*, commonly known as ‘confraternities’, i.e. the story of *the Scuole* within the life of Venice, rather than connecting them to a strategic or *external* priority.

In 1501 Marin Sanudo The Young could list already two hundred confraternities in town identified as *Scuole di devozione* (devotional confraternities), *Scuole di arti e mestieri* (guilds), but also *Scuole di nazione*, created by those communities immigrated in Venice from the provinces dominated by *La Serenissima*. At the end of the century in 1581, Francesco Sansovino son of the architect Jacopo, clarified the aim of such institutions with special focus on devotional and mutual assistance between the affiliated members. Their social background might differ, including citizens, business men, artists “et alter persone popolari della città”.<sup>3</sup> Official approval by the Council of Ten was compulsory, but relevant space was acknowledged to spiritual training as well as to devotion for the deceased ones. Still, bureaucratic regulation of the confraternities’ status might be found in the first half of the fifteenth century. The approval from the Council of Ten was established on October 1401; on May 1451, provisions were taken to prevent or settle scuffles and fights between brothers, and in 1453 it was decided to prevent the General Chapter to continue after the sunset. In other words, the development of legislation for confraternities confirm their relevance within the religious, social and cultural life of Venice, i.e. not just with respect to their contribution to any outside conflict of the Republic. Still, the words of the Venetian scholar Perocco (1964) point well to the actual role that has to be correctly assigned to the *confraternite*:

In una città così traboccante di attività artigianali e mercantili come Venezia, in un emporio così variopinto di nazionalità e costume diversi, le Scuole furono spesso anello di congiunzione tra il potere pubblico e la vita privata del cittadino, che si inseriva attraverso di esse nel connettivo sociale, secondo affinità di lavoro, di interessi e di nazionalità. Esse avevano il potere, d’altro canto, di porre in luce di fronte allo Stato le benemerienze dei cittadini facoltosi che avessero elargito denaro a favore delle loro iniziative: la comunità della Scuola veniva così a creare, quasi per osmosi, un accordo economico e sociale, accanto ai motivi di pietà, che si legavano ad una religione di patria, secondo certi principi basilari e costanti della Repubblica di Venezia. (17)<sup>4</sup>

3 ‘Other popular ones in town’.

4 “In a city overflowing with artisans and seamen’ business such as Venice was, in a commercial hub enriched by diverse nationalities and costumes, the Scuole were often the joining link between State’ power and citizens’ private life, as they provided connection to the social environment, through working affinities, similar interests or nationalities. On the other hand, the Scuola had the power to present to the State the merits of the wealthy citizens willing to support financially *La Serenissima*’ ventures. A Scuola community through

The Zara-born historian Giuseppe Praga (1893-1958) in his major work *Storia della Dalmazia* (1981) remarked that after the previously mentioned inclusion of the most of Dalmatia into the Republic dominance by the half of the fifteenth century, the main wish of Dalmatian people was to become part of Venice such as their new homeland:

Specialmente il popolo, non ne vuol più sapere né di bosnesi, né di napoletani, né di ungheresi, né in genere di tutti quei dominatori estranei e lontani che con le loro lotte, i loro intrighi, le loro estorsioni conducevano i comuni alla rovina. Nell'impossibilità ormai di realizzare l'indipendenza assoluta si pensa con nostalgia al dominio veneziano, lo si desidera, lo si invoca. (Vallery 2009, 9)<sup>5</sup>

It might be plausible to ascertain the extent in those centuries, people developed such an awareness of a clear belonging to a specific cultural background, in a region whose ethnic framework was ever since, a largely mixed one. Still, donation to Venice, in order to gain protection from the mainland invasions and attacks, was a choice that Istrian cities, in the upper part of the Eastern Adriatic coast, started since the twelfth century and completed by the half of the XIV. An ever-growing number of Dalmatians started to come to Venice, whose main motivations seemed to be business or sailing as crew of the Republic galleys. In a city where social groups were provided with such a structured organization, precariousness and uncertainty given by daily issues such as sickness or oldness brought to the need of haven for rest:

molte et infinite volte achade, molti et assai poverer non haver i de la nostra nation nelle armade vostre esser feridi a morte e vegnir in questa vostra terra, ocorendo al più de le volte lor manchar de necessitade e desasio per non haver subsidio ni sovengo da parsona alguna. Et anchor molto poveri famei i quali a la morte soa non havendo da sepelirse sono astreti far portar soto i portegi del vostro palazzo e li demorar fin che per alguna bona persona li sia fato alguna limosina, mediante la qual possano far sopolire. Et etiamdio molti poveri presonieri de la dita nation li qual per non aver sollicito ni aiutorio da parsona alguna perisse de

this sort of mutual exchange, was able to set an economic and social agreement, besides devotional priorities referring to a 'homeland' religion', within specific and permanent fundamentals of Venetian background". Translation by the author.

5 "The people especially, don't want to know more about Bosnians, Neapolitans, Hungarians, and about all those foreign and distant dominators whose fights, plots, and blackmails have brought citizens on ruin. As independence turned unattainable, Venetian dominion started to be seen as desirable". Translation by the author.

fame e da desasio ne le carcere vostre. (Vallery 2009, 11)<sup>6</sup>

It is clear that the need to establish a retreat in Venice, was felt by the Dalmatians in order to solve very trivial issues.

The official charter of each *Scuola* was called *mariegola*, and those authors who have worked on the original documents, including also the ‘Catastico’ (book of accounts), provide a precious repertoire of news on the story of the *Scuola dalmata* since its founding. And there seems to be the chance to discuss some of the previously selected quotations.

Minuets from the first meeting, mention that the brothers felt united as part of the “Nation Dalmatina ovvero Sclavonica”, reminding to the Praga’s consideration on the way the Dalmatians considered themselves within Venice Republic’ social framework.

If the location was the same as today, still the current building was the first issue to engage the brothers with particular involvement by the *Guardian Grande*’ side. The meeting of the first two hundred Dalmatian brothers, was held in a hall of the “Hospedal de Madona Santta Catharina”, the hostel just next the church of “missier San Zuane del Tempio”, i.e. the former church of the Templars, granted the *Scuola* by the Chief Reverend of the Order of Knights of the Hospital of Saint John of Jerusalem which acquired the Templars’ estate when the Order was banned in the first half of the fourteenth century.

The closeness to the Venetian headquarter of such knights’ orders, who strongly contributed the success of Crusades, might clash with the modest occupation of the small Dalmatian community- whose *Scuola* within some fifty years’ time, would have been decorated with paintings celebrating a warrior’ saint such as Saint George.

per Governador

per Vicario

per Scrivan

per Degani

Simon Zuane dalee Stagnade<sup>7</sup>

mistro Paolo Barbier

Nicolò de Catharo

mistro Zorzi de Marco casselero<sup>8</sup>

Agustin de Alegreto Fruttarolo<sup>9</sup>

6 “It often happens that many of us, ended up in poverty, mortally wounded by fighting in your troops, come into your territory, by necessity and in lack of any support and help by anyone. Such a deprived condition doesn’t even allow proper burial, by forcing them to beg for charity under the colonnade of your palace and remain there until some good soul might grant some money, by which they can finally pay burial. Not to mention many poor prisoners of the nation, with no help by anyone, ending up dying of hunger and struggle in your jails” Translation by the author.

7 Stagna: copper kitchenware.

8 Casselero-casseler: wood craftman, especially skilled in wooden boxes.

9 Fruttarolo: greengrocer

Zuane de Zorzi scudellaro<sup>10</sup> in piazza  
Zuane de Piero orevese<sup>11</sup>  
mistro Zorzi de Jacomo coffanaro<sup>12</sup>  
mistro Piero sartore<sup>13</sup> de San Fantin  
mistro Paolo de Zorzi callegaro<sup>14</sup>  
mistro Martin Zancheta muraro<sup>15</sup>  
mistro Mathio de fior sartor<sup>16</sup>  
mistro Nicolò cimador<sup>17</sup>  
mistro Michiel Surian

(Vallery 2011, 11-12)

Besides the prevailing occupation of the first *confratelli* in the manufacturing business, the others were seamen. Further evidence can be found in the ledger or *Catastico*, the other important document for the *Scuola*'s management which confirm how the *confraternita* soon started to be the main reference for the crew member of the galleys reaching *La Serenissima* from Cattaro (today Kotor), Zara (Zadar) and Sebenico (Sibenik). References on this document (Perocco 1964, 24) bring attention on the case of "Stefano da Budua fu Zorzi" through the detail extracted by his testament. The paper dates back to 1485: it confirms his employment on a galley leaving from today Budva, Montenegro, and quoted his wish to have his soul kept in the memory by the brothers, by lightening two candles at the newly built church of Santa Maria dei Miracoli. The act of mercy from Pope Sisto the IVth in 1481, recorded as *Indulgenza di Rodi*, show how few decades after the *Scuola* foundation, Rome started to become aware of the role of the Dalmatian community in the military commitment of Venice against the Ottomans. As largely known, the donation of the relic of Saint George in 1502 from Captain Paolo Vallaresso celebrated the conquest of the Methoni and Koroni in Western Peloponnese' coast.

- 10 Scudellaro: bowls' craftman.
- 11 Orevese, orese: goldsmith.
- 12 Coffanaro: rattan baskets' maker.
- 13 Sartor: taylor.
- 14 Callegher, calegher, calzolar: shoemaker.
- 15 Muraro: bricklayer.
- 16 Sartor: Taylor
- 17 Cimador: trimmer.

### 3 The Dalmatians in Venice: Their Lives, Their Accomplishments

For the first fifty years after its official foundation, that hall granted from the fourteenth century' shelter by the Order of the Knights of Saint John in Jerusalem, remained as the gathering place of the *Scuola*. The Dalmatians after winning a few legal occurrences with the nearby Order of the Knights of Rhodes concerning the maintenance of the lodge, eventually gained the grant, agreed also by the Pope, to start the restoration of the building. By the mid-sixteenth century, the small Dalmatian community reached a respectable economic status which allowed them to financially contribute to the renovation project thanks to their own donations. From 1516 until 1551 at least five bequests enriched the *Scuola* budget: the first from "Helena relicta Marco da Cattaro" (Elena, daughter of Marco from Kotor), in 1541 from "Alessio della Torre da Dulcigno" (Alessio della Torre from Ulcinj, Montenegro), in 1544 another one from "Lucia da Lesina vedova di Matteo da Spalato" (Lucia from Hvar, widow of Matteo from Split, Croatia) until the last one from "Zuane quondam Petrus di Lissa" (Giovanni, son of Pietro from Vis, Croatia). Besides other valuables acquired by the *confraternita*, the 'teleri' completed by Carpaccio by 1507 required an appropriate arrangement.<sup>18</sup>

Documents have provided plenty of news on the life of "Giovanni da Lissa" who was appointed *Guardian Grande* for four times in 1541, in 1544, 1549 and in 1551. The birth in today island of Vis is confirmed whether the date remains unknown even though it is possible to place it at the end of the fifteenth century. After a first attempt into the ecclesiastical career, later news confirms his permanent occupation as wine trader: insurance policies on his name are found on shipments across the Adriatic Sea in 1524, 1525, 1526, 1528, 1533 and 1539. Married with Isabella, born by the ship owner Francesco Foresti from Corfù, Giovanni had no children but coherent to his devoted nature, continued to financially help all his closest relatives. Documents concerning his work life, show him as a successful business man: his store was located at San Domenico, in Castello, but a good deal started when he was able to become a supplier of the Arsenal; his trade spread across 'Vegli' (today Krk, Croatia), Ancona, Corfù, 'Antivari' (Bar, Montenegro), Rimini, Chioggia, Trieste and Lepanto, including the mainland until Oderzo, Treviso and Spilimbergo. Giovanni didn't miss opportunities for estates investments, but also charity continued to be among his interests, such as for his financial support to the *Scuola del Sacramento*, providing dowries for the poorest young girls aiming to get married or to become nun. Papers from Giovanni include the inventory of

18 Vallery 2009, 43. All the news concerning the *confratelli* that will be mentioned from now on, are found in this same book.

his house and store, as well as his testament drafted by the notary at the moment he passed: a detailed description of the furniture in every single room of the house show his sober measured nature, whereas the bequest left not only to the wife Isabella but also to other relatives such as the cousins living in the Dalmatian town of 'Spizza' (today Sutomore, Montenegro), and also at the *Scuola* complete the portrait of a peaceful and devoted Dalmatian man, who clearly considered the sharing of his material accomplishments, a natural part of such a successful existence he was given to live in Venice. No mention is given to the date and the cause of his death, still his properties' inventory was completed between April and May 1552. Gifted with such an industrious nature, it is no surprise that he was the one to manage the initial restoration of the new building of the *Scuola*. The first contract was signed in 1550: the *Guardian Grande* Giovanni da Lissa wrote that Giovanni de Zon' project for the façade' building, was selected as the 'most beautiful' with the condition added to have only Istrian stone from the cave of Rovigno as construction' material. One year later, on 8 March, Giovanni signed another contract with Sansovino pupil Pietro da Salò, for the carving of the bas-relief representing Saint George which still today stand out on the front façade.

The initial quoting of Lallich' famous painting, bring us to five centuries later, until March 1838. On the fourth of that month Pier Alessandro Paravia was appointed *Guardian grande*, as successor of his uncle Nicolò Zech Messevich. The family connection was from the mother of Paravia, Anna Missevich, born in Corfù in 1759, married the Venetian Colonel Giovanni Paravia on 1782. The fate gave to the father of the future *Guardian Grande*, the sad honour to take part to the other tribute given by the Dalmatians in Zara, as *Commander of the Schiavoni*, i.e. the oversea' infantry corps of the Venetian navy, where a less-known flag lowering' ceremony was held on the evening of 30 June 1797. Just the day after the sad event, Colonel Paravia wrote to his brother about the anxiety provoked by the memory of the last day of Venice independence:

Da che esisto non mi ricordo di aver provato giornata più terribile, particolarmente al momento che, ammainate furono le insegne e inalberate quelle imperiali. (Vallery 2009, 67)<sup>19</sup>

Nicolò Messevich was almost one-hundred years old when he died on January 1838. Not only his life but also the one of his Dalmatian relatives, had been strongly bound to the development of Venice 'Stato da Mar'. His family was listed among the notable patricians of the 'Repubblica di

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19 "Since birth, I can't remember having experienced a worst day, especially when the flags were taken down and the imperial one were hoisted". Translation by the author.



Poglizza' (Poljica, Croatia), nearby today Split.

Lately moved to 'Sebenico', when the name 'Messevich' is found among the Council of Patricians, late nineteenth century documents mention an uncle of Nicolò, called Doimo employed as 'Primo Alfiere' (First standard' bearer) in the defence of the Sign fortress (today Sinj, Croatia) during the Ottoman assault of 1715; the father Antonio after fifty-seven years' duty on the Venice fleet' galleys received a special mention in the dispatches of the Senate along with a life-time jubilation. Nicolò went in charge with a number of appointments that brought him close to illustrious Venetian *condottieri*. As a young, Nicolò also was employed in the Schiavoni corps, first as a cadet in the Marcovich regiment, later on since 1757 in the Levant as scribe for seven years, and eventually for the same amount of years, promoted as 'sopramasser' (accountant) of Paolo Boldù, 'Provveditor all'Armar' (overseer) for the Levant, and Captain of the Adriatic Fleet. Moved to Corfù, Nicolò was put in charge with the local accounting department until the arrival of the new 'Provveditore Generale da Mar', residing in the island as Chief of the 'Stato da Mar' provinces. From 1774 Nicolò worked some other seven years in Levant, as 'sopramasser' of Captain Giambattista Contarini, but soon was back on service for Paolo Boldù who had been appointed 'Provveditore Generale in Dalmazia e Albania'. There in the city of Zara, is where Messevich received the special office of inspecting munitions of the whole province and those at the city' military hostel.

His health spoiled by such twenty years' dedication to the oversea' bureaucracy, Nicolò submitted his request to be relocated at home in Venice. The 'Consiglio dei Quaranta al Criminal' (Council of Forty)<sup>20</sup> granted him the privilege to be listed for those appointments set only to Venice-born citizens, whereas the 'Cinque Savi agli Ordini' (Council of the Five Advisers).<sup>21</sup> His careers was completed with Nicolò' admission in the 'Collegio dei veneti Ragionati' by acknowledging in such a manner, full accomplishment of his career but especially of his *status*, within Venice' articulated bureaucracy. Messevich continued to be involved in other bureaucratic positions, including in 1787, the appointment as *Scontro* (accountant) at the Arsenal, for which he was reconfirmed also by the new Austrian government. It goes without saying that such a hard worker couldn't but turn also into a highly-regarded member of the Dalmatian community in Venice. When his nephew Pier Alessandro Paravia succeeded to him, Messevich had been involved in the *Scuola* board in the last twenty-five years already. The acceptance of the office as *Guardian Grande*, required instead to Pier Alessandro to

20 One of the highest constitutional bodies of the ancient Republic of Venice, with both legal and political functions as the Supreme Court.

21 In charge since the early fifteenth century with the overseas dominions and the fleet, this *Magistrato* later turned into the training authority for the younger service men recruited among Venice's patricians.

leave Turin where since 1832, he was in charge with the chair of Oratory by direct appointment of the King Carlo Alberto. In the Piedmont' capital, Paravia had become the official speaker of every public ceremony. Born in Zara in 1797, he moved to Venice as a teenager, to start his secondary education at the High school for Classical Studies Liceo Marco Foscarini, (than named Liceo Santa Caterina). Completed his university course in Law in Padua, was soon employed in mainland' bureaucracy but his talent as intellectual prevailed and brought him in touch with some of the most important personalities of his time, such as the Dalmatian Nicolò Tommaseo and philosopher Antonio Rosmini. The appointment received from the Savoy in Turin, required him to scale down the French background of the young educated Piedmontese, in order to train them toward a more defined national awareness as 'Italians'.

It is clear that the appointment of Pier Alessandro in 1838, came in a time when the political situation of Italy was going toward unification, to be gained through opposition to the Austrian Empire whose dominance in Venice was hardly tolerated. It is no surprise that his new office caught the attention of the imperial delegation, such as a letter written at the end of March clearly shows:

si invita la Scuola dalmata di riferire entro giorni cinque come abbia potuto aver luogo la nomina del signor Paravia al carico di direttore cassiere quando il carico stesso esige la continua presenza in luogo dell'individuo che lo esercita e quando il signor cav. Paravia, che d'altronde si è dichiarato suddito sardo, deve per la cattedra che cuopre a Torino starsene presso chè tutto l'anno fuori dagli stati di Sua Maestà l'imperatore d'Austria. (Vallery 2009, 69)<sup>22</sup>

Paravia's reply to the appointment came few weeks later, at the beginning of April: the way he commented on his new office, cannot but remind us of the sense of responsibility and courage that marked the commitment of the Dalmatians, to the duties assigned by *La Serenissima*:

mi è dolce la prova di bontà e fiducia datami dalla Nazione Dalmata alla quale non lascerò mai d'appartenere e per nascita e per cuore. (Vallery 2009, 70)<sup>23</sup>

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22 "The Scuola is invited to provide explanation within five days, why and how that Mr. Paravia could be appointed treasurer as long as this appointment require permanent presence by the employee, in consideration of Mr. Paravia' s declaration as Sardinian subject, and his chair in Turin which requires him to stay all-yearlong outside the borders of His Majesty' Emperor of Austria" Translation by the author.

23 "I feel touched by the proof of good will and trust received by the Dalmatian Nation, to which I will never cease to belong by birth and spirit". Translation by the author.

## 4 Conclusions

This paper has aimed a confrontation between different titles written about the *Scuola dalmata*, in order to provide a new perspective in considering its role within Venice' history.

As a matter of fact, its foundation occurred in a time when the struggle of Venice for the Adriatic Sea, was at the peak of the conflicts with the Ottomans, at a time when the Turks started to be the main occupying force in the Balkan mainland. This is why, by reading the biographies of the *Guardiani*, the 'Venice factor', rather than the 'Rome one', might seem to be the main reason bringing many Dalmatian seamen and business men, to *La Serenissima*. In other words, in the fifteenth and in the sixteenth century, strategic interference from the Pope in order to establish a community of soldiers inspired by the figure of Saint George and fight against the Muslim threat on Europe, might be much less relevant.

In this sense, future research might focus on the origins of the first *confratelli*, in order to consider whether their religious background might be the actual reason for the choice of the guardian' saints. In fact, the two saints have a 'eastern' origin as Saint George was born in Cappodocia, and San Trifon in Greek city of Lampsacus, located in today Turkey: the first was patron of Antivari whereas the latter was guardian for Cattaro (today Kotor), two cities with a typical multicultural, still Dalmatian mood, filled with a population of diverse background. The fact that Saint George still remains the most important saint worshipped in Serbian Orthodox Church on the special celebration of the Đurđevdan (6 May of the Gregorian Calendar), might be worth to reconsider the heavy symbolism of Carpaccio's painting within a stronger Byzantine' approach on the iconography. After the religious ones, hypothesis on the ethnic background of the first Dalmatians who reached Venice, might easily follow.

It is clear also that daily needs, by a time similar to the ones of today 'economic migrants', pushed Dalmatians to reach Venice. As a matter of fact, the ongoing inclusion into the 'Stato da Mar' made Venice the 'capital' of the many cities, towns and islands of the Dalmatian province, but such as the personal story of Giovanni da Lissa has shown, *La Serenissima* offered a stable *milieu* to the career of men gifted with great deal of initiative. Religious devotion might be channelled toward the surrounding social group in Venice, by providing the path to active integration either social either cultural. Messevich's rich career has brought to light the story of a man whose office in the oversea provinces, wasn't at all a warrior' one but rather of a meticulous accountant whose ability appeared useful even to the Austrians who considered Nicolò as a Venetian official provided with an expertise of a high value for the new Empire' bureaucracy.

The personal events of *Guardiani*'s lives, from the founding ones until the more recent ones of the nineteenth century, have shown how members

of a relatively small community, have been involved in greater events of geopolitics. Still, such as by Paravia's appointment in Turin, the outstanding ability of a community naturally provided by a multicultural background, made their level of cultural and social integration as an asset for the Italian's unification process, as esteemed trainers of 'Italian character'.

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## **Heritage, Consumption and Content: Case Histories?**

Roberto Peretta  
(Università degli Studi di Bergamo, Italia)

**Abstract** Heritage is more easily communicated, reached and talked about in the digital age, a time in which the spreading of transport opportunities have eased and developed cultural tourism and CH tourism. But has this situation led to a more open dialogue between visitors and local stakeholders, to ensure the destinations' heritage conservation and, generally speaking, their sustainability? Global English content extracted through a period of six months from three reputed content 'curation' platforms and the leading tourism community TripAdvisor about five Italian destinations – Bergamo, Catania, Matera, Siena and Trieste – seem to show that local stakeholders do not necessarily put the Web to good use to ensure their heritage conservation and, in the long run, their destinations' sustainability.

**Summary** 1 Heritage and Tourism in the Digital Age. – 2 Tourists, Heritage and Consumption. – 3 Misinterpretation of Cultural Landmarks. – 4 CH Tourism and Local Stakeholders. – 5 Methodology. – 5.1 Content Curation Platform. – 5.2 TripAdvisor . – 6 Results in Five Italian Destinations . – 6.1 Bergamo . – 6.2 Catania. – 6.3 Matera. – 6.4 Siena. – 6.5 Trieste. – 7 Conclusions. – 7.1 Limitations and Future Research.

**Keywords** Digital. Tourism. Heritage.

### **1 Heritage and Tourism in the Digital Age**

Heritage is more easily communicated, reached and talked about in the digital age.<sup>1</sup> Has this led to a more open dialogue among people and heritage? Or has it simply boosted consumption?

The main current human activity involved in this question is tourism. As it was authoritatively observed, it is no exaggeration to say that, throughout the world, heritage and tourism have become inextricably linked and

**1** The combination has become even clearer after the Charter on the Preservation of the Digital Heritage (<http://goo.gl/6FaZwC>) was delivered by UNESCO in 2003. Implications were thoroughly discussed at the 2012 UNESCO conference *The Memory of the World in the Digital age: Digitization and Preservation*, where the potential role of digital in preserving the whole spectrum of heritage – not only previously digitized content or legacy information technologies – was underlined.

mutually dependent upon each other (Salazar, Zhu 2015).

From the point of view of local communities and destinations' management, the question is crucial. If the visitors' identities do not interact with the destinations' identities, heritage is neglected - literally - and won't be preserved.

## 2 Tourists, Heritage and Consumption

Thanks to the development of transport opportunities - and a long period of peace in Europe - cultural tourism and CH tourism have specifically and significantly grown throughout our continent in the last decades. Particularly relevant to the question, the development of transport opportunities has meant that masses of tourists move abruptly, quickly and somehow randomly across Europe.<sup>2</sup>

Tourists do not necessarily have any distinct idea of the heritage they come across in the destinations they are visiting. "Although heritage tourism is described in many different ways, it is important to remember that, in the end, it is a consumerist practice" (Salazar, Zhu, 2015).

This is true in urban tourism, too, particularly suitable for short breaks enjoyed through low-cost airlines. People leave home for two or three days, take a stroll and have a meal in a foreign town they haven't really heard about before, but which is struggling - often after private investments and public culture initiatives - to secure their cash and maintain its own welfare.

In the 1980s the continued growth of Culture 2.0 saw the rise of (cultural) tourism as an economic sector in cities. [...] In the 1990s there was growing investment in cultural space to stimulate consumption and create jobs, based on the concept of cultural capital as a source of value in the symbolic economy [...]. The consolidation of Culture 2.0 systems in cities saw synergies developing between cultural investment and tourism production. (Richards 2014, 27)<sup>3</sup>

Frequently, urban tourists don't interact with locals, engage in a dialogue with them or accept the interaction proposed, if any. What those tourists may think they are practicing - i.e. cultural tourism and CH tourism - frequently results in mass consumption. Basically, tourists may be less

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2 See, for instance, the official European statistics on tourism at <http://goo.gl/bAAkTt>

3 A distinction is placed here among Culture 1.0, where culture is a "by-product of industrial growth"; Culture 2.0, where culture is 'an industry' on its own; and Culture 3.0, where "culture is a source of new value(s)".

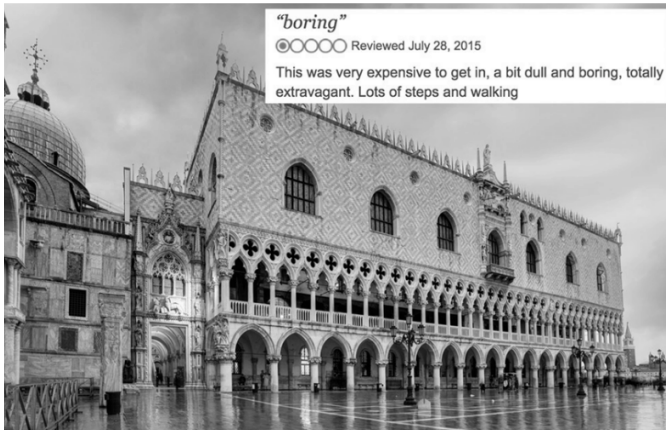


Figure 1. Venice, Doges' Palace as reviewed at TripAdvisor on July 28, 2015

attracted by heritage than by cheap flights and destination branding.

Major challenges [...] include the basic problem of reaching a much more diverse and diffused consumer market. [...] Internet does not provide an immediate solution to this problem, because people can only find productions of which they are aware, and they tend to search for experiences they are already interested in. [...] We are no longer dealing primarily with high culture, but also with popular, everyday and street culture. (Richards 2014, 32)

### 3 Misinterpretation of Cultural Landmarks

This mix of cheap flights and destination branding can lead to severe misinterpretation of cultural landmarks – which may become a problem for both visitors and local stakeholders. Places that are not efficiently intermediated are no longer understood, and places that are not understood may become obsolete. In the long run, this decline runs the risk of intertwining with sustainability issues.

Another reason for the lack of sufficient safeguards to protect the values of heritage properties is to be found in an underdeveloped understanding, and therefore lack of appreciation, of the heritage value of precious cultural or natural resources by both local communities and tourists. (Salazar, Zhu, 2015)

Some relevant cases have been recently identified (figs. 1-2) in what is considered the biggest tourism community worldwide today: TripAdvisor.

Figure 2. Venice. Rialto Bridge as reviewed at TripAdvisor on April 11, 2015



The size and importance of TripAdvisor can hardly be overvalued. As the world leading business magazine has stated, around 260m people visit the site each month to read some of the 125m reviews. [...] It is such a good example of a network effect that it is the subject of a Harvard Business School (HBS) case study. (*The Economist*. August 9, 2014)

The role of TripAdvisor in registering - or generating - global common sense<sup>4</sup> about destinations and their brands shouldn't be underestimated either.

New ways of collaboration and social networking have become a global trend in tourism. The implications of the increasing significance of social networks and the rise of networked organizations and individuals are profound. Since 2009, the WH Center has an agreement with TripAdvisor. The traveller website provides technological and financial assistance and develops an online outreach and awareness-building campaign focusing on conservation and community involvement at World Heritage destinations. TripAdvisor asks its 45 million monthly visitors to contribute reviews and opinions about the condition of World Heritage across the globe, to vote on the places they want to protect most, and to encourage donations. (Salazar, Zhu 2015, 252)

4 As Alaimo and Kallinikos (2015) conclude their research on CH consumption, "social media's main innovation [is] the capacity of encoding the everyday and storing its data footprint into flexible and granular data fields".



## 4 CH Tourism and Local Stakeholders

Cultural tourism and CH tourism are supposed to ensure the conservation and the interpretation of cultural resources, as well as the authenticity of visitors' experiences.

Tourists are believed to search for 'authenticity', a quest that reflects the desire for genuine and credible cultural construction and representation in diverse heritage contexts [...]. Indeed, many tourists are eagerly looking for 'authentic' heritage, which can be as varied as untouched nature, a traditional indigenous performance, or a private community space or ethnic festival. However, authenticity means different things to different people. (Salazar, Zhu 2015, 244)

Cultural tourism and CH tourism may produce bad feelings and tensions among the stakeholders involved, inasmuch as they impact on communities. Recent academic contributions that this paper refers to, as well as an ongoing discussion among leading heritage managers in Italy,<sup>5</sup> underline the role played by local communities - either actually or potentially - in maintaining, developing and interpreting the heritage.

The desire for authentic experiences can conflict with expert and professional understandings of what it means to be authentic, especially because tourists may not always wish to be confronted with the reality on the ground. (244)

Conventional producers [from the traditional cultural tourism industry] will increasingly need to deal with the new cultural intermediaries [...]. They will also need to choose strategies relative to the new producers and intermediaries [...]. They will also need to find ways of plugging into new disperse segments of 'uncontrolled explorers' in cities [...], who will be using new creative tourism tactics and 'guerrilla tourism' [...]. The tourism industry, local authorities, couch-surfing hosts, local guides, creative venues, Internet platforms and local citizens in general have all become part of the tourist system. (Richards 2014, 32-3)<sup>6</sup>

What local stakeholders do, or don't do, in order to keep their heritage available to themselves and the visitors, and ensure its sustainability, is

5 Two recently published books, Cecchi (2015) and Volpe (2015), provide useful reference to this point.

6 Not by chance, Vasile, Surugiu, Login, Cristea (2015) conclude their interesting research observing that the main challenge from the supply side is to consider a deeply revising of the consumption model of CH products

increasingly reckoned to be crucial.

Sustainable tourism development entails the adoption of planning strategies to mitigate the negative impact of tourism without sacrificing its benefits. [...] Sustainable tourism development requires a long-term partnership with local stakeholders. (Salazar, Zhu 2015)

In short, local communities are now considered more responsible than tourists for the survival of their territorial identity and the conservation of their heritage.

## 5 Methodology

In order to begin understanding what local communities may be doing to keep their heritage available to themselves and the visitors, this research has adopted the point of view of digital communication in tourism.<sup>7</sup> Although certainly not conclusive, this approach has the advantages of accepting the Web as the most used and most measurable communication environment globally available, and gathering UGC<sup>8</sup> on a relatively mass scale.

Global English UGC about five Italian destinations (Bergamo, Catania, Matera, Siena and Trieste) was identified through three reputed content curation platforms (ExpressCurate, Scoop.It and StumbleUpon) and the leading tourist community, TripAdvisor, between November 29, 2015 – the day a presentation of this research was held in Venice during the *Cultural Heritage. Scenarios 2015* conference – and July 31, 2016. The resulting content data gathered throughout the period of six months have been quantified, and classified under two main criteria: whether they concern the heritage, and whether they were locally produced.

Admittedly, the first criterion is questionable, also because the idea of ICH can be paradoxically stretched to include nearly everything touristic as heritage. Though further discussion on this problem would be welcome, the thresholds in this research were 1) whether the subject of a tourist review appears to make sense in terms of heritage – in other words, no hotel or service station was selected as such<sup>9</sup> – and 2) whether it is geo-

7 The author has longed belonged to the to the IFITT (<http://www.ifitt.org/>), which has produced a considerable amount of research in the field since 1994.

8 In short, scholars agree that UGC is any form of media that was created by users of an online system or service. Interestingly, it is reckoned that the first massive creation of UGC was performed by TripAdvisor by attracting tourism reviews from the general public in the year 2000.

9 See further, under 5.2 and 6.5, some intriguing exceptions found in the TripAdvisor data.

located or, according to the tourist vulgate, it is a POI.

The choice of Bergamo, Catania, Matera, Siena and Trieste has mainly depended on the author's personal experience in tourism management. These towns, anyway, are all provincial capitals and middle-sized cities of art - ranging from 53,000 inhabitants (Siena) to nearly 300,000 (Catania) - where tourism plays a role in the local economy, but it's not the main source of local welfare.

The issue whether these five towns can be seriously considered to be case histories - a matter raised by the question mark closing the paper's title - may look redundant or pedantic. It underlines, however, the subjectivity of the selection and, as mentioned further, the limitations of the research. On the other hand, a reasonable criterion to justify the choice of three of these towns is the role played in tourism communication by designated cultural capitals.<sup>10</sup> Indeed, Matera will be a European Capital of Culture in 2019, while Bergamo and Siena were Italian nominees for this role. As for Catania and Trieste - a proudly Northern and a proudly Southern town - they are both seaside destinations, rich in distinctive POIs rooted in centuries-old histories, and belonging to a Regione a Statuto Speciale, i.e. an Italian region enjoying some political autonomy and special public funding (in tourism management, too).

The sampling described above, though clearly incomplete and obviously disputable, nonetheless appears to be fair, reasonably representative, and most of all scalable in future research.

## 5.1 Content Curation Platform

Disconcertingly, the examination of some leading content curation platforms has proved pointless. Taking the names of our five Italian urban destinations as keywords or navigation starting points for ExpressCurate, Scoop.It, and StumbleUpon between November 29, 2015 and July 31, 2016 produced no significant results. Pictures, videos and reviews posted by travel professionals (or professionals-to-be) regularly turned up on the author's monitors, almost invariably focused on the country rather than on individual destinations. No locally produced material, instead, was ever picked up in this research, and no assessment on the role of local stakeholders was therefore possible.

The reasons of this outcome may certainly be investigated. A theory by the author is that algorithms adopted by global content curation platforms are not primarily developed to offer helpful suggestions about Italian second-level destinations or, in other words, a global approach in content

<sup>10</sup> As mentioned above, according to Richards 2014.

curation is not set to deal with provincial towns, interesting as they may be.

Another theory, however, may suggest that most digital content produced about tourism is not focused on heritage, perhaps because it is predominantly meant to attract a mass audience. Instead, “research has shown that visitors to heritage sites are usually better educated, bigger spenders, travel in groups, and have average or higher than average incomes” (Salazar, Zhu 2015).

## 5.2 TripAdvisor

Conversely, searching TripAdvisor for UGC concerning Bergamo, Catania, Matera, Siena and Trieste delivered plenty of material – possibly too much to be worth considering under a reasonable benefit-cost ratio. In fact, most of the reviews took into account a limited number of POIs. For instance, searching TripAdvisor for the ‘Things to Do’ category under Bergamo identified 94 POIs, making for 12,004 reviews, while the 30 most popular POIs in Bergamo (i.e. those gathering the highest number of TripAdvisor reviews) were enough to make for 11,276 reviews.<sup>11</sup> Limiting the analysis to the 30 most popular POIs for each of the five towns seemed therefore a viable solution, enough to guarantee reliable results.

Further analysis in the criteria used shows that the TripAdvisor ‘Things to Do’ category may include items which are not POIs. This happens, among our five chosen Italian towns, in the cases of Catania, Matera and Siena.

Given the experiential nature of tourist behaviours, categorizing a bike excursion, a wine tour or a cooking class as a ‘Thing to Do’ is quite reasonable. However, analysing this sort of non-POI ‘Things to Do’ from an objective point of view – or from the point of view of a destination manager – raises at least two problems: 1) Non-POI ‘Things to Do’ tend to belong to the world of ICH, per se hardly measurable,<sup>12</sup> and 2) TripAdvisor deals with lists of several “Hiking & Camping Tours” or “Wine Tours & Tastings” exactly as with a single church or street or museum. What’s numerically even worse, TripAdvisor lists the same business under different ‘Things to Do’ in the same town,<sup>13</sup> making any possible calculations totally unreliable.

**11** When a TripAdvisor user reviews a previously un-reviewed POI – or adds a new POI to the TripAdvisor list, and reviews it – that POI boasts a review. If no more reviews flock in, the tourism popularity of that POI is debatable. Still, it makes for a POI and a review in the TripAdvisor world.

**12** The Mediterranean diet, clearly involved in wine tours or cooking classes held in Siena, is recognized by the UNESCO as ICH.

**13** For instance, the ‘Italy Unfiltered’ business located in Siena is listed under ‘Wine Tours and Tastings’, ‘Private Tours’ and ‘FoodTours’, each time adding to the figure of the total

## 6 Results in Five Italian Destinations

In the following tables (1 to 5), which refer to the five towns selected, all the 30 most popular ‘Things to Do’ are duly reported along with their figures, but the names of the non-POI ‘Things to Do’ are strike through, and their figures – though published – not considered in any other calculation. Similarly, these figures are not considered in table 6, where results of the research are summarized.

For each of the 30 most popular ‘Things to Do’ reviewed in the five destinations, tables 1 to 5 report the TripAdvisor evaluation in terms of ‘stars’ – actually a quite rough one. Curiously, a cooking class in Siena deserves a higher evaluation than any heritage place in Catania, Mount Etna included. The lack of consideration for contexts, needs and tastes is blatant, yet consistent with the situation in which the average TripAdvisor users find themselves when asked to click a number of stars between 0 and 5.

After two columns declaring the main TripAdvisor category to which every ‘Thing to Do’ belongs,<sup>14</sup> and the total number of reviews found, distinctions are drawn between reviews from different origins – visitors vs. local stakeholders<sup>15</sup> – and whether they were posted recently, i.e. during the six months in which this research was conducted. Two final columns discriminate reviews posted in English by local stakeholders from those by residents in Italy, underlining that global English is now closed to be a *lingua franca*.

To help determining whether the rate of posting accelerated or slowed down in the last six months, the dates of the first TripAdvisor review of a POI for the five destinations follow. Bergamo: March 19, 2007. Catania: April 18, 2003. Matera: October 18, 2011. Siena: April 17, 2007. Trieste: June 2, 2009. Generally speaking, it is apparent that the rate of posting tends to increase in time.

### 6.1 Bergamo

Data for Bergamo reveal a correlation between the number of reviews recently posted by local stakeholders and two relatively recent events. The Accademia Carrara art gallery reopened after restoration works on April

presences of the ‘Italy Unfiltered’ business as a listed TripAdvisor ‘Thing to Do’.

<sup>14</sup> A set of more detailed sub-categories is also used. For instance, ‘La Città Alta’ in Bergamo is not only a ‘Sight & Landmark’ but also, more specifically, an ‘Historic Site’ and an ‘Architectural Building’.

<sup>15</sup> To state the origin of a review, only declared identities were considered. TripAdvisor users who didn’t declare an Italian residency were not considered Italians, and those who didn’t declare to be from the town itself were not considered local stakeholders.

23, 2015,<sup>16</sup> and a campaign is currently on supporting the nomination of the Venetian Walls – the Cinta Muraria di Bergamo, according to TripAdvisor – as a component of a candidate UNESCO Heritage Site encompassing the “Venetian Works of defence between 15th and 17th centuries”.<sup>17</sup> Reviews about this two POIs have increased in number more than for any other Bergamo ‘Things to Do’ in the last six months, showing that TripAdvisor has mirrored participation from locals.

However, reviews in Italian for these two POIs have grown more than those in global English. Perhaps the reopening of the Accademia Carrara – an undisputable gem in terms of history of art – has not been really noticed outside Italy yet, while reviews by locals do not appear to be meant to attract potential visitors from abroad.

**Table 1. Number of reviews on TripAdvisor about the 30 most popular POIs in Bergamo on July 31, 2016; ‘Recent’ meaning posted between November 29, 2015 and July 31, 2016**

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
<b>La Citta Alta</b>	5	Sights & Landmarks	3960	2183	609	60	812	205	12	4
<b>Piazza Vecchia</b>	4,5	Sights & Landmarks	1081	628	161	44	181	45	2	1
<b>Funicolare Bergamo Alta</b>	4,5	Scenic Railroads	1039	617	142	23	205	45	5	1
<b>Basilica di Santa Maria Maggiore</b>	5	Sights & Landmarks	954	461	155	22	191	67	5	2
<b>Cattedrale (Duomo) di Bergamo e Battistero</b>	4,5	Sights & Landmarks	485	229	48	5	104	26	2	1
<b>Cinta Muraria di Bergamo</b>	4,5	Sights & Landmarks	477	339	93	31	39	12	2	1
<b>Cappella Colleoni</b>	4,5	Sights & Landmarks	399	236	54	9	59	11	0	0
<b>Campanone o Torre Civica</b>	4,5	Sights & Landmarks	363	195	51	8	64	17	0	0
<b>Funicolare di San Vigilio</b>	4,5	Scenic Railroads	297	132	10	3	68	5	0	0
<b>Galleria dell’Accademia Carrara</b>	4,5	Museums	278	211	93	33	25	6	2	2
<b>Museo di Scienze Naturali ‘E. Caffi’</b>	4,5	Museums	223	176	41	12	22	2	0	0
<b>Rocca di Bergamo</b>	4	Sights & Landmarks	219	130	18	0	28	6	1	6
<b>Castello di San Vigilio</b>	4	Sights & Landmarks	174	77	26	8	41	20	2	0
<b>Fontana Contarini</b>	4	Sights & Landmarks	142	69	27	5	20	10	0	0

16 See under <http://whc.unesco.org/en/list/1533>.

17 See under <http://whc.unesco.org/en/tentativelists/5844/>.

**Table 1. Number of reviews on TripAdvisor about the 30 most popular POIs in Bergamo on July 31, 2016, 'Recent' meaning posted between November 29, 2015 and July 31, 2016**

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
Monastero d'Astino	4,5	Sights & Landmarks	130	119	56	20	5	1	0	0
Lavatoio di Citta Alta	4,5	Sights & Landmarks	117	66	43	12	17	10	0	0
Cittadella di Bergamo	4	Sights & Landmarks	102	50	12	1	7	1	0	0
GAMeC	4	Museums	90	72	28	6	5	5	0	0
Meridiana Monumentale del Palazzo della Ragione	4,5	Sights & Landmarks	88	54	16	1	9	9	1	1
Torre del Gombito	4,5	Sights & Landmarks	80	39	7	1	17	5	0	0
Teatro Donizetti	4,5	Theaters	74	71	7	0	5	0	0	0
Parco della Trucca	4	Nature & Parks	71	64	21	9	2	1	1	1
Il Sentierone	4	Sights & Landmarks	68	55	28	15	1	1	0	0
Chiesa di San Michele al Pozzo Bianco	4,5	Sights & Landmarks	68	50	15	5	6	1	0	0
Social Theater of Bergamo	4,5	Theaters	63	56	3	0	2	0	0	0
Orto Botanico di Bergamo Lorenzo Rota	4	Nature & Parks	56	28	5	0	15	4	0	0
Palazzo del Podesta	4,5	Sights & Landmarks	49	30	4	0	5	2	0	0
Torre dei Caduti	4	Sights & Landmarks	45	25	4	1	2	2	0	0
Monumento al Partigiano	4	Sights & Landmarks	44	33	9	4	2	0	0	0
Palazzo della Ragione o Palazzo Vecchio	4,5	Sights & Landmarks	40	15	10	1	7	5	0	0

Source: TripAdvisor data, recorded and processed by the author between November 29, 2015 and July 31, 2016

## 6.2 Catania

The global fame of Mount Etna shines through in the TripAdvisor data for Catania, where local stakeholders appear to cooperate in the promotion of their heritage more than in any other destination analyzed in this research.

The Monastero dei Benedettini seems to benefit particularly from its mixed role as a former convent and as a current university campus: every question asked through TripAdvisor to the Monastero managers is promptly answered in public, and every positive review is thanked in due time – an unusual behaviour in Italian social networking management of public resources.

The number of non-POIs items – nature, wine and sports – among the ‘Things to Do’ underlines the experiential side of tourism in Catania.

**Table 2. Number of reviews on TripAdvisor about the 30 most popular POIs in Catania on July 31, 2016,**

‘Recent’ meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
Mount Etna	4,5	Nature & Parks	5406	1960	502	76	1840	424	11	4
[Nature & Wildlife Tours (12)]		{Non-POIs}	4512							
[Hiking & Camping Tours (12)]		{Non-POIs}	2149							
Piazza Duomo	4,5	Sights & Landmarks	1747	961	263		364	92	4	2
Monastero dei Benedettini	4,5	Museums	1104	825	202	56	166	22	3	2
Duomo di Catania	4,5	Sights & Landmarks	857	457	101	15	174	39	2	0
[Wine Tours & Tastings (3)]		{Non-POIs}	775							
Giardino Bellini	4	Nature & Parks	699	433	71	15	155			
Aci Castello	4,5	Sights & Landmarks	614	403	79	18	103	16	0	0
[4WD, ATV & Off-Road Tours (5)]		{Non-POIs}	586							
Museo Storico dello Sbarco in Sicilia 1943	4,5	Museums	488	322	47	16	134	27	1	1
[Day Trips (1)]		{Non-POIs}	432							
Parco Archeologico Greco Romano	4	Sights & Landmarks	404	151	36	4	135	39	2	0
Museo Civico Castello Ursino	4	Museums	388	244	71	5	79	18	2	1
A' Piscaria Mercato del Pesce	4,5	Shopping	356	232	42	6	57	8	0	0
Fontana dell'Amenano	4,5	Sights & Landmarks	325	189	59	9	52	24	3	0
Piazza Università	4,5	Sights & Landmarks	284	165	35	7	39	6	1	1
Palazzo Biscari	4,5	Sights & Landmarks	252	178	41	6	27	4	0	0
Via dei Crociferi	4,5	Sights & Landmarks	221	151	40	14	28	10	3	2
Teatro Massimo Bellini	4,5	Sights & Landmarks	213	114	10	3	54	6	2	1
Palazzo degli Elefanti	4,5	Sights & Landmarks	148	45	25	2	43	29	2	0
Orto Botanico	4	Nature & Parks	117	66	13	6	31	8	0	0
Basilica Collegiata	4,5	Sights & Landmarks	109	63	15	3	13	3	0	0



**Table 2. Number of reviews on TripAdvisor about the 30 most popular POIs in Catania on July 31, 2016,**

'Recent' meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
<b>{Ski &amp; Snow Tours (1)}</b>		{Non-POIs}	106							
<b>{Air-Tours (1)}</b>		{Non-POIs}	106							
<b>Chiesa della Badia di Sant'Agata</b>	4,5	Sights & Landmarks	97	55	24	9	15	9	1	0
<b>Chiesa San Benedetto</b>	4,5	Sights & Landmarks	83	51	11	3	17	2	0	0
<b>Via Etnea</b>	4,5	Sights & Landmarks	80	41	38	7	15	14	2	1
<b>Museo del Cinema di Catania</b>	4,5	Museums	77	60	14	2	10	2	1	0
<b>Cappella Bonajuto</b>	4,5	Sights & Landmarks	45	34	14	4	4	4	1	1

Source: TripAdvisor data, recorded and processed by the author between November 29, 2015 and July 31, 2016

### 6.3 Matera

As in Catania, a penchant for experiential tourism is apparent here – though veering towards the cultural side. An 'Aqvaworld Bluwellness Family Club' and an 'Eldorado Ranch' are reviewed among ravines and cave churches (understandably, comments on this two latter POIs come mostly from locals.).

No review in English was recently posted by any local stakeholder.

**Table 3. Number of reviews on TripAdvisor about the 30 most popular POIs in Matera on July 31, 2016**

'Recent' meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
<b>Sassi di Matera</b>	5	Sights & Landmarks	6733	5170	1410	11	909	173	9	0
<b>Casa Grotta di Vico Solitario</b>	4,5	Nature & Parks	640	513	161	2	69	11	0	0
<b>{Sightseeing Tours in Matera (10)}</b>		{Non-POIs}	603							
<b>Palombaro Lungo</b>	4	Sights & Landmarks	489	448	157	2	26	6	2	0
<b>Cripta del Peccato Originale</b>	4,5	Sights & Landmarks	479	422	30	3	38	1	0	0
<b>Casa Noha</b>	4,5	Sights & Landmarks	438	365	153	4	60	25	0	0
<b>{Cultural Tours (13)}</b>		{Non-POIs}	376							
<b>Church of Santa Maria de Idris</b>	4,5	Sights & Landmarks	327	240	69	2	39	13	0	0

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**Table 3. Number of reviews on TripAdvisor about the 30 most popular POIs in Matera on July 31, 2016**

'Recent' meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
<b>Parco delle Chiese Rupestri di Matera</b>	4,5	Sights & Landmarks	307	227	33	0	50	2	0	0
<b>Parco della Murgia Materana</b>	4,5	Nature & Parks	267	113	105	3	35	15	2	0
<b>Cattedrale di Matera</b>	4	Sights & Landmarks	218	146	86	2	35	11	0	0
<b>Sassi in Miniatura</b>	4,5	Museums	201	153	47	0	23	5	0	0
<b>Chiesa rupestre di Santa Lucia alle Malve</b>	4,5	Sights & Landmarks	197	149	42	0	25	11	0	0
<b>Musma</b>	4,5	Museums	194	141	34	2	37	6	0	0
<b>{Photography Tours (2)}</b>		{Non-POIs}	190							
<b>Aqvaworld Bluwellness Family Club</b>	4,5	Sport Complexes	185	185	88	17	0	0	0	0
<b>{Movie &amp; TV Tours (1)}</b>		{Non-POIs}	181							
<b>San Giovanni Battista</b>	4,5	Sights & Landmarks	165	130	57	0	13	4	0	0
<b>Chiesa rupestre di San Pietro Barisano</b>	4,5	Sights & Landmarks	139	108	27	0	11	2	0	0
<b>Casa Cava</b>	4,5	Theaters	111	93	15	0	14	1	0	0
<b>Chiesa del Purgatorio</b>	4,5	Sights & Landmarks	95	60	21	0	17	7	0	0
<b>Chiesa di Madonna delle Virtu</b>	4,5	Sights & Landmarks	94	59	21	0	21	6	0	0
<b>Museo Laboratorio della Civiltà Contadina</b>	5	Museums	91	84	23	0	5	2	0	0
<b>Museo Archeologico Nazionale Domenico Ridola</b>	4,5	Museums	87	61	17	2	17			
<b>Chiesa dei Santi Pietro e Paolo</b>	4,5	Sights & Landmarks	76	49	24	1	6	2	0	0
<b>Eldorado Ranch</b>	5	Sights & Landmarks	66	55	16	4	9	5	0	0
<b>San Francesco d'Assisi</b>	4	Sights & Landmarks	65	37	21	0	7	2	0	0
<b>Museo Nazionale d'Arte Medievale e Moderna</b>	4	Museums	49	35	9	0	4	2	0	0
<b>Jazzo Gattini - Centro Visite</b>	4,5	Visitor Centers	26	25	15	1	1	1	0	0
<b>Convicinio Di Sant' Antonio</b>	4,5	Sights & Landmarks	26	19	19	0	4	3	0	0

Source: TripAdvisor data, recorded and processed by the author between November 29, 2015 and July 31, 2016

## 6.4 Siena

The Piazza del Campo in Siena is the most popular of all the TripAdvisor POIs considered in this research.

Reviews in English by Italians are exceptionally numerous, if compared with data from the other four towns. Also, they appear to be better balanced among different POIs than anywhere else, possibly showing a dominant global approach in Italian visitors to Siena, or a high number of English speakers who have settled here.

**Table 4. Number of reviews on TripAdvisor about the 30 most popular POIs in Siena on July 31, 2016**

'Recent' meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
<b>Piazza del Campo</b>	5	Sights & Landmarks	6893	2920	834	21	2010	413	14	4
<b>Siena Cathedral</b>	5	Sights & Landmarks	6371	2110	562	26	2309	420	10	4
<b>{Wine Tours &amp; Tastings (13)}</b>		{Non-POIs}	4909							
<b>{Food Tours (6)}</b>		{Non-POIs}	2130							
<b>{Sightseeing Tours (20)}</b>		{Non-POIs}	1602							
<b>Torre del Mangia</b>	4,5	Sights & Landmarks	1563	786	214	3	397	96	3	0
<b>Biblioteca Piccolomini</b>	5	Libraries	1107	550	143	4	281	73	7	1
<b>{Cultural Tours (3)}</b>		{Non-POIs}	1105							
<b>{Private Tours (13)}</b>		{Non-POIs}	954							
<b>Centro Storico di Siena</b>	5	Sights & Landmarks	827	264	183	7	218	69	2	0
<b>{Cooking Classes (2)}</b>		{Non-POIs}	804							
<b>Cripta del Duomo di Siena</b>	4,5	Sights & Landmarks	670	278	53	2	217	37	2	0
<b>Palazzo Pubblico and Museo Civico</b>	4,5	Sights & Landmarks	518	206	40	2	178	38	2	1
<b>Battistero di San Giovanni</b>	4,5	Sights & Landmarks	512	230	51	1	132	29	1	0
<b>Basilica di San Domenico</b>	4	Sights & Landmarks	410	176	39	0	110	21	0	0
<b>Museo dell'Opera Metropolitana</b>	4,5	Museums	349	135	19	1	101	23	2	0
<b>Complesso Museale Santa Maria della Scala</b>	4,5	Sights & Landmarks	312	156	39	2	90	24	3	0
<b>Casa di Santa Caterina</b>	4,5	Sights & Landmarks	304	144	29	0	65	30	2	1
<b>Facciataone</b>	4,5	Sights & Landmarks	237	135	82	7	43	25	2	1

**Table 4. Number of reviews on TripAdvisor about the 30 most popular POIs in Siena on July 31, 2016**  
 'Recent' meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
<b>Basilica di San Francesco</b>	4	Sights & Landmarks	232	126	31	0	36	13	1	1
<b>Fonta Gaia</b>	4	Sights & Landmarks	225	80	40	1	37	26	0	0
<b>All'Orto de' Pecci</b>	4,5	Nature & Parks	203	158	26	5	22	5	1	1
<b>Pinacoteca Nazionale</b>	4	Museums	178	74	13	1	52	9	2	1
<b>Piazza del Mercato</b>	4	Sights & Landmarks	174	75	12	0	32	7	0	0
<b>Scuola di Cucina di Lella</b>	5	Sights & Landmarks	85	10	3	2	68	9	1	1
<b>Fontebranda</b>	4	Sights & Landmarks	85	46	17	0	12	4	0	0
<b>Cappella di Piazza</b>	4,5	Sights & Landmarks	83	25	3	0	17	8	1	0
<b>Palazzo Chigi Saracini</b>	4,5	Sights & Landmarks	75	57	18	1	6	3	0	0
<b>Sinagoga di Siena</b>	4,5	Sights & Landmarks	73	24	5	0	31	8	0	0
<b>Basilica di Santa Maria dei Servi</b>	4,5	Sights & Landmarks	71	37	6	1	9	3	0	0

**Source: TripAdvisor data, recorded and processed by the author between November 29, 2015 and July 31, 2016**

## 6.5 Trieste

Signs of changing habits in tourism behaviour are apparent in the TripAdvisor data for Trieste. The Kleine Berlin - a group of tunnels built by the German army during WWII, now managed by volunteer guides - has attracted much more reviews than the Roman Theater or the Old Town itself. A couple of Escape Rooms, intentionally designed to keep visitors far away from local heritage, deserve the same number of evaluation 'stars' as the wonderful Piazza Unità open to the sea.

**Table 5. Number of reviews on TripAdvisor about the 30 most popular POIs in Trieste on July 31, 2016**

'Recent' meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
<b>Piazza dell'Unita d'Italia</b>	5	Sights & Landmarks	3792	2930	851	90	498	143	13	2
<b>Miramare Castle</b>	4,5	Sights & Landmarks	2936	2126	545	53	474	257	17	4
<b>Opicina Tramway</b>	4,5	Transportation	1175	832	355	62	214	80	7	2
<b>Civico Museo della Risiera di San Sabba</b>	4,5	Museums	776	677	193	27	64	16	4	3
<b>Cattedrale di San Giusto</b>	4,5	Sights & Landmarks	572	408	140	13	81	32	2	0
<b>Golfo di Trieste</b>	4,5	Bodies of Water	504	392	97	21	39	7	1	0
<b>Molo Audace</b>	4,5	Sights & Landmarks	405	332	104	28	32	8	3	0
<b>Canale Grande</b>	4	Nature & Parks	381	199	85	10	93	44	2	0
<b>Barcola</b>	4,5	Nature & Parks	325	247	63	23	43	8	1	1
<b>Museo Revoltella</b>	4,5	Museums	323	227	44	11	66	14	2	1
<b>Castello di San Giusto</b>	4,5	Sights & Landmarks	273	174	61	5	61	15	1	0
<b>Chiesa Serbo Ortodossa di San Spiridione</b>	4,5	Sights & Landmarks	265	172	61	11	47	23	4	0
<b>Carso Triestino</b>	5	Nature & Parks	238	200	57	24	13	4	2	1
<b>Kleine Berlin</b>	4,5	Sights & Landmarks	225	211	77	39	6	5	3	2
<b>La Foiba di Basovizza</b>	4,5	Sights & Landmarks	222	208	40	7	6	2	0	0
<b>Strada Vicentina</b>	4,5	Sights & Landmarks	216	172	56	22	16	8	3	2
<b>Teatro Romano di Trieste</b>	3,5	Sights & Landmarks	185	99	37	4	44	23	0	0
<b>Citta Vecchia (Old City)</b>	4,5	Sights & Landmarks	158	99	17	7	37	6	1	0
<b>Faro della Vittoria</b>	4,5	Sights & Landmarks	158	139	35	5	8	1	0	0
<b>Val Rosandra Reserve</b>	4,5	Nature & Parks	149	124	13	9	15	2	1	1
<b>Museo Ferroviario di Trieste Campo Marzio</b>	4,5	Museums	146	120	29	8	10	2	0	0
<b>Escape Rooms</b>	5	Room Escape Games	143	125	77	33	18	13	1	1
<b>Museo Civico di Storia Naturale di Trieste</b>	4,5	Museums	108	91	25	7	10	3	0	0
<b>Centrale Idrodinamica</b>	5	Sights & Landmarks	103	91	50	20	7	7	4	2
<b>Viale XX Settembre</b>	4	Sights & Landmarks	100	74	26	15	11	7	0	0
<b>Civico Museo Sartorio</b>	4,5	Museums	77	52	8	6	14	2	0	0

**Table 5. Number of reviews on TripAdvisor about the 30 most popular POIs in Trieste on July 31, 2016**

'Recent' meaning posted between November 29, 2015 and July 31, 2016

POI Name	Evaluation	Category	Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent in Italian by Locals	Reviews in English	Recent Reviews in English	Recent in English by Italians	Recent in English by Locals
Borsa Vecchia	4	Sights & Landmarks	69	40	17	1	7	4	0	0
Chiesa di San Nicolò dei Greci	4,5	Sights & Landmarks	62	42	20	3	8	6	1	0
Civico Museo d'Arte Orientale	4,5	Museums	60	51	10	5	7	2	1	0
Civico Museo della Guerra per la Pace	4,5	Museums	56	51	17	7	4	1	0	0

Source: TripAdvisor data, recorded and processed by the author between November 29, 2015 and July 31, 2016

## 7 Conclusions

Results show that the numbers of TripAdvisor reviews about heritage POIs posted by local stakeholders in Bergamo, Catania, Matera, Siena, and Trieste are – when compared with those posted by visitors – very low (Table 6) both in Italian and in English. This brings to the conclusion that the considered samples of local communities do not care much for the Web in order to ensure the sustainability of their heritage and, in the last instance, of their own towns as tourist destinations.

**Table 6. Number of reviews on TripAdvisor about the 30 most popular POIs in Bergamo, Catania, Matera, Siena, and Trieste on July 31, 2016, 'Recent' meaning posted between November 29, 2015 and July 31, 2016, and their percentage**

Total Reviews	Reviews in Italian	Recent Reviews in Italian	Recent Reviews in Italian by Locals	Reviews in English	Recent Reviews in English	Recent Reviews in English by Italians	Recent Reviews in English by Locals
72,914	42,304	11,921	1,344	15,422	3,784	219	74
100%	58.01%	16.34%	1.84%	21.15%	5.19%	0.3%	0.1%

Source: TripAdvisor data, recorded and processed by the author between November 29, 2015 and July 31, 2016

Assuming that an analysis of digital communication in tourism can measure the 'amount of heritage' in the web presence of a destination, the answer to the question whether the destination stakeholders and managers of these Italian towns care enough about the sustainability of their destination is negative. In short, consumption tends to prevail on sustainability.

In fact, reviews which appear intentionally posted to provide visitors with useful information and hints of heritage interpretation are few and far between. An instance follows.

One of the most beautiful piazzas. My husband and I live in Siena six months a year. This is one of the most beautiful piazzas in Italy. The great Palio di Siena is run here twice a year. Please come in the morning, laze around and then leave...the late afternoon and evening are for

the locals. Do not bring food or drink into the Campo. This is a sacred place for the Senese and should not be despoiled.<sup>18</sup>

This entry is particularly interesting, as it provides a good example of what some scholars mean when talking of ‘para-locals’, i.e. global people who have moved and gained local knowledge.

In many cases, because of the need to communicate with foreign tourists, these ‘locals’ are actually para-locals – expats, migrants and other mobile intermediaries who are able to negotiate the communication gap between the global and the local (Richards 2014, 32).

Similarly helpful reviews, however, are posted by local stakeholders in local language, too.

La maestosità del vulcano (in realtà questa recensione non è di un turista ma di un appassionato e amante del monte Etna).

Abito a Catania e ogni volta che sono libero salgo in montagna in MTB perché questa è la mia passione!!per me non c’è niente di più stimolante di una discesa in downhill dal salto del cane o di una traversata a quota 2990....mt.ma la cosa più bella e interessante è fare una passeggiata in famiglia o in mtb sulla pista altomontana che attraversa la sommità del vulcano a quota 1500 / 1800.... esperienza assolutamente da fare a tutti i turisti<sup>19</sup>

Instances of misinterpretation of cultural landmarks were found here and there. One of the most irritating concerns the Fonte Gaia in Siena. “Niente di particolare, ci passi, la vedi ci fai una foto, ma niente di più...”<sup>20</sup>

## 7.1 Limitations and Future Research

Limitations in this research concern criteria applied to identify heritage POIs, the choice of Italian urban destinations considered, and the number of POIs for each destination. Also, a more sophisticated way of comparing percentages between the numbers of reviews from visitors vs. local stakeholders could apply, by taking into account official figures of tourists vs. residents.

Future research may keep recording the relevant data, categorize the

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18 TripAdvisor, Siena, Piazza del Campo, April 15, 2016, under <https://goo.gl/jgGkbG>.

19 TripAdvisor, Mount Etna, July 14, 2016, under <https://goo.gl/yItnn8>.

20 TripAdvisor, Fonte Gaia, April 3, 2016, under <https://goo.gl/ubwlL2>.

reviews also in terms of sentiment and, when possible, of market segments, as well as broaden the spectrum of sources beyond TripAdvisor – representative as it may be.

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# **Local Cultural Heritage Collections from the Slovenian-Italian Border Region**

Špela Ledinek-Lozej  
(ZRC-SAZU, Ljubljana, Slovenia)

**Abstract** This paper discusses the development of a network of owners and guardians of local CH collections as well as professionals from different fields in the Slovenian - Italian border region that was implemented in the framework of the project ZBORZBIRK. *Cultural heritage in the Collections between the Alps and the Karst*. The paper highlights the importance of local CH and collecting for local communities, the general public and experts, and shows that CH has become a medium for the establishment of a local community.

**Summary** 1 Introduction. – 2 Methodological, Historical and Conceptual Premises. – 3 The ZBORZBIRK Project. – 4 Discussions. – 5 Conclusions.

**Keywords** Guardians. Local CH. Local communities. Slovenia.

## **1 Introduction**

The northern Slovenian-Italian border region between the Alps and the Karst – i.e. the north-eastern mountain part of the province of Udine in Italy<sup>1</sup> and the northern part of the Goriška region<sup>2</sup> in Slovenia – is a remote area,<sup>3</sup> which is, in comparison with the regional urban and tourist centres, underdeveloped in terms of economy. Due to the remoteness of the area and a consecutive delay in socio-economic structural changes on both sides of the border, some elements of past material culture remained well preserved in situ. That resulted in vigorous collecting practices and numerous

1 The project included the following areas of the province of Udine: the Canale valley, the Resia valley, the Torre valleys, the Cornappo valleys, and the Natisone valleys. For better readability, all toponyms from the Italian part are kept in the official, Italian form, although they also exist in Slovenian (and in some areas also in Friulian and German). On the other hand, the toponyms from the Slovenian part are kept in Slovenian.

2 The project included the Brda, the Kobarid and the Kanal area in the Goriška region, as well as the Upper Sava valley in the Gorenjska region.

3 For the consideration about the remoteness of the Slavia Veneta, recently named also Slavia Friulana, see Kozorog 2013.

CH collections. The presented ZBORZBIRK project *Cultural heritage in the Collections between the Alps and the Karst* aimed at evaluating this CH collections of the once interrelated, yet in the decades of the second half of the 20th century politically divided, and after the entrance of the Republic of Slovenia in the EU in 2004, and in particular after its entrance in the Schengen Area in 2007, supposedly re-united territory of the border region(s).

## 2 Methodological, Historical and Conceptual Premises

The paper is based on a participant observation, that is on an intensive involvement – as a project manager<sup>4</sup> – in day-to-day tasks management and issues resolving, and on a post-project consideration of the project's results, its impact and, in particular, different ways of dealing with CH collections, heritage practices and heritage uses of different actors involved – from project partners (experts, representatives of the Slovenian minority in Italy, local communities) to main stakeholders (collectors).

Till the beginning of the 19th century the border region in question was divided among the Republic of Venice and the Inner Austria of the Habsburg Monarchy. Between 1797 and 1866 it was joined under the Austrian Empire. In 1866 the Slavia Veneta was annexed to the Kingdom of Italy, whereas the rest remained under the Austrian Empire. The transition of the Slavia Veneta under the Kingdom of Italy was followed by a period of forced assimilation of the Slovenian minority, which reached its peak during the Fascist period, when the whole pertinent region came under the Italian rule. After the end of the WWII the Slavia Veneta and the Canale valley were immediately re-annexed to Italy, whereas the Goriška region was under Anglo-American administration till the Paris Peace Treaty of 1947, when it was annexed to Yugoslavia. The Slovenians living in the province of Udine – in contrast to the Slovenians in the provinces of Trieste and Gorizia<sup>5</sup> – were not legally recognized as a linguistic minority until

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4 The initial idea, the overall aim and the project consortium were designed by Mojca Ravnik (Institute of the Slovenian Ethnology ZRC SAZU) in cooperation with the colleagues at the University of Udine.

5 The first international legal source that provided Slovenians in the province of Trieste with a basic form of legal protection was the Special Statute of the London Memorandum of 1954, which laid down a number of political and social rights for the Slovenian minority in Italy, namely the right to use their language in interactions with administrative services and judicial authorities, the right to bilingual public signs and bilingual printed publications, the right to bilingualism in educational, cultural and other organizations, the right to public funding intended for these organizations, and the right to instruction in their mother tongue together with the right to preserve the existing Slovenian schools (Stranj 1992).

the adoption of the Protection Law no. 38<sup>6</sup> in 2001 (Vidau 2013, 36, 46).

It was in the 19th century, the period of European movements for the establishment of modern nations and nation states, that the Slovenian and Italian national identity in the modern linguistic, social and political sense began to develop. Nationalism and nation-building had been since then an important process, ideology and/or meta-narrative to bind populations to a shifting sense of territorial identity and to legitimize state formation (Graham et al. 2000, 12).<sup>7</sup> Within the context of 19th century nationalisms also a heritage discourse emerged in association with national identity by providing a physical representation and reality to the ‘ephemeral and slippery concept of identity’ (Lowenthal 1985, 214). Grand narratives of nations were perpetuated in the “authorized heritage discourse” (Smith 2010) that had stressed

the significance of material culture in playing a vital representational role in defining national identity. (2010, 48)

But beside national identifications, heritage can be also employed as a physical representation of other meanings, “of those things from the past that speak to a sense of place, a sense of self, of belonging and community” (Smith 2010, 30).

The greatest attention of the *ZBORZBIRK* project was dedicated to the material heritage – that is the evaluation of tangible CH collections and their objects by identification, documentation, renewal and presentation to the public. In this paper, I would like to focus a bit more on the procedural and performative aspects of heritage, that is on the processes of ‘heritage making’, as it was stated by Laurejane Smith that

‘heritage’ is not a ‘thing’, it is not a ‘site’, building or other material object. [...] Rather, heritage is what goes on at these sites. [...] It] is a cultural process that engages with acts of remembering that work to create ways to understand and engage with the present. (Smith 2010, 44)

Although the project was primarily dedicated to the material heritage – in this article I focus on the processes of heritage making in and around the project, their ground and effects.

<sup>6</sup> “Regulations for the Protection of the Slovene speaking Minority of the region Friuli-Venezia Giulia” (Law no. 38 of February 14 2001).

<sup>7</sup> Nationalism might be connected with ethnicity, which is, following Barth (1969), comprehended relationally; it means that the existence of the ethnic group and its cultural distinctiveness (ex. language, work etc.) has to be affirmed socially and ideologically through the general recognition among its members and outsiders. Ethnicity enables ‘appropriation of a shared history’ and is created and forced through social and political processes (Eriksen 2001, 263-8).

### 3 The ZBORZBIRK Project

The applied ZBORZBIRK Project – *Cultural Heritage in the Collections between the Alps and the Karst* was designed on the basis of the long-term ethnographic research of the researchers of the Institute of the Slovenian Ethnology ZRC SAZU and the University of Udine. To the consortium joined the newly-established Institute for Slovenian Culture in San Pietro al Natisone, two museums (the Goriška Museum in Kromberk – Nova Gorica and the Upper Sava valley Museum in Jesenice) and six local communities (the Italian municipalities of Lusevera, Pulfero and Taipana, and the Slovenian municipalities of Brda, Kanal ob Soči and Kobarid). The project was approved and implemented within the *Cross-Border Cooperation Operational Programme Slovenia-Italy 2007-2013* between 1 October 2012 and 31 March 2015 and co-financed by the ERDF and national funds from the Republics of Slovenia and Italy. It aimed to evaluate – i.e. identify, register, digitalize, contextualize, arrange, present and promote in different media – local CH collections in the northern Slovenian-Italian border region, in the area between the Canale valley and the Upper Sava valley in the north, the region of Brda in the south, the Soča valley in the east, and the Torre valley in the west.

The project involved thirty-four CH collections; fifteen from the Slovenian side of the border and nineteen from the Italian side. Fifteen collections were compiled in the 1970s and 1980s, sixteen in the 1990s and 2000s, and three collections were built up during the project. Most of these collections (twenty-one) are in private hands; eighteen were assembled through collecting, and three of them belonged to a family and were acquired by bequest. Besides private ownership, some of the collections belong to associations (eight), local communities (four), and even to a museum branch. Only four collections are regularly on view to the public, six of them are inaccessible, while the rest can be viewed by prior arrangement with the owner or the guardian of the collection. The collections differ according to typology and content. Typologically, two collections contain holy cards, one collection consists of postcards, and the remaining collections include different material objects. Concerning the content, many collections focus on local crafts (carpentry, blacksmithing, sharpening of knives, scissors and tools), certain types of objects (clothing, carnival characters, carvings) or individual objects within one type of objects (rakes, irons). Eight collections share the thematic content of objects from the WWI (Ravnik 2012; Ledinek Lozej 2014). The collectors and/or managers which joined the project were identified on the basis of the registers and documentation of the regional museums, the Slovenian Ethnological Association, and the project partners. Some of the invited collectors refused to participate at the project due to various reasons, the others joined in the course of initial activities.

The central activity of the project was the creation of an inventory of

thirty-four local CH collections. Specific collection and material characteristics, differences in the interests of collectors and differences in the professional competences of registrars influenced physical and informational scopes of the registration process. For the purpose of the inventory, a metadata scheme and an application for entering the data of the inventoried objects were established, based on past experiences in museology, collections management standards and recommendations, former and existing museum applications, open source platforms and frameworks and particularly on information projects in the field of ethnology that had dealt with similar circumstances and encountered similar problems. One of the main challenges of the project was to define a metadata scheme and a registration procedure that would be sufficiently flexible not to discourage the owners and the registrars from a thorough and comprehensive registration of objects (Ledinek Lozej, Peče 2014).<sup>8</sup> A unified repository aggregating metadata of material objects (items) from the collections as well as digital photographs and scans of images and textual objects was established. In total, there are 5355 items and 9334 digital objects (digital photographs or scans) in the repository at the moment.<sup>9</sup> The other goal in creating a metadata scheme was to maximize interoperability, which would facilitate a possible unification of metadata of individual collections with potential applications for an inventory of museum objects (Ledinek Lozej, Peče 2014; Ledinek Lozej, Peče, Ivančič Kutin 2015). The repository is intended for researchers, experts and students from the fields of ethnology, cultural anthropology, history, linguistics, and museology as well as

8 The metadata scheme contained the following data elements about the collections (excluding administrative and technical elements): name, location (geographical longitude and latitude, country, place, address), collection's accessibility for the public, founder, owner and manager of the collection, museum institution where the collection is registered, collection description and data of those involved in the registration process (administrator, registrar, photographer, language editor, editor and photograph editor). In the web application, every collection was assigned a unique identification number and a label that collection items were automatically given. Alongside the already mentioned typological element, other elements were defined for collection items: standard name in the Slovenian and the Italian language (and possibly in the Friulian and German languages, in case of any etymological connection), a local or dialectal name of the object, state of preservation, completeness, acquisition, materials and production technique, production date, authorship, measurements, object description, object use, object history, sources, inscriptions, and remarks. Later, an element set was also added. In addition to certain technical or internal metadata, administration elements also included a registration date, a date of registration change, identification number or label, former or other labels, and the registrar. For the purpose of categorization and taxonomy, an ethnological decimal controlled vocabulary was used. In accordance with the demands of the *Cross-Border Cooperation Operational Programme Slovenia-Italy 2007-2013*, a collection of elements was anticipated to be bilingual, i.e. in the Slovenian and the Italian language (Ledinek Lozej, Peče 2014; Ledinek Lozej, Peče, Ivančič Kutin 2015).

9 This work is still in progress as some collectors or registrars are still adding data into the repository.

for the general public. It can be accessed through a search engine placed on the website of the project.<sup>10</sup>

Parallel to the registration of the objects, extensive fieldwork was conducted to record stories around the collections and the objects. The primary informants were collection owners, who knew their collections and collection items best. Information about collections owned by local communities or other legal entities was provided by people who donated their objects to museum collections or took an active part in the establishment of the collection (secondary informants). Most of the attention was paid to the beginnings of collecting (reasons, incentives, period, role models/colleagues, etc.) and to the personal selection of the most favourite, most valuable or most interesting items and the reasons for this choice. Together with the intensive fieldwork a visual contextualization of collections was performed by making recordings of the collectors and by digitalizing archival audio-visual material.<sup>11</sup>

In addition to the registration and contextualization of the collections, i.e. the museological and research part of the project, local communities also renovated five buildings that housed the collections, arranged equipment for the exhibitions, presented twelve collections to the public and established eleven information points.

Alongside these information points, several other ways of dissemination of information were employed. In addition to the mandatory dissemination tools – project website,<sup>12</sup> signposts, roll-ups, posters – all the collections were also presented in the guidebook *Kulturna dediščina med Alpami in Krasom. L'eredità culturale fra Alpi e Carso*.<sup>13</sup> Most of the collections were also presented in their own leaflets (27 different leaflets for a total circulation of 36,300 copies) and were featured in the exhibition catalogue *Etnologija, zbirke in prva vojna* (Ethnology, Collections and WWI) (Miklavčič-Brezigar 2015). In addition, three CDs were published: *Fiabe resiane. Rezijanske pravljice* (Resia Fairy Tales) (Dapit, Krojepej 2014), *Te so peli v Prosnidu. Queste erano cantate a Prossenico* (These were Sung in Prossenico) (Ivančič Kutin 2014), and *Valli del Natisone. Antichi carnevali senza tempo. Nediške doline. Stari karnevali in brezčasni obredi* (Natisone valley. Old Carnivals and Timeless Rituals) (Pignat 2015). Two major events were organised for the general public and experts, namely a workshop for collectors *Zbirke povezujejo. Le collezioni uniscono* (Collections Unite) in the villages of Kanal ob Soči and Kambreško (18 May 2013) and an in-

10 URL <http://zborzbirk.zrc-sazu.si/it-it/lecollezioni.aspx> (2017-12-13).

11 Some of the material can be accessed on the following webpage: <http://zborzbirk.zrc-sazu.si/it-it/raccontieimmagini.aspx> (ZBORZBIRK 2016a).

12 URL <http://zborzbirk.zrc-sazu.si/it-it/home.aspx> (2017-12-13).

13 Cf. Poljak Istenič 2015.

ternational conference *Collezioni etnologiche, tradizione orale e turismo culturale fra le Alpi e il Carso. Etnološke zbirke, ustno izročilo in kulturni turizem med Alpami in Krasom* (Ethnological Collections, Oral Tradition and Cultural Tourism) in Udine (29 May 2014).<sup>14</sup> There were over twenty smaller events on the occasion of the opening of the renovated premises, collections exhibitions and information points, and other public presentations of the collections and the collectors (Ledinek Lozej, Ravnik 2016).

## 4 Discussions

The ZBORZBIRK Project is one of the first projects in the Italian–Slovenian cross-border region which links non-institutional collections and collectors with experts. In the framework of the project we had the opportunity to follow and overcome negotiations between two (if not even more) authorised heritage discourses, to name but a few, the heritage discourses of the Slovenian and Italian majority, those of (Slovenian) minority in Italy, as well as heritage discourses of different experts,<sup>15</sup> and a bulk of less-authorised or even subversive heritage discourses, that employed identifications linked to a sense of a place, (local) community, and self.

And which were the meanings that the project – authorised from the EU, from national and regional governments as well as from different expert institutions included in the project – aimed to transmit and reinforce? It highlighted the multiple importance of local CH collections and, above all, of collecting practices for local communities, the general public, and experts from the fields of museology, ethnology, cultural anthropology, digital humanities, informatics, etc.

Firstly, the preserved objects in the collections, the stories about the collections and the objects, and local narrative folklore bear witness to the (semi-)past culture and the ways of life in the area, thus providing insight into economic activities, dwelling culture, nutrition habits, handcraft skills, emigration and seasonality, social relationships, calendar customs and customs

<sup>14</sup> The papers presented at the conference were published in the conference proceedings *Le collezioni uniscono. Collezioni etnologiche, tradizione orale e turismo culturale fra le Alpi e il Carso. Zbirke povezujejo. Etnološke zbirke, ustno izročilo in kulturni turizem med Alpami in Krasom* (Collections Unite. Ethnological Collections, Folklore and Cultural Tourism Between the Alps and the Karst) (Dapit, Ivančič Kutin, Ledinek Lozej 2015). All the publications are available on the following website: <http://zborzbirk.zrc-sazu.si/it-it/progetto/pubblicazioni.aspx> (2017-12-13). (ZBORZBIRK 2016b).

<sup>15</sup> Experts' heritage discourses – and the project itself is not excepted from it – are authorised par excellence, as different experts often set the agendas and provide epistemological frameworks that define debates about the meaning and the nature of the past and its heritage. "The ability to possess, control and give meaning to the past and/or heritage sites is a re-occurring and reinforcing statement of disciplinary authority and identity" (Smith 2010, 50).

of a life cycle, family history and local community history, local dialect, etc.

Furthermore, the materiality of objects and collections can be employed by private collectors as a physical representation of many identifications, ranging from a sense of self (ex. some personal collections acquired by bequest or a collection of irons from all over the world) to a sense of place and local community (ex. collections of local crafts, agricultural utensils, etc.). We might suppose that collecting was used as a means of communicating cultural difference (Eriksen 2001, 262), of expressing either local, ethnic or – at a larger scale on the Italian side of the border, where public uttering of the Slovenian identity was suppressed by the Italian authorities – also Slovenian national identity. The assimilation process of the Slovenian speaking inhabitants,<sup>16</sup> forced by the shrinking of media for ethnic socialization<sup>17</sup> and partially also by emigration,<sup>18</sup> started with the annex of the Slavia Veneta to the Kingdom of Italy in 1866 and had its peak with measures during the Fascist period. The Slovenian minority in the province of Udine was recognized only in 2001 with the Protection Law no. 38.<sup>19</sup> The measures resulted in assimilation or in fear or at least in inconvenience of expressing Slovenian national or ethnic identity in public. Undercommunication of the national/ethnic identity in public context by means of language was by some of them compensated by collecting practices. Collecting was – in comparison to public use of Slovenian language – not designated or sensed as a contentious practice, but yet enabled them to remember everyday life, rituals and traditions from the past,<sup>20</sup> and, by doing that, to communicate cultural differences.

But collecting was not a suitable way to express cultural difference only for those who were frightened of expressing Slovenian identity because of the oppressions of the Italian authorities, but also for those who were feeling uncomfortable because they didn't master the standard Slovenian, or even for those who didn't master neither vernacular nor standard Slo-

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**16** Like other minorities in the formation's period of modern States and the classic nationalisms, also the Slovenians in Italy were seen as a potential factor of conflict (Bufon 2016, 18-19).

**17** For more see also Brezigar 2016; Jagodic 2016; Jagodic, Kaučič-Baša, Dapit 2016.

**18** For more on the emigration from the province of Udine see Clavora, Ruttar 1985; Komac 1990, 1991; Kalc, Kodrič 1992; Mlekuž 2002, 2004; Steinicke et al. 2016.

**19** Relevant provisions for the Slovenian-speaking population of the province of Udine were actually introduced in 1999 with the Law no. 482, and followed by the "Regulations for the Protection of the Slovene speaking Minority of the Region Friuli-Venezia Giulia" (Law no. 38 of February 14 2001). For further reading about the protection measures and the impact of further legal modifications, such as the Regional Law no. 26 of 2007, see Vidau 2013, 2016.

**20** References to past life, rituals and traditions, that is historical continuity of the group, are usually important elements of an ethnic long period of time (Eriksen 2001, 267).



venian.<sup>21</sup> Due to the assimilation and stigmatization processes, and the lack of any form of collective minority and linguistic rights from 1866 until 1999, the majority of the Slovenian-speaking population in the province of Udine speaks vernacular (“nediško”, “rozajanski”), that is a local Slovenian dialect, and is not familiar with standard Slovenian (Vidau 2013, 37).<sup>22</sup> The situation is even more complex, because a part of the vernacular speakers doesn’t recognise their mother tongue as a Slovenian dialect, but as “a local Slavic language”, a Natisone (“nediško”)<sup>23</sup> or a Resian (“rozajanski”) language.<sup>24</sup> These complexity of identifications shows that (vernacular) Slovenian speaking inhabitants of the province of Udine have been subjected to the different authorised discourses (at least that one of the Italian and Slovenian national ideology), which influenced their self-recognition and identification.

Authorised heritage discourses, linked with the development of 19th century nationalisms, are challenged (Smith 2010, 5,17) as different actors “discover” their cultural uniqueness as a resource and exploit it for political purposes. The multiplicity of interpretations is not just a counter-reaction to globalization, but a result of intensified contact between groups because of technological and cultural changes following modernisation (Eriksen 2001, 309).

Collecting as a selective, active and longitudinal act of acquisition, possession and disposition of an interrelated set of different objects that contributed to and derived an extraordinary meaning from the entity (Belk

21 Discordance between mastering the language and national identification is reported also by Zuljan Kumar (forthcoming), as she identifies inhabitants who master vernacular but do not feel part of the Slovenian community, and others, on the other hand, who have a strong sense of belonging to the Slovenian community and no knowledge of the Slovenian language.

22 The reason of the unfamiliarity with standard Slovenian - invented by the mass media (Anderson 1991) and the State educational system (Eriksen 2001, 278) - lies in the lack of education, media and social practices in standard Slovenian. After WWII, in the Canale valley standard Slovenian language was only taught by priests, and later at the courses of the Planika Association. It has only recently been introduced in elementary schools and occasionally in secondary schools (Gliha Komac 2009). The Slavia Veneta region did not have schools until 1984, when a private bilingual kindergarten and, two years later, the first class of a primary school opened in San Pietro al Natisone. The Bilingual School Centre became a state school only after the adoption of the Law for the protection of the Slovenian minority in 2001 (Law no. 38 2001). In 2007, a secondary school also opened (<http://www.icbilingue.gov.it/scuole-dellinfanzia/viale-azzida-9>). There is no education in standard Slovenian in the Resia valley. For further information about education in Slovenian see Bogatec 2016. For further information on the role of CH in social communication among participants of the Slovenian minority in Italy see Ravnik 2017.

23 See for example Špehonja 2012.

24 For more complex, mixed and hybrid multidimensional identities among Slovenians in Italy see Jagodic 2016, 43.

et al. 1991) thus became a practice of expressing uncontested personal and/or communal - local, regional or national - identifications.<sup>25</sup> The imaginative link that unites the collected material may be purely personal or may engage the wider world (Pearce 1995, 27), in the *ZBORZBIRK* case it ranged from very personal collections of irons and holy cards, found remnants of the WWI, inherited carpentry and blacksmith workshop, to collections of a great variety of rakes, manufactured by the local craftsmen, to the larger and more systematic collections of the local crafts, clothing or carnival characters. As it was demonstrated by Susan Pearce,

the individual [...] stands at the crux of past and present and creates his collection in terms of the tensions between these two and of his individual poetic response. (Pearce 1995, 33-4)

Material objects of heritage might have different meanings and interpretations for diverse actors.<sup>26</sup> The majority of collections included in the *ZBORZBIRK* project were mostly created as a more or less long term collecting practice which enabled expression and communication of personal or cultural difference with references to self and/or to place and community. Only recently and occasionally, at a larger scale, in the framework of the "authorised heritage discourse" (Smith 2010) by different (supra) national and regional subjects, among others also that one of the *European Programme of Cross-border Cooperation*, they were employed for larger aims of the European Territorial Cooperation. But, as it was delineated above, it was designed bottom-up as far as possible, as it involved, beside project partners, also collectors, and enabled them to choose their objects to be registered, stories to be told, experiences to be shared, and connections to be established. It give them the opportunity to participate - using the words of Laurejane Smith - in "heritage work", in "a process of engagement, an act of communication and act of making in and for the present" (1, 3) - under the umbrella of the cross-border cooperation and European integration.

25 "The notion of the special object set we call a collection is bound up with ideas - not about intention and purpose of the objects themselves as such, since we social animals do everything with intention of one sort of another - but about the deliberate intention to create a group of material perceived by its possessors to be lifted out of common purposes of daily life and to be appropriate to carry a significant investment of thought and feeling, and so also of time, trouble and resource" (Pearce 1995, 23). For passing of the collections from the profane - the secular world of mundane, ordinary commodity - to the sacred, thereby acquiring the character of something extraordinary, special and capable of generating reverence, see Belk et al. (1988).

26 And consecutively cause dissonance. For the argument on "dissonant heritage" see Ashworth, Tunbridge 1996.

## 5 Conclusions

The collaborative approach of the *ZBORZBIRK* Project with its use of information and communication technologies and its network of experts from different fields (museology, ethnology, cultural anthropology, linguistics, folklore, digital humanities, archival sciences, etc.), representative of local communities and collectors, might be considered a pilot action that evaluated CH collections of the cross-border region and highlighted the multiple importance of collections and collecting practices for uncontested expression and communication of cultural difference in the framework of different more or less authorised heritage discourses.

A post-project view from afar seems to prove the statement of Thomas Hyland Eriksen “that whereas cultural differences in many regards become less apparent because of increased contact and the general processes of modernisation, ethnic identity and self-consciousness become increasingly important. The more similar people become, it seems, the more they are concerned with remaining distinctive” (Eriksen 2001, 262).

We are looking forward to the possible follow-up projects that might additionally challenge the dominant discourses and reinforce and deepen the community participation in heritage management, interpretation and conservation work, for example in different new-emerging forms, like the ecomuseums or the “heritage communities”, promoted by the FARO Convention (2005).<sup>27</sup>

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<sup>27</sup> Compare the examples of the organisation of local communities in heritage communities that were realised in Marseilles and Venice (D’Alessandro 2015; Di Mauro 2015). For more about HC see Giampieretti 2015.

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## **Face to Face with Heritage**

# From Africa as an Icon of Italian Colonial Consciousness to the Contemporary Enhancement of Cultural Diversity Through the Cipriani Mask Collection

Valentina Rizzo

(Museo di Antropologia dell'Università di Bologna, Italia)

**Abstract** This paper's aim is to present a project for the enhancement of a collection from that period, Cipriani's masks, that is on display at the University of Bologna's Museum of Anthropology, by engaging with the system of representation that prevailed in anthropology at the time, and the issue of its legitimacy. The specific focus of this paper is to present the hypothesis of a project titled *Ex: the Dialectical Paradigm of Enhancement* based on the interpenetration of contraries. This project consists of three parts: extinction (the object's past), extension (the object's present) and the exhibition as a dialectical synthesis. Themes touched on include the negotiations between physical anthropologist and cultural anthropologist on the politic of enhancement of the collection and the common interest to go beyond the concept of racism.

**Summary** 1 The Extinction and Extension of a System of Representation. – 2 Exit and the Elaboration of a Synthesis about Otherness. – 3 Exposition: Portraits of Contemporary Cultural Diversity.

**Keywords** Italian Colonialism. Museums. Representations.

## **1 The Extinction and Extension of a System of Representation**

The words colonialism and Africa appear frequently on the pages of Italian history books addressing the twentieth century. Museums and anthropology are closely connected with this historical period in which scientific knowledge and models of representation constructed systems for 'thinking' the otherness that was kept alive in people's collective, shared mentalities. This paper aims to present a project for the enhancement of a collection from that period, Cipriani's masks, that is on display at the University of Bologna's Museum of Anthropology, by engaging with the system of representation that prevailed in anthropology at the time, and the issue of its legitimacy. First, I would like to thank Professor Maria Giovanna Belcastro, Physical Anthropologist at the Department of Biological,

Geological and Environmental Sciences of the University of Bologna, who hosted me as a cultural anthropologist. The project represents a synthesis of discussion about the past and future prospects for carrying out an operation of enhancement on Cipriani's Collection of Masks.

Collaboration between cultural and physical anthropologists is the first step necessary for understanding how a dialectal model of thinking about heritage might be possible and for promoting such a model.

My task, as a guest-anthropologist, consisted in a recognition of sources and bibliography about the masks. The aim is to treat the collection not only as a material data, but as a peculiar data acquired and exhibited by The Museum of Anthropology of Bologna. That's why the majority of the bibliography is taken from the library of the Department to which the Museum belongs. Every proposal of enhancement was discussed and approved as a synthesis of two different visions on the Collection between physical anthropologist and me as a cultural one.

This foreword could show the reason of a dialect method to promote and re-interpret the Collection.

Enhancement, indeed, is a critical action in museography; thanks to this process, museums are able to communicate critical arguments to the public. The specific focus of this paper is to present the hypothesis of a project titled *Ex: the Dialectical Paradigm of Enhancement* based on the interpenetration of contraries. This project consists of three parts: extinction (the object's past), extension (the object's present) and the exhibition as a dialectical synthesis. The final aim is to provide a stimulating starting point for discussing the politics of representing 'Others' on the basis of Cipriani's collection of facial masks shown in the University of Bologna's Museum of Anthropology. In this case, particular attention is granted to the masks created during the period from 1927 to 1932 in Africa, although the Museum also has masks from Yemen (1927-1932), three masks of Chinese people's faces, one of a Philippine person, probably cast during a mission in Asia (1935) and the mask of a Sardinian person from a trip to Sardinia (1934); in this collection, "each of the masks is identified by: the name of the type, sex, age, and the place of origin" (Calanchi, Frassetto 1996, 124). I would like to emphasize in particular the crucial importance of the rhetorical process in explaining the process by which scientific instruments became heritage, and the kind of content they carried with them as objects in an exhibition. The masks as artifacts were purchased by Fabio Frassetto, the physical anthropologist who established the Institute of Anthropology of Bologna in 1908. Frassetto probably acquired them from the anthropologist and ethnologist Lidio Cipriani as part of his scientific collection with the intention of including them in the University of Bologna's Museum of Anthropology. The historical-scientific value of this collection lies in the fact that it was an instrument for studying human variability, a method which is no longer in use and is currently *extinct*.

From its initial origins, anthropology has produced a number of objects: for measuring otherness (Biometric Sciences), for taking photos of people in impersonal environments (Ethnographic photography), and for collecting objects (tribal art) and sometimes even human beings (such as Ote Benga, the 'Hontettot Venus'). For the majority of travelers, the act of collecting was a necessary way to document their fieldwork:

Collecting by travelers was omnivorous, because of their varied expertise and because all of them proposed to create a map of the places and peoples they had visited through these collections, almost always still unknown to the West, and to bring home the material 'proof' of their routes. (Puccini 2014, 37)

One of the most interesting examples is given by the Dakar-Gibuti expedition led by the Ethnographer Marcel Griaule. About that field, Michel Leiris, as he wrote in *Afrique Fantôme*, sentenced the robbery of artifacts from villages. The collection of objects, artifacts, masks from Oceania to Africa, tells about method and relationships during the colonization.

Over the course of my research I never located a legal document establishing that a fiscal transaction had taken place between Cipriani and Frassetto, but the historical sources suggest this collection was part of the original collection. I can hypothesize, however, that the masks were indispensable objects in a museum of anthropology. The museum followed the standards constituted by collections representing human variability, collections which attest to collaboration at a European level. For instance, the Museum of Anthropology of the University of Bologna hosts collections from Germany (Prof. Eugen Fisher, University of Berlin) and Austria (Prof. Josef Weninger, University of Wien) as well as other objects that are part of the collection that Dumoutier, Tramonda and Poch put together during the first years of the 20th century. A large part of Frassetto's work involved biometrical studies, and he sought to unify measurement methods by creating a synthesis of eugenics and biology. Each object comprising this historical collection is closely connected to Frassetto, either deriving directly from his own work or from the relationships he maintained with other European scientists through the S.A.S. *International Bulletin for the Unification of Methods and the Synthesis of Eugenic Anthropology and Biology*.<sup>1</sup> In August 1938 the fascist government, and in particular the Minister of Popular Culture, created the Office of Race. The ideological foundation for this approach revolved around the use of para-scientific equipment designed according to anthropological models and focused on

1 The original title of the text was *Bulletin du Comité International pour la Standardisation Anthropologique Synthétique*.

measurements, compilations and classifications. The aim was to demonstrate a direct link between physical data and psychological data to justify colonization through a theory of racial inferiority (Chiozzi 1994, 91).

To produce the facial masks in this collection, the subjects were made to lie down on the floor and the anthropologist created a plaster cast of the face of the indigenous person. This procedure produced a negative mold that could be used as a master to produce masks and copies. The most difficult part was ensuring that the people cooperated with the entirety of the operation, as in many cases they were not very confident about participating (Labanca 1992, 47). Unlike Fabio Frassetto, Cipriani was an ethnologist, although he practiced this discipline in a period in which observation had not been critically interrogated as a component of fieldwork. The fact that Cipriani never negotiated his presence in the field is key to thinking about the problem of legitimacy of representation that must be clarified in order to enhance this collection. As Jacopo Moggi has explained in reference to Cipriani's photos:

Beyond his involvement in the racial policies of the Fascist regime, Cipriani's career should be remembered for his important scientific contributions and in particular for his photographic collections. His photographs aspired to objectivity because they were based on a clear separation between the observing subject and the object being pottered. Convinced that there must be a great distance between the two protagonists of the operation, he used new stratagems based on technological innovation using Leica camera he could even take photographs of people who were unwilling to be depicted. (Landi, Moggi 2014, 29)

According to the *thesis* of that period, the sciences that treated human beings used various instruments to give intellectuals, scientists, and the people of the nation representations. It is not possible from our contemporary perspective to theorize about the methods of representation. These instruments in a museum offer us suggestions about a new life for the objects. Although anthropology (cultural and physical) has by now thoroughly discarded the concept of race, visitors often view these masks as 'faces from all over the world'. Indeed, the word 'race' lingers on in our language as an expression of cultural diversity. In antithesis with the past, the present of the object highlights peoples' ability to interpret the objects on display using expressions from the past. Objects could write diaries about their stories. In studies of material culture Igor Kopytoff (1986) pinpoints the biography of objects and their ability to move in many different social rules.

According to science, representations serve to order the world in an objective way; in reality, however, the world is more complex. I would argue that instruments contribute to constructing an image:

Image derives from the word *imago*, which evokes the idea of imitation

in perceptual terms: *im-* from which the word imitation originates and *sim-* which gives rise to *similis* or *simulacro*, terms that index the representation of something convincing (Pennacini 2010, 188). Images are thus associated with the sense of sight and, if this serves to strengthen the level of mindset, then it surely also strengthens the level of ideas (from the Latin *eidos*, derived from the linguistic root meaning “to see”). Ideas are in flux; indeed, as Plato has argued, ideas are by their nature dynamic, live and animated (Remotti 2010, 310). During the period of interaction in Africa, Europeans not only captured the typologies of human and ethnological variability, they also added and imposed their own cultural categories to legitimize this difference. If the production of ideas is continually changing, this must be matched by a reorganization of images. But how? Cultural anthropologist concept should not be felt as interferences. The interesting experiences of ‘Museum Studies’, for example, are untimely.

## 2 Exit and the Elaboration of a Synthesis about Otherness

Before going ahead, I want to introduce a short reflection on the terms coming from material culture often to better understand how to recombine a code from language to museology. How might the exhibit maintain this historical context and suggest what indigenous people would have said if they had been able to negotiate their identities? In the museum, objects are subjected to a change of value. Museums transmit not only knowledge but also a model for expressing its content. Using a semiotic definition, in this article I consider two levels of practices. First, the code used in the field of museology is based on semiotics in that it is capable of simultaneously analysing language and, at the same time, our natural world (Fabbri 1999, 8) and it can go beyond the distinctions it itself creates, thereby separating the dimension of *paradigma* from the dimension of *sintagma* (separating the taxonomic order from rules of combination) (9). Cipriani’s masks have a scientific past and a present in museology, but to enable the masks to recount history and a critical vision of humanity, the exhibition would need to recombine the past and present in a way that allows the masks to say something about these elements. Obviously, the method must be coherent with the uses of items. In his studies of deep social relationships, Marx observes how people establish relationships with objects. In particular, the impulse to criticize and to reveal the intimacy between society and objects comes from the historical and philosophical context of social suffering and the prevalence of Hegelian Idealism. In his *Theses on Feuerbach*, Marx notes the relational sequences of material culture, highlighting the way German language fixes complexity and variability: *Gegenstand* is the object in a phenomenological key, it is something that remains in front of; object, on the contrary, creates relationships and is

projected outside of the subject. In talking about Marx, Baudrillard claims that anthropologists often reduce natives' systems of representation to mere mythology. Anthropologists create fetishism. This takes the place of scientific analysis, passing on the "whole western ideology" (Baudrillard 2010, 81-3), which was 'crystallized' first in the *Wunderkammer* and then in the museum, before the adoption of new, contemporary approaches to museology. The predicament of culture is a critical ethnography of the West in its changing relations with other societies. Analysing cultural practices such as anthropology, travel writing, collecting, and museum displays of tribal art, James Clifford shows authoritative accounts of other ways of life to be contingent fictions that are now actively contested in postcolonial contexts. Clifford, starting from the poetess and Princeton professor Susan Steward, comments:

She shows how collections, most notably museums, create the illusion of adequate representation of a world by first cutting objects out of specific contexts (whether cultural, historical, or intersubjective) and making them 'stand for' abstract wholes, a 'Bambara mask', for example, becoming an ethnographic metonym for Bambara culture. [...] Paralleling Marx's account of the fantastic objectification of commodities, Steward argues that in the modern Western museum 'an illusion of a relation between things takes the place of a social relation'. [...] The objective world is given, not produced, and thus historical relations of power in the work of acquisition are occulted. The making of meaning in the museum classification and display is mystified as adequate representation. The time and order of the collection erase the concrete social labor of its making. (Clifford 1988, 220)

During the first half of the 19th century, scholars in North America took a pioneering role in launching a discussion about collecting and the organization and exhibition of objects associated with 'Others'. The reason for this attitude can be traced to colonial policy in that exploitation and the progressive establishment of the country led to the original territories of indigenous peoples being organized into gradually more institutionalized units. For example, Pitt-Rivers' collection was developed along these lines and aimed at highlighting the exotic rather than the ancient according to two main principles of organization: similarities of form and functional affinities. In this logic the objects take part, like links, in the chain of progress. The "Ethnological Society" treated material culture as an aspect of physical description, attributes that differentiate among the races. Indeed, the general overview 'Evolution of culture' grants a great deal of attention to identifying similar objects and organizing them according to the principle of continuity or modification through small gradations. In this way, it was possible to lead to the degeneration or progress of humanity. Identity constructions were related to material forms, so the approach was not only

phenomenological but relational and dialectic. The development of American anthropology linked the structure of museological reflection to ethnology and physical anthropology in a 'joint study of optics'. Franz Boas, the father of historical particularism, organized the Museum of Natural History according to academic principles, as if it were a university, bringing in a large number of researchers to contextualize the objects. The many innovations showcased here included the idea of scenes from daily life, that is, "the ethnological specimen in its history and environment" (Jackins 2000, 62). This idea represented a crucial step towards ensuring that visitors understand the contents within a more complex frame, as well as a way to help less cultured visitors grasp the materia. These were fictions, reconstructions, in which the *limes* were not to have been obscured but rather highlighted. French museums summed up the many theoretical shifts that anthropology had taken over time, emphasizing the steps and policy changes that had taken place in museum anthropology. The example of Pablo Picasso's *Les Femmes d'Alger (O. J. R. M.)* is particularly telling. More than the result, it is the "tormented genesis of this work" (Ginzburg 2014, 144) akin to art premier that interests us. Carlo Ginzburg analyses the process through which Picasso, who was powerfully influenced by African art and more specifically the African art on display at the Trocadéro in Paris, overcame exoticism. In *Rapporti di Forza*, Ginzburg conducts a highly-detailed analysis of the historical sources to trace concepts of history, rhetoric and testing from their origins. The case of Picasso aids us in understanding representation and the meanings associated with exhibition and, therefore, fuelling a reflection on the objectives of exhibition. It was precisely Picasso's education in the classical tradition that allowed him to seize and take possession of art he conceptualized as exotic. This example has a great deal to teach. Picasso went over the piece again and again, making changes. The *Femmes d'Alger* certainly constitutes an effective interpretation on the process of ethnographic and museological representation. Following a process of reviewing and negotiating the images, the postures of classical Venuses met African masks, not just any masks but the masks already in the process of becoming museum displays that Picasso viewed and studied at the Trocadéro in Paris. This example should have clarified the process of building of a mindset and the chain of reflections on visitors about cultures.

As Ginzburg says:

Of course the juxtaposition of classic echoes and elements inspired by figurative traditions found in the *Femmes d'Alger* was radically foreign to racism and exoticism. However, that juxtaposition indirectly testified to the strength of a cultural tradition that had provided the ideological justification and intellectual tools for Europe to conquer the world. (Ginzburg 2014, 144)

Obviously, discourses are produced in different dimensions and in more or less dense gradations. What we need to grasp is the potential of representations to produce social work and dynamic processing, knowledge and awareness of collection processes. According to Michel Foucault, the main characteristic of modern Western culture is the continuous accumulation of time in an immobile space. In his analysis, the public museum and national library thus represent emblems of efforts made as early as the nineteenth century to introduce a new space of representation. Brian Durrans, a researcher at the British Museum, has noted that:

The issue of who controls representation, however, is hardly a productive subject for discussion outside a wider programme concerned with political power. Taken in isolation, as if it were a matter lightly to be considered by curators or directors, this deeply political question finds itself parodied as merely another consumer choice. It is strangely inconsistent for those emphasizing the social embeddedness of museums, as most contributors to *Exhibiting Cultures* do, to imply that control over the images created by exhibitions can be resolved without tackling the embracing issue of political power. (Durrans 1992, 11-15)

The most important aspect of exhibition is getting the exhibition right. To return to the case of Bologna's Museum of Anthropology, it would be inappropriate to extend the collection regarding African cultures; in some ways, Cipriani's collection remains an isolated historical scientific collection that testifies to an unresolved question about the legitimacy of representation. By recovering the etymological meaning of the word  *fingere*  from latin  *fingo*  (to pretend) we can attend to the value of constructing nothing more than patterns of representation, in which material production is an expression: "The operation was simple but so delicate, it encountered many barriers, one of them being the subjects' candid fear of dying by suffocation" (Cipriani 1938; Calanchi, Facchini 1996, 124).

### **3    Exposition: Portraits of Contemporary Cultural Diversity**

In the human sciences - Carlo Ginzburg explains-, the concept of representation has had a great success, often due precisely to its ambiguity. "On the one hand, 'representation' stands for reality represented, and thus evokes absence; on the other hand, it makes visible the reality being represented and therefore suggests presence" (Ginzburg 2014, 82). In the field of exhibition, for example, objects occupy the space of a specific environment which in turn has a certain set of cultural connotations. The objects are placed in relation to each other to communicate and suggest discourse. In the representation of a subject, the intimate relationship of presence/



absence comes to life. The idea that these two elements are in opposition, however, is a western assumption that proceeds by distinguishing rather than the application of procedural order. In relation to dualism, the German historian and art critic Carl Einstein has argued that cube-surrealism functions to overturn the hierarchy among levels of reality:

One thing is important: to shake up what is called reality by means of non-reconciled hallucinations in a way that alters the existing hierarchies of value. [...] The dense fabric of this reality is torn and the tensions of duality come to life. (Einstein 1929, 95)

In a sense, the operation that a museum carries out with its exhibits is to resolve the conflict of the relationship between what is present and what is missing, what you use and what you admire, as occurs in hyperbolic manner in a technology museum. From an historical-anthropological perspective, there is also another scenario that reveals the increasingly dense interweaving of biological science and politics with society. The fascist period process of interventionism in Africa was not only generated by the relationship among academics, intellectuals, scientists and the PNF; the nation's involvement was meant to constitute an effective element for producing a representation of Africa as opposed to the values associated with the identity of *Ventennio* in Italy.<sup>2</sup> An idea of Africa "gradually reduced to virtual reality, artificially reconstructed" was 'invented,' was gradually transformed into an Africa on display, the Africa of museums exhibits and colonial fairs that was set up again and again by "relocating and deporting images, objects, products, men and women, fauna and flora" from the colonies "into the squares of Italy" in order to display them in real life - and in contrast - with the country's still-existent internal otherness (Triulzi 1999, 180). This political process of representation was a fundamental element of the *Overseas Exhibition* inaugurated in Naples on May 9 1940. Indeed, this exhibition was designed to represent the value of the fascist enterprise and the civilizing mission of fascist colonial rule in Africa, in contrast with the previous mode of government. It lasted just over a month but, due to Italy's entry into the war, it was presented with great fanfare: 54 buildings and 150 exhibition halls built in 500 days. Gianni Dore writes:

An assembly of representatives of ethnic groups, environments, landscapes and techniques: indigenous people offering special group photos, a walk down the paths with a decorated camel, busy demonstrating shooting with bow and arrow or the javelin, engaged in daily technical actions such as weaving the hut. A simulation of fragments of real life. (Dore 1992, 52)

2 Italian word that indicates the two decades of Fascist government.

The evolution/degeneration opposition is the most typical contradiction of positivist thought, and it is the reason why the 20th century racism continued to live its own eugenic myth of evolutionary progress in opposition to the degeneration represented by inferior races, which were later slated for elimination (Villa 1999, 408). Fascism inherited the keen interest many scholars displayed in racial eugenics. Beginning with the conquest of Ethiopia in 1936 and the racial laws of 1938, social scientists showed increasing interest in the bio-genetic category of the 'Italian race'. The size of the collection testifies to a clear political vision on the part of the museum in which the prevailing perspective is that of aggregation as an opportunity to represent and, in the case of Durrans, specifically to represent cultures. Expressions of the construction of a new scientific cultural order, the museum institutions opposed the chaotic disorder of impromptu displays with the fixity of their representations (Cafuri 2000, 13-14). This transition from chaos to order within the museum was meant to simultaneously represent the history "of the progress of science from error to truth" (Bennet 1995, 4). In the museum, objects live a new experience of life. Exhibition was understood as the synthesis of the interpenetration of two opposites, one extinct (the past) and one extant (present in the sense of presence) capable of interpreting the subject in the light of present-day needs. This factor is not reducible:

To discover the various uses of things is the work of history. So also is the establishment of socially-recognized standards of measure for the quantities of these useful objects. The diversity of these measures has its origin partly in the diverse nature of the objects to be measured, partly in convention. (Marx 2011, 53)

It follows that the task of anthropology is to find social and museological measures and to generate discourses that contribute to producing value in the society through museums and their associated practices.

The ethnography of an object should recount the meaningful relationships involved in the given context of reference, highlighting the close interactions among people and objects through a form of narration that transcends categorizations and the distinction between form and content; otherwise, it ends up being "merely didactic", as "the material forces would not be historically conceivable without form, and ideologies without material forces would be individual whims" (Gramsci 1975, 869). This statement of Gramsci refers to the theory of hegemony and the "historical bloc" (Gramsci 2012, 120) according to which material forces are the content and ideologies the form. Gramsci's main point in this passage is to develop, including through material forms, ideology as a way of developing a populations' own group consciousness rather than as a form of 'false consciousness'. Unlike Marx, Gramsci does not argue that intellectual groups determine the historical

process; rather, he claims that economic processes determine intellectual groups' ways of being. The very origin of different historical realities can be found in the formation of a hegemonic social group that 'cements' the whole society around it through the ideology of the organization of consent, the state apparatus, thus creating an historical bloc. The concept of historical bloc therefore refers to both the existence of this close relationship between structure and superstructure within a given society, and the potentially dominant class' possibility of establishing the conditions for the creation of a new social organization that provides an alternative to the existing one.<sup>3</sup> There is a recent point of contact between the world of museums and that of anthropology in that both have experienced a kind "crisis of representation" (Cafuri 2000, 1). Indeed, since the colonial period, with science museums and modern museums, the object has been subjected to a form of control that anthropology initially took an active part in enacting. Later, the discipline distanced itself from this approach and rejected it. In its application in museum contexts, anthropology must avoid a one-dimensional approach that treats representation as a unique means of making reparations to otherness. In the contemporary context, the role of anthropology must contribute in terms of applied anthropology, not only theory.

The most considerable part of the project is to involve visitors. The majority of the public consists in children who come to the museum to know the history and the hypothesis about the evolution. The renovation applied on the Collection could extend the public, pointing to adults and to new segment of people, for example blind people. Scientific Museums of the University are often part of two institutions: the System of Museums of the University and the Scientific Department of the University, from which every 'responsible' is called. The duplicity of competence on the museum gets more complicate the realization of projects. It could be necessary have double agreements on a project. Projects of participation must consider a solid structure to give business case and continuity. An unvaried presence of employed staff (not of volunteers) makes an innovative idea into a program. To re-think a collection is a hard task and it is a politic negation of idea from a different field. As Frances Larson (referring to the Shrunken Heads of the Shuar) explains, "museums have a duty to tell the stories of the dead, and to show other cultures as rational, meaningful and part of the same modern community" (Larson 2014, 52). How is it possible to extend the field and the imaginary of the faces of Cipriani? Cecilia Penacini shows in several of her works how objects contribute to create a

3 According to Gramsci, the Communist Party needed to develop the hegemonic role of the working class and implement its program for a new historical bloc. In the work of Gramsci, the concept of historical bloc, like that of hegemony, therefore forms part of a larger recognition of the importance of theory and, in general, of politics, especially in their critical function in relation to economic trends.

mindset about Africa (Pennacini 2011, 2014). At first I was sure about the necessity to consider the Cipriani's Collection as portraits. After debating in the museum we decided to borrow a code out of the action of seeing. Nowadays masks are exhibited exactly as in the past. My idea starts from the will that it is possible to maintain the historical set, adding elements from contemporary debates on culture and on nature. If the mask as a visual object provides evidence of human variation, the same mask might also offer a feeling or experience of equality. The approach developed by David Howes, for example in *Varieties of sensory experience* (1991), calls for considering the different systems of classification used in other societies, showing that ocularcentrism is a western apparatus produced by specific historical and cultural events. The Marxist perspective also contributes to providing a useful vocabulary for addressing the theme of material culture and has been decisive in defining the dialectical process, a project', we should continue even today.

To produce a critical combination of the elements outlined above, this project considers the use of touch as a way of gaining familiarity with and experiencing the collection. This approach would allow visitors to trust in the object, accepting all of its ambiguities and recognizing the invisible dimension that an object in a museum possesses. In suggesting exercises for ethnographers, Sara Pink proposes a perspective of feeling for interpreting through the use of resonance. I believe that a collection such as Cipriani's needs to overturn the orders of knowledge to propose a new way of orienting representation. Touching without seeing will never demonstrate the difference between a Tuareg type and a Bosciman type. And yet the aim of a museum is no longer to show visitors things, but rather to enchant them. Exhibition might offer many aesthetic possibilities, but the absence of this creativity must take a leading role in recounting histories and offering suggestions. As a first step, the interpenetration of opposites comprises two aspects of an object, its past (thesis, extinct) and present life (which is extensive in that it raises the object to an interpretative level based on contemporary social value) and a synthesis, that is, the exhibition. The legitimacy of the representation can only be resolved through clear intentions and the public demonstration enacted by this representation based on a temporary form of legitimacy, a code that is partially shared and, unquestionably, an honest acknowledgement of the inherent ambiguity of representation itself.

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# **Increase the Potential of a Territory Starting from Culture**

## **The Exemplar of the Ecomuseo della Pastorizia**

Claudia Da Re

(Université Paris 1 Panthéon-Sorbonne, France)

**Abstract** Although culture is considered the fourth pillar of sustainable development, there still not exist specific politics concerning this subject. Initiatives on cultural sustainability seem to take place at two separate levels: at international level with, for instance, CoE's Conventions and international research programs as *COST-Action*; at a local level, where there are interesting local initiatives considering CH as a way to interpret territories. This is the case of ecomuseums that carry on projects based on citizens' participation. In this paper we will propose some case study from the Piemonte region and we will try to place it in a general discourse on cultural sustainability.

**Summary** 1 Introduction. – 2 Ecomuseums: Some Definitions. – 3 The Role of CH in Sustainability.– 4 Participatory Practices in Ecomuseums. – 5 An Example of Sustainable Economic Development: the Ecomuseo della Pastorizia. – 6 Conclusions.

**Keywords** Ecomuseums. Cultural sustainability. Landscape.

## **1 Introduction**

The object of this paper is to investigate the role of citizens' participation in the activities of the ecomuseums and, more largely, try to place it in a general discourse of 'cultural sustainability'. At this purpose, a brief review on the evolution of the notion of CH is necessary.

After WWII the museologists proposed a new approach where museums were placed within the social, economic, cultural and anthropological context of the community which they originate from. UNESCO and ICOM took part in this process and, in fact, in 1972 they adopted the Santiago Declaration. This document establishes a social role for CH and proposes the definition of 'integral museum', which is based on an interdisciplinary knowledge and on a close connection with the community. The Santiago Declaration also defined the museum as an instrument for social change. Since then, UNESCO has led a reflection on cultural and natural heritage that produced the 2001 UNESCO Declaration where CH is defined as a

Creation [that] draws on the roots of cultural tradition, but [that] flourishes in contact with other cultures. For this reason, heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations, so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures. (art. 7, CH as the Wellspring of Creativity)

The term cultural heritage has evolved in the last decades, going beyond monuments and objects of extraordinary value. It now includes traditions or living expressions inherited from the past, natural elements, knowledge, skills to produce traditional crafts and much more. Today we consider CH

[...] an expression of the ways of living developed by a community and passed on from generation to generation, including customs, practices, places, objects, artistic expressions and values. (ICOMOS, 2002)

The correlation between community, identity and cultural goods was accentuated by the 2003 UNESCO Convention that established “a connection between the static monumental artifacts addressed by the 1972 Convention and immaterial, knowledge-based traditional practices” (Adell et al. 2015, 10). UNESCO considers ICH an important factor in maintaining cultural diversity in the face of growing globalization. The 2003 Convention recognizes the importance of the transmission of knowledge and skills through generations in addition to its social and economic value. Communities are the depository of their own CH and so they have the right and the duty to safeguard it. The central role of the communities is established in the art. 15<sup>1</sup> and it is reaffirmed in the *Ethical Principles for Safeguarding ICH* approved in 2015 during the 10th session of the ICSICH. Communities’ engagement as a necessary element to safeguard intangible heritage is underlined in points 3 and 12:

3) Mutual respect as well as a respect for and mutual appreciation of intangible cultural heritage, should prevail in interactions between States and between communities, groups and, where applicable, individuals.

12) The safeguarding of intangible cultural heritage is of general interest to humanity and should therefore be undertaken through coopera-

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<sup>1</sup> Art. 15 - *Participation of communities, groups and individuals*. Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.

tion among bilateral, sub regional, regional and international parties; nevertheless, communities, groups and, where applicable, individuals should never be alienated from their own intangible cultural heritage.

Even the CoE has always dealt with culture, by considering it essential to the development of a genuine openness of mind and basic rights. The numerous conventions drafted over the years provide a common framework of action for policy makers responsible for safeguarding and enhancing CH. For the purposes of this paper, it is useful to remember the ELC (European Landscape Convention). This Convention is about sustainable development, based upon the balance between social needs, economic activities, environment and culture. Its objects are the promotion of landscape protection, management and planning, and the organization of the European cooperation on landscape issues (art. 3). The landscape, here, is considered a good, independently from its value. In this conception, landscape must be interpreted as a fundamental part of the CH of a community (Da Re 2015, 258) and even when it has no historic or artistic value, landscape acquires value as such and for the people who leave there.

In 2005 CoE recognized, by mean of the Faro Convention, the value and potential of CH wisely used as a resource for sustainable development and quality of life in a constantly evolving society (Preamble). This Convention's innovation lies in proposing a definition of CH which basically includes any aspect of life:

cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time. (art. 2(a))

The originality of the definition lies in the expression "constantly evolving values, beliefs, knowledge and traditions" in which "the subjective elements (values, beliefs) prevail or in any case precede the objective ones (knowledge, traditions)" (Zagato 2015, 144). In this perception, the responsibility to identify and to safeguard CH falls on the heritage community, intended as a set

of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations. (art. 2(b))

The choice to use 'people' instead of 'individuals' focuses on the collective dimension of CH (Zagato 2015, 144-5). The definition of CH has expanded up to including objects and places that may not have

an extraordinary value, but they acquire importance if considered in correlation with the environment in which they are settled in. In this conception, communities take a prevalent role because they are called to define their own CH.

Communities' participation in the identification of CH is well specified in all the legal instruments we are taking into consideration; it is indeed considered the key to raise the awareness of CH's value and the role it plays in determining the quality of life of a territory. Both the ELC and the Faro Convention recognize also the importance of CH for the social and economic development of a territory. If in the ELC this approach can be deduced from the text, the Faro Convention specifies (art. 5) that CH is an element of sustainable development,<sup>2</sup> and that (art. 2) the term 'resources' underlines their feasible economic implications.

Also, UNESCO has pushed the theme of culture and sustainable development into its action policies for several years, giving particular consideration to ICH. In particular, in the last resolution approved during the sixth session of the GA of the States Parties to the 2003 Convention, which took place from May 30 to June 1 2016, part 2 is entirely dedicated to the existing connection between ICH and sustainable development. Chapter 6 invites States Parties to recognize

the role of intangible cultural heritage as a driver and guarantee of sustainable development, as well as fully integrate the safeguarding of intangible cultural heritage into their development plans, policies and programmes at all levels.

The document also recognizes the contribution of ICH in realizing an inclusive and equitable economic development.

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2 Art. 5 - *Cultural heritage law and policies*. The Parties undertake to: a) recognize the public interest associated with elements of the cultural heritage in accordance with their importance to society; b) enhance the value of the cultural heritage through its identification, study, interpretation, protection, conservation and presentation; c) ensure, in the specific context of each Party, that legislative provisions exist for exercising the right to cultural heritage as defined in art. 4; d) foster an economic and social climate which supports participation in cultural heritage activities; e) promote cultural heritage protection as a central factor in the mutually supporting objectives of sustainable development, cultural diversity and contemporary creativity; f) recognize the value of cultural heritage situated on territories under their jurisdiction, regardless of its origin; g) formulate integrated strategies to facilitate the implementation of the provisions of this Convention.

## 2 Ecomuseums: Some Definitions

The discussions concerning CH went hand in hand with the discussions about the role of museums. Since 1950, in fact, ethnographers and museologists have been more and more interested in the industrial and urban milieu. Museum approach developed until rejecting the traditional idea of museum, designated only to objects conservation, in favour of a museum closer to the territory and more attentive to the relationship between men and the environment they live in. More in detail, in France, museologists experimented ecomuseums. This particular type of museums comes from the experience of regional parks and is founded on the concepts of human being and environment. George Henri Rivière<sup>3</sup> was the first to develop the idea of ecomuseum in 1969, starting from 'en plein air' museums; then, in 1971, Hugues de Varine<sup>4</sup> coined the noun. There are many definitions of ecomuseum proposed along the decades, but one of the most effective still remains de Varine one, which explains the differences between traditional museums and ecomuseums:

MUSEUM	ECOMUSEUM
Collection	Heritage
Static	Environment
Public	Inhabitants

This simple framework highlights the key concepts of the ecomuseums:

- CH: everything that is considered as such by the community. The inhabitants participate in collecting, inventorying and interpreting CH and they contribute to build it with donations and loans;
- Environment: is the place of the knowledge of a community and the place of relationships between human beings and nature. The ecomuseum allows inhabitants to re-appropriate their own territory and be aware of their history;
- Population: it is the first interlocutor of an ecomuseum and for this reason it has to be involved in any activity.

Hugues de Varine argues that the concept of ecomuseum reflects more ideas that complement each other:

**3** George Henri Rivière (1897-1985) was a French museologist and the founder of Arts and Popular Traditions Museum in Paris, which is now in Marseille. He gave, with his work, an important contribution to New Museology and to ethnographic museums.

**4** He is a French archaeologist, historian and museologist and he was one of the protagonists of New Museology. From 1965 to 1976 he was the ICOM's director and, with G.H. Rivière, he founded ecomuseums.

- Its scope is the CH of a community or a territory;
- It has an environmental dimension;
- It originates from a long process that goes with the environmental development;
- Inhabitants' participation is permanent and decisions about the territory have to be taken from local stakeholders;
- It is a tool for education and transmission of local culture, but it also encourages the openness to the world and to the other cultures;
- Research and conservation are not the main purposes of an ecomuseum, but rather they are tools to achieve its mission. (De Varine 2005).

From the early 1970s till now, ecomuseums have spread all around the world, assuming different aims and forms in accordance with local exigencies. In Europe, and in Italy in particular, they have based their actions on sustainable development, trying to increase local potentialities. This is also evident in the Italian definition of ecomuseum:

[...] is a participatory practice for the safeguard of cultural heritage, tangible and intangible, developed by an organized subject, expression of a local community, in the perspective of sustainable development. (Kaufman 2013, 28)<sup>5</sup>

Thus, an ecomuseum can be seen as the promoter of the sustainable development of a territory, which is achieved through the promotion of local cultural dynamics, the collaboration with the touristic and economic sectors, the attention to the environment and the promotion of sustainability. The ecomuseum approach focuses on the recreation of territorial knowledge, which is based on the interconnection of know-hows and on the promotion of CH by individuals who reinterpret them as a collective resource. To recognize local heritage and to be able to read the traces, it helps to be aware of the territory we live in and of its values. "What any particular place is, or seems to be, is shaped by the life story that each person brings to it". And since each person's life story is different, the meanings of places as well as people's feelings for them will also be different. But when we talk about communities, places take a common sense too. To interpret cultural and natural heritage means to consider individual preferences, backgrounds and cultural baggage, but also, and especially, to point out the common sense of this heritage (28). Ecomuseums differ from traditional museums just because they have an organization centred on the territory, that is viewed as a fabric of relationships, past and present.

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<sup>5</sup> Conference *Giornate dell'ecomuseo. Verso una nuova offerta culturale per lo sviluppo sostenibile del territorio*, held in Catania, Sicily, 12-13 October 2007.

The Ecomuseum model is instrumental to the sustainable development of a territory because it focuses on the territory itself, understood as a privileged framework of man-nature relations, as a place for storing knowledge of local communities, as a testimony of environmental values, as a space that synergies the ability of inhabitants to develop alternative economies.

### 3 The Role of CH in Sustainability

When we talk about sustainable development is now quite evident to include culture into the discourse. That's why it has been accepted, by now, that culture, intended in its anthropological definition, is a fundamental element of a territory or a community. This conception proposed culture as the fourth pillar – or an essential aspect – of the sustainable development; but it took almost thirty years to achieve this result. The notion of sustainable development was theorized in the 1970s when the Club of Rome published a report on the environmental consequences of rapid economic growth (Meadows et al. 1972)<sup>6</sup> and in 1987 the Bruntland Report gave the first definition of sustainable development:

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>7</sup>

The possibility to put culture into the discourse of sustainable development was suggested by the WCCD, whose 1995 Report *Our Creative Diversity* was published in 1995. In this report culture is considered “a part of a human-centred development paradigm” (Throsby 2008, 2). Once again, in 1997 the EU established ‘the model of the three pillars of sustainability’, which affirms that sustainable development concerns not only the environment, but also the social institutions and the economic achievements. Finally, in 2002, the Johannesburg Summit<sup>8</sup> proposed culture as the fourth pillar of sustainable development. Here it is established that culture has

6 Commissioned by the MIT (Massachusetts Institute of Technology), the Report concerns the results of a computer simulation studying the interactions between worldwide population, industrialization, pollution, food production and resources depletion. The conclusion was that an unlimited growth would cause the deplete of energetic and environmental resources. The Report also argues that it was possible to achieve a sustainable development.

7 Report *Our Common Future* realized by the UN WCED in 1987, commonly called ‘The Bruntland Report’ from the name of the chairperson of the Commission, and former Norwegian prime minister, Gro Harlem Brundtland.

8 The World Summit on Sustainable Development was organized by the UN and took place in Johannesburg from 26 August to 4 September 2002.

a key role in public policies, such as education, science, economy, social cohesion, environment and international cooperation.

Cultural and natural heritage, tangible and intangible, can be considered as a social and a cultural capital for the population, because it is closely connected to the history and the system of values of a community and it participates in defining the environment of people's lives. Development can be seen as an aim that generates established actions apt to modify the territory and to help the inhabitants to re-appropriate it. Renovating actions have also the object to promote a responsible modernity that moves from the potentialities of the territory (historic, economic, social, cultural and natural) and takes place with the engagement of the population concerned. Frequently, these transformations include the knowledge and the transmission of CH (Gellereau 2011, 88-90). Here culture is intended to have a "mediating role to achieve economic, social, and ecological sustainability" (Dessein et al. 2015, 31), so CH is considered as a resource for the development of a territory, that has to be taken into consideration when aiming for sustainable development. In the author's opinion, this is partially true: considering CH as a capital means to assume that it can actively participate in the development of a territory. Precisely, culture could be intended as the keystone of the process, the "foundation for meeting the overall aims of sustainability" (33). In this way, culture is not one of the pillars, but becomes an overarching dimension of sustainability. Development could be interpreted as a cultural process in which sustainability is a procedure that involves all the actors (policy-makers, citizens, public and private institutions) in the same way.

Considering CH as a resource also means to acknowledge the presence of users of this resource, who are going to use it individually or collectively, as a community. It is necessary to take into consideration all the possible users of CH during the decision-making process. Participatory practices aim to get the entire community involved in every step of the process and offer alternative frameworks to rethink identification and inventory-making. 'Community participation' could be intended as the involvement of inhabitants of a territory in projects to improve their potentialities or to solve their own problems. This type of action is important because it helps to individuate what is heritage and what is important to preserve. It can be helpful also to promote 'a process of re-appropriation and comprehension' of the territory. That is particularly true in places that have suffered depopulation or impact in economic and social modifications. Participatory practices allow to highlight, and try to solve, the elements of continuity and clash between different generations. They provide sparks for dialogue with new inhabitants, helping them to recognize each other in the territory in which they live.

Heritage interpretation has to promote dialogue between stakeholders and also considering individual preferences. It has to take care of the



feelings inspired by places or objects that could appear to experts utterly lacking in heritage value, but that assume significance for the community. In a democratic decision-making process, these feelings are important because they can explain the meaning that people give to the environment (Kaufman 2013, 28).

#### 4 Participatory Practices in Ecomuseums

The ideal place to think about participation is probably the ecomuseum. Due to its structure, the ecomuseum needs a participatory management of citizens and of political actors; moreover, the vast field of action allows it to reflect about the CH of a territory. An ecomuseum is usually created by a community and is that same community its very first interlocutor. But there are also specialists working in an ecomuseum which are necessary to train the inhabitants and to carry out research activities or projects. Furthermore, it constantly deals with public administration and local authorities. Ideally the ecomuseum holds, intrinsically in its nature, the role of mediator and it can be the depository of the instances of the territory. It can be crucial in combining the needs of promotion and development of a territory with the need to preserve cultural and natural heritage. As the guardian of knowledge and know-hows of the community, the ecomuseum becomes the ideal place where citizens, experts and local authorities can talk and can reason together about what could be preserved and what could be renovated to realize a sustainable development that takes care of the potentialities of the territory.

The inventory participatory and the Parish maps, for example, are the most widely used tools for spotlighting the vocations of places and communities. The creation of a Parish map or of an inventory enables people who inhabit a place to discover the highlights of their history and take back their landscape. Parish maps are tools through which the inhabitants of a particular place can represent their local heritage, their landscape, the knowledge in which they recognize themselves and what they wish to transmit to future generations. It does not matter what form they take, be it a map, a drawing or a scale model, what is important is to represent the instances of the community; for this reason, the work on a Parish map must be open to all the members interested in it. This is exactly what has been done by the Ecomuseo della Segale<sup>9</sup> in 2007 when the Parish map of Valle Gesso was realized. This ecomuseum was created to contrast with the depopulation its territory was suffering from and to rediscover and promote the cultural roots of the valley. It is spread around the villages of Sant'Anna,

9 URL <http://www.ecomuseosegale.it/> (2017-12-15).

Andonno, Valdieri, Entracque and Roaschia and is situated in the Piemonte region, in a mountain valley in the district of Cuneo, Valle Gesso indeed.

To realize the Parish map, the ecomuseum's team coordinated an open-ended working group accessible to all citizens of the valley. In each session meeting, the group discussed about places, monuments and memories that best described the valley. After one year of work the result was a map reproducing the elements considered significant for the inhabitants of the valley, which often doesn't match with the most representative part depicted from a cultural point of view. So the people of Roaschia chose to represent a 'tèit'<sup>10</sup> instead of the quarry of limestone; likewise the inhabitants of Sant'Anna put into the map not Sant'Anna's church, but only the statue of the Saint that is more important to them. Working on a Parish map can be the first step to become aware of the milieu, to understand what is important for the community. The process leading to a Parish map is not simple nor immediate, it is about going beyond judgments and preconceived values, in order to build common bases to take care of the environment. The work is done step by step and every subject participates to a collective reasoning that reflects, in the end, on the Parish map (Murtas 2013).

A more deepened approach in defining CH is the 'participatory inventory'. Whereas the Parish map is a detailed selection of the elements that best represent a territory and a community, the inventory consists in classifying all the elements constitutive of CH of a territory and of a community. When this operation is made with the participation of the population it encourages the action and the beginning of the community's empowerment. De Varine (2013) argues that the inventory is strictly correlated to the territorial development process; this process needs a diagnosis about the condition of resources, of the population, of the territory and about problems. When the inhabitants are called to inventory the elements of their heritage, they are also called to actively participate in the development process. It could take a long time, but it is a process that produces awareness of what elements define the community and why people choose some of them instead of others. It is not only a selection of items, but also a work on private sensations and on the significance that we attribute to a particular object or place. De Varine (2013) again argues that when people are obliged to face their CH, they become aware of it and they start to think how to safeguard it and how to do it. Assuming that participatory inventories are strictly related to territorial development brings us back to the concept of sustainability expressed beforehand in this paper.

"Both cultural and natural heritage imposes a duty of care on the present generation" (Throsby 2003, 166). At the same time, when we talk about sustainability we think of the best solutions for the preservation and

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10 In the local dialect 'tèit' means a roof built with rye, typical of Valle Gesso.

the transmission of CH. CH does not mean only monuments or objects of extraordinary value; it also means landscape, traditional works, knowledge, and so many other elements like we said at the beginning of this article. To be preserved, CH needs to be in connection with the context and to be used by people that, in this way, regenerate it constantly. It does mean that CH takes part in all kind of processes that concern a territory, like for example the economic ones for which it becomes essential (168).

## **5 An Example of Sustainable Economic Development: the Ecomuseo della Pastorizia**

The Ecomuseo della pastorizia (Ecomuseum of sheep farming) is founded on the tradition of the Sambucana sheep. The ecomuseum was created in 2000 with the contribution of the Valle Stura's Mountain Community. It is located in the Alpine village of Ponteb Bernardo, Pietraporzio hamlet, 1300 m. high, in the Piemonte region. This mountain area has been characterized, since the fifteenth century at least, by the pastoralism and in particular by the livestock of the Sambucana sheep. Shepherds living in the valleys of Stura, Maina and Grana, went to work in the near Provence, where there were large herds of sheep; their job consisted in conducting sheeps in the aforementioned valleys during the summer period.

Over the centuries, the transhumance has produced a considerable wealth of knowledge and traditions that are an important part of the CH of the territory, with the Occitan language which allows French and Italian people to understand each other. This activity has also modified the natural environment and determined the modern aspect of the landscape.

The Sambucana sheep is a typical breed of this valley; the great adaptability of this animal allows it to resist at cold temperatures and at high altitudes, so it has been able to survive and settle down in Valle Stura since ancient times. From this sheep, it is possible to produce excellent meat, milk and wool. Thanks to these characteristics, the inhabitants of the valley developed a sort of subsistence economy basically based on the Sambucana sheep, from which they obtained food, clothes and everyday objects. So it was, at least until the beginning of the twentieth century, when the area was interested by a migratory phenomenon that caused a strong depopulation of the valley. In 1980s the Sambucana sheep was in danger of extinction and, thus, the consortium 'l'Escaroun' was created to reintroduce the race. The consortium also encouraged the last sheep farmers to form a cooperative. These entrepreneurs continued to take flocks on the mountain pasture during the summer, and by doing this they contributed to the maintenance of landscapes and they avoided environmental degradation, caused by depopulation.

So the project of the ecomuseum was born in a context that was already aware of the importance of traditional activities and of the benefits of revitalizing them. The mountain community also felt the need to rediscover the traditions related to the pastoralism in Valle Stura. Here the ecomuseum is a tool for the interpretation of a territory and a way of life deeply influenced by the traditional economic activity. The work team is constituted by people who bet on the ecomuseum project, understood as an operation act to project a territory into the future, starting from the recovery of its past. It was one of the first ecomuseums in Italy to work with the Parish maps, in 2002. Back then, the inhabitants were invited to propose the elements that they considered representative of their place. The process was, also in this case, very long: the drawing of the map took more than one year. The lengthen of the process was due mainly to the initial difficulty of the local citizens to identify the places worth to be represented as CH. In the end, the Parish maps of Pietraporzio, Vinadio and Argentera came out and they were shared with all the members of the communities. To maintain the population active, the ecomuseum constantly organizes educational activities, like a laboratory for working wool products, as well as initiatives that are not strictly correlated to its mission, but that have allowed the ecomuseum to be recognized as a place of aggregation. At the same time, the ecomuseum has worked in close contact with the mountain community to recreate an economy based on the traditions of the Sambucana sheep. It thus opened a sales point for the purchase of precious Sambucana sheep wool artifacts and a small restaurant where the tasting of traditional culinary products is possible and helps to promote local productions among visitors. The headquarters of the Ecomuseum is a building in the centre of the village, acquired by the mountain community. On the ground floor, a small dairy allows local shepherds to prepare the 'Toumo' of the Ecomuseum, a sheep cheese. There is also a laboratory for processing the Sambucana sheep's meat, from which can be made excellent sausages. A second building hosts both the 'Arieti Centre' on the ground floor, managed by the consortium 'Escaroun', and the Interpretation Centre of the ecomuseum 'Na Draio for Vioure' on the first floor, which provides the visitors with a broader picture of the phenomenon of sheep farming and pastoralism, with a large part dedicated to the illustration of local reality, in his most direct reference to the goods and the flavours. Here there is also a multifunctional room for the activities of the ecomuseum.<sup>11</sup>

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11 URL <http://www.vallestura.net/ecomuseo/default.asp> (2017-12-15).

## 6 Conclusions

The complex definition of CH provided in the last years by UNESCO and CoE is the backbone of any discussion about sustainability. Although culture starts to be included in the sustainability debates, at least at a scientific level, to translate these purposes into practical and political actions still seems to be a great challenge, as explained in COST-Action conclusions:<sup>12</sup>

the policy challenge is that a broad understanding of culture requires cross-sectoral policies, and innovative modes of implementation that involve reexamination of governance, democratic participation and social equity. (Dessein et al. 2015)

COE's Conventions give to States Parties the instruments to achieve a sustainable development and encourage them to base the appeal of a territory (intended as the sense of place and the capacity to attract touristic and economic activities) on the CH. These international instruments, and the Faro Convention in particular, also introduce a very important statement:

the right to cultural heritage is recognized [...] as pertaining to the sphere of (individual, at least) human rights. (Zagato 2015, 142)

However, the concept of cultural sustainability has also been introduced in several public actions, even if sometimes "some ambivalence still persists regarding the application of the cultural notion" (Auclair 2011, 8). It can be assumed that the most interesting results were seen at the local level, where CH was considered a way to interpret territories. Beyond the cases mentioned in this article, many different actions have been put into practice for this purpose: for instance, the heritage walks, proposed within the framework of the Faro Convention and developed in local contest. In the city of Venice, for example, there are many associations who, during the year, bring citizens and visitors to discover the city and the Lagoon, outside the traditional tourist routes. Supported by the CoE Programme office, based in Venice, these associations – which are present on the territory since decades – take into charge that very part of cultural and natural heritage that is embedded with the daily lives of the community,

<sup>12</sup> COST is a European program that encourages trans-national cooperation among researchers, engineers and scholars across Europe. The COST Action IS1007 took place from 2010 to 2015 with the purpose to increase understanding of and determine the role of culture in sustainable development based on multidisciplinary principles. Twenty-five European countries got involved, including Italy. In 2015, the working group published the COST-Actions Conclusions *Culture in, for and as Sustainable Development*. URL [http://www.cost.eu/COST\\_Actions/isch/IS1007](http://www.cost.eu/COST_Actions/isch/IS1007) (2017-12-15).

but it is often underestimated. The involvement of the inhabitants as witnesses of the relevance of this heritage is the core of a 'heritage walk'. In this case people are 'used' as oral sources to describe the history of a territory. Participation can assume many other different forms, starting from the public participation in exhibitions till more complex forms. For example, when citizens realize their own research concerns particular aspects of their history and their environment, or when they get actively involved in the conception of an exposition. However, to achieve this result, a cultural awareness of the inhabitants is necessary as well as recognizing that the community is the main subject apt to operate a positive change on the territory (Rotondo 2016, 18). The construction of identities is often linked to a particular place; therefore, to enhance a collective sense of place, attention is increasingly paid to the importance of the elements that surround us and determine the environment in which we live (Dessein, Soini, Fairclough and Horlings 2015, 40). Local heritage is also central in producing lasting wealth and in defining particular characteristics of the economic future (Rotondo et al. 2016, 18), as well as citizen's participation, that can "improve risk-sharing" and help "alleviate the vulnerability of the heritage economy" (Wanner 2009, 133).

The need to combine the strengthening of the territorial vocation with the improvement of its environmental conditions and the achievement of social goals, determines a new concept of development and promotion of the territory, deeply embedded within the culture. In the author's opinion, the ecomuseum could be a tool to achieve this result. Being an institution that stands halfway between the population and the local administration, it can interact both with the inhabitants and the politicians/institutions and it assumes, as we said above, a role of mediation/coordination in the decision-making process. Ecomuseological projects bind economic development to the cultural growth of a region and to the choice of a lifestyle more coherent with the environment. It is therefore desirable to entrust its design to a local level, in order to represent the territory in a congruent and unique way. But, what is the role of the ecomuseum within this process? It can be one of the subjects apt to guide the population in the definition of its CH and, in that case, it becomes its guardian. With stakeholders it will develop a scientific-cultural project and it will promote the research. Then, it will return to the community the results of this work and promote a new interpretation of CH. This type of activity is continuous, for this heritage is not limited to a certain historic period, but it is constantly recreated by the community just living on the territory. The ecomuseum may therefore represent the instrument through which rebuild the memory, in a path starting from the past and oriented toward the future. But it also helps to observe transformations with critical ability. Participation promotes the enhancement of knowledge and the traditional practices during the selection process of the CH to safeguard and contributes to define

new models of sustainable local development. By collecting the memory of the community, ecomuseums - unlike museums - offer potential positive economic effects through the raising of traditional works or the promotion of a sustainable tourism.

Using CH as an instrument of social and democratic action gives people the means to understand their own CH, considered in its evolution, and helps to strengthen the local identity by increasing the population's awareness of the importance of taking action to safeguard its territory.

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# **The Digital Biography of Things**

## **A Canadian Case Study in Digital Repatriation**

Emanuela Rossi  
(Università degli Studi di Firenze, Italia)

**Abstract** I propose taking a closer look at the anthropological, classificatory and exhibitionary principles on which a Canadian digital repatriation project (GRASAC) was built. The process of dematerialisation and subsequent reinsertion into a new ‘concretion’ (the digital database) has lent the objects a new status within a certain organisational structure. This kind of products, once created, take on a life and history of their own, separate from that of the objects themselves. Digital files of physical objects are more than just simple reproductions or copies, and can be read as a further phase of the ‘objects’ biography’.

**Summary** 1 Foreword. – 2 How to Repatriate and to Whom?. – 3 Digital Technologies and Source Communities. – 4 GRASAC. – 5 Digital Biographies.

**Keywords** Communities. Ownership. Digital repatriation.

Digital repatriation is not intended to be a substitute for the actual transfer of ownership of cultural property through repatriation negotiations. However, digital access can accomplish a first level of image and text repatriation, returning to originating communities information about their history and cultural achievements. As an ethical gesture, it responds to people’s right to own their pasts.

(Phillips 2011, 287-88)

### **1 Foreword**

In Canada, as in other parts of the world, in the middle of the 19th century, during the so-called ‘Classic Era’ of museum collecting, ethnographic collections were amassed on the premise that Native populations would soon disappear under the weight of impending modernity, and, therefore, artifacts from these cultures on the verge of extinction should be saved for the future. This established a one-sided relationship that reinforced the conviction that knowledge was the privilege of Western institutions. Colonial empires were the largest settings for this kind of relationship. In recent years, Native communities, as well as so-called new settler socie-

ties (such as representatives of diaspora communities) have started to counter this pervasive theoretical and methodological model, requesting, for instance, the repatriation of objects stolen in the past, or demanding to work with museum curators to represent their own point of view. In some national contexts, these protests mirrored the transformation of relationships with Indigenous communities, whose battles for cultural property had by then gained political recognition. In this changed climate, objects as museums became new “contact zones” (Clifford 1997; Peers, Brown 2003), metaphorical “spaces of colonial encounters, the space in which peoples geographically and historically separated come in contact with each other and establish ongoing relations, usually involving conditions of coercion, radical inequality and intractable conflicts” (Pratt as quoted in Clifford 1997, 192).

Objects in museums embody both indigenous knowledge and the history of colonial expansion, which is the reason these collections exist. They are embedded in layers of overlapping histories, which have value and meaning for the communities to which they belong, and for the museums that claim ownership of them. In particular, for those communities afflicted by radical and rapid transformation, the objects held in museums represent a material heritage that embodies the lives and knowledge of their past. At the same time, these objects also represent a bridge to the future because, through them, it becomes possible to regain contact with a universe of knowledge and information useful both in the present and in the future (Peers, Brown 2003).

Therefore, through loans or repatriation, objects can be returned to the communities they belong to, so as to pass on knowledge from generation to generation. Through the act of repatriation, the pivotal role that objects can have on a community’s identity is recognized, as well as the community’s right to claim and have access to them. In cases where objects are never returned to their communities, museums act as caretakers on their behalf.

Several approaches to the conservation and safeguarding of artifacts have been used (Clavir 2002). In some museums run by Indigenous communities there is little interest in the conservation of these objects. Australian Aboriginals, for example, see museums as places to store the objects until they can be used again. Other museums favour practices that take the interests and needs of Indigenous communities into consideration. Nowadays, for instance, museums acknowledge that numerous Indigenous groups may treat these objects as living entities possessing supernatural powers that can put both the museum and its visitors at risk.<sup>1</sup> Today, the meaning of an object is no longer related solely to its production and use,

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1 In this regard, museums are slowly adapting to Indigenous traditions, which require ceremonies or fumigation of sacred or sensitive objects.

but also includes the meanings that it may carry for Indigenous communities in the present as well as in the future (Bouquet 2012).

## 2 How to Repatriate and to Whom?

The first reaction to challenges launched by Indigenous communities regarding the housing of collections of objects in museums was one of fear; namely the fear of losing the right to own and exhibit indigenous materials.<sup>2</sup> In fact, the legislation on this issue has been very conservative regarding the call for immediate repatriation of objects (Nicks 2003). The NAGPRA (the Native American Graves Protection and Repatriation Act) and the regulations mandated in Canada by the National Association of Museums (Task Force Report on Museums and First Peoples 1992) and in Australia (Museums Australia 1996) are quite cautious about repatriation issues.<sup>3</sup> Today many collections have been returned and others soon will be; new museums and cultural centres have also been created following the restitution of collections of objects (Kreps, 2003; Coody Cooper, 2006). A well-known case concerning two Canadian institutions in Cape Mudge Village and Alert Bay – where objects taken forcibly by the Canadian government in 1992, during an ‘illegal’ potlatch, are now on display (Clifford 1999) – exemplifies this trend.

The question of ownership is perhaps one of the most complex matters when working from a collaborative perspective. When returning these objects, a pivotal question is who or which community is entitled to receive them. In general, unless an individual can legally prove his or her ownership, the law prefers to return the objects to the entire community. The repatriation process is a difficult one and should be made as transparent as possible, otherwise it risks favouring one community over another, with negative consequences for both the museums and the Indigenous groups involved. Many museums, in order to facilitate the process for Native communities as well as to provide information for museum professionals

2 This paper does not address the repatriation debate. On this topic see Bouquet 2012.

3 The origin and goals of the 1992 Canadian report are discussed in Rossi 2008. In response to the Canadian report, Museum Australia (formerly the Council of Australian Museum Associations) produced a document stating that Aboriginals and Torres Strait Islanders have the right to self-determine their cultural property, and that museums are obligated to help them. This document focuses not only on the repatriation of sacred objects and human remains, but seeks to identify strategies that museums can use to incorporate Indigenous perspectives into their day-to-day practices and exhibit design. Another important benchmark was the *International Conference on Cultural and Intellectual Property Rights of Indigenous People*, held in 1993 in New Zealand, which in producing recommendations for states, nations and international agencies about human remains and cultural objects, “both politicized collections and helped to shift the locus of authority from ‘experts’ to source communities” (Bouquet 2012, 153).

seeking a model for their own institutions, post instructions for requesting the return of cultural items on their websites.<sup>4</sup>

### 3 Digital Technologies and Source Communities

Over the past twenty years, in response to legal, social and political movements that emphasized dialogue, negotiation and debate about the restitution of human remains to Indigenous communities, the term ‘repatriation’ has become a priority for anthropologists, museum curators and members of Native communities. Looking back on the earliest instances of repatriation after many years, it is difficult now to attribute a single meaning to this term: “The diversity of Indigenous colonial histories and contemporary legal and social climates in settler nations has produced a varied landscape of practices that can be termed repatriation” (Bell et al. 2013, 3).

Mary Bouquet defines ‘repatriation’ as an

umbrella term which, when applied to museums, connotes the restoring, returning, repairing, replacing and renewing of objects and images as well as relationships that compose them. Restitution and repatriation [...] reflect changing understandings of how this material is embedded in the social world. (Bouquet 2012)

More or less every country in the world that has lived under colonial dominion has seen a rapid diffusion of repatriation projects in collaboration with Indigenous communities.<sup>5</sup> Collaboration, sharing, restitution and community have become the keywords for any project aspiring to ‘political correctness’ and hoping to attract the government’s attention and financing.<sup>6</sup> Some of this financing has supported the creation of databases and infrastructures that facilitate online collaboration with the often geographically distant source communities,<sup>7</sup> as well as forms of what is known as ‘digital repatriation’.

4 To give just a few examples: the Museum of Anthropology at the University of British Columbia in Vancouver, the Aboriginal Heritage Unit at the Australian Museum in Sydney, and the Canadian Museum of Civilization in Ottawa (now Canadian Museum of History).

5 To provide another example and broaden the horizon, in 2008 a huge digital archive, the ATSIDA (Aboriginal & Torres Strait Islander Data Archive), was created in Australia. ATSIDA is a specialized trusted research data management facility for Australian Indigenous research data and is managed by the UTS Library.

6 It was this climate that led to the rise of collaborative museography in museums. On this see Phillips 2003.

7 “The term ‘source communities’ (sometimes referred to as ‘originating communities’) refers both these groups in the past when artifacts were collected, as well as to their descendants today. [...] Most importantly, the concept recognizes that artifacts play an

While physical return was, and remains, appropriate and necessary for some objects, many Native nations and Indigenous communities around the world could not house, did not have proper storage facilities for, or internal politics precluded the safe return of, physical objects. In such scenario, digital repatriation has emerged as an alternative to physical repatriation akin to and in tandem with what has been termed visual repatriation – the practice of sharing copies of visual materials in archives and museums (Bell et al. 2013, 5).

In 2000, while I was in Vancouver conducting my Ph.D. research, the Museum of Anthropology at the University of British Columbia had just begun a project (complete as of 2010) entitled: *A Partnership of Peoples. A New Infrastructure for Collaborative Research*, thanks to a \$34 million grant funded in large part by the Canada Foundation for Innovation.<sup>8</sup> This infrastructure is one of the first in the world to establish a connection between scholars, Native communities and museum research through the creation of an ERRN (Electronic Reciprocal Research Network), conceived to facilitate collaborative research between museums and Native communities and to link collections of Northwestern objects scattered around the world. This system has given researchers access to images, objects and information and allowed them to overcome cultural barriers to conducting research (Phillips 2011; Rowley 2013).

This is how the ERRN is described on the website:

The ERRN is an online tool to facilitate reciprocal and collaborative research about cultural heritage from the Northwest Coast of British Columbia. The ERRN enables communities, cultural institutions and researchers to work together. Members can build their own projects, collaborate on shared projects, upload files, hold discussions, research museum projects, and create social networks. For both communities and museums, the ERRN is groundbreaking in facilitating communication and fostering lasting relationships between originating communities and institutions around the world. The ERRN is being co-developed by the Musqueam Indian Band, the Stó:lō Nation/Tribal Council, the U'mista Cultural Society and the Museum of Anthropology. This collaboration ensures the needs of the originating

important role in the identities of source community members, that source communities have legitimate moral and cultural stakes of forms of ownership in museum collections, and that may have special claims, need or right of access to material heritage held by museums. In this new relationship, museums become stewards of artifacts on behalf of source communities" (Peers, Brown 2003, 2).

<sup>8</sup> The CFI is an independent corporation created in 1997 by the Canadian government to develop research infrastructures. Its mandate is to strengthen the capacity-building of Canadian universities, colleges, hospitals, and non-profit research centres, and to aid the development of high-quality research and technology for Canadian people. The foundation has been one of the major sponsors of GRASAC (Great Lakes Research Alliance for the Study of Aboriginal Arts & Cultures).

communities as well as museums are taken into account at all stages of the development.<sup>9</sup>

Like the aforementioned ERRN, the GRASAC — the digital repatriation project I wish to focus on in this paper — is to be understood in this context. GRASAC is an international research group made up of Native researchers, scholars and museum professionals whose goal is collaborative research. The idea at the core of this group is that everyone can benefit from the points of view, skills and expertise of members from different disciplines and areas. The acronym GRASAC refers both to the people who meet regularly, collaborate on projects and exchange ideas, and to the electronic tools developed specifically for the project in order to collaborate and share resources at distance, through the web (Phillips 2013).

GRASAC began as a question that was raised by three researchers in the spring of 2004: would it be possible to use information technology to digitally reunite Great Lakes heritage that is currently scattered across museums and archives in North America and Europe with Aboriginal community knowledge, memory and perspectives? Each researcher came from a different disciplinary background (history, law, art history & anthropology) but saw a common problem, and wondered if there could be a viable common solution. The GRASAC is our solution. The organisation is an international collaborative research partnership of Aboriginal community researchers, museum and archival scholars and university researchers. Members contribute insights and knowledge from their own areas of understanding and in turn benefit from the insights and knowledge of others. We provide online access to digital materials to our research collaborators and especially, to Aboriginal community members. Staff in Aboriginal Cultural Centres and schools can begin to use the research to prepare exhibitions and education kits. Museum curators and university scholars can use the findings to incorporate Aboriginal perspectives and knowledge into the interpretation of collections, exhibitions, teaching, and research. As part of this project, we also support capacity-building in both the current and future generations of researchers based in Aboriginal communities and elsewhere through training, professional networking, and access to material heritage.<sup>10</sup>

## **4 GRASAC**

The GRASAC database is accessible only by group coordinators and approved members who have been assigned a password, essentially museum institutions and tribal members. These limitations are based on three criteria:

9 URL [https://www.rrncommunity.org/pages/about#whos\\_involved](https://www.rrncommunity.org/pages/about#whos_involved) (2016-10-01).

10 URL [https://grasac.org/gks/gks\\_about.php](https://grasac.org/gks/gks_about.php) (2016-10-01).



- Some of the materials collected by Indigenous communities and stored in the database are considered sacred or sensitive, and therefore public access would be inappropriate;
- Some materials, such as photographic images, have copyright restrictions;
- GRASAC was conceived as a reciprocal tool, with the understanding that community members are not merely passive users and observers, but contribute to it by sharing their knowledge.

On a theoretical level and according to its statement of intent, GRASAC's digital archive is meant to facilitate Indigenous communities' access to cultural property scattered across the world, and allow them to share their knowledge within and through this virtual tool. Based on statistical inquiries into the amount of data within the archive, as well as on comments from Indigenous community members, it appears that this has not happened, since the amount of information present in the database is rather small (Carlton 2010). So far GRASAC has registered over 450 members, either individuals or institutions (myself included, as a 'correspondent' from Italy)<sup>11</sup> and more than 4,000 records have been created. When analysing the data, it can be observed that the majority of institutions included in the database have no relationship to Indigenous communities; these are primarily museum institutions and archives (more than 80%). The remaining percentage is composed of Indigenous cultural centres and tribes (Carlton 2010). Thus, the majority of member institutions are museums.

From this, we can observe that a database that was created to facilitate the cooperation and dissemination of knowledge among Indigenous communities and scholars is operating within a network of mostly European museums, and it is these museums that benefit from and utilize it the most. This seems paradoxical, given that the driving motivation for the creation of GRASAC was a desire to acknowledge injustices related to colonialism enacted by Canadian and American (and European) institutions, to the detriment of Indigenous communities. In a recent text some of the promoters of the GRASAC digital archive have admitted the gaps in their program:

Although our database is designed as a collaborative project, a relatively small number of people have been actively contributing. We also come to realize that the resource we have developed could and should serve a wider range of user communities. That includes students, teachers, artists, and members of the general public, both Aboriginal and non-

<sup>11</sup> For this project I catalogued and photographed items from the Great Lakes Region held in Italian museums such as: the Museum of Anthropology in Florence, the National Prehistoric and Ethnographic Museum 'L. Pigorini', in Rome (now Museum of Civilizations) and the Beltrami collection in the Natural Science Museum, in Bergamo.

Aboriginal. For these groups other interfaces and formats for presenting data would be more effective. (Bohaker et al. 2015, 48)

At the centre of GRASAC's cataloguing system are the so-called "heritage items".<sup>12</sup> A heritage item "could be an item of material culture, a piece of art, an historic photograph, an archival document, or a video of an elder narrating an oral tradition". The overall structure of information (or the system of records classification) is very similar to that used in Western museums (it is reminiscent of the Italian cataloguing system used by the Central Institute for Cataloguing and Documentation) and is not 'participatory' or 'user friendly'. Rather, it requires that one is already trained in these technologies and possesses a scholarly approach that, ultimately, is linked to the world of collecting and museums, and more in general to Western classificatory systems.<sup>13</sup> To give an example, the data is organised as follows: each "heritage item" is identified by its name ("Item name"); the name of its creator, if known; the site of production; and a physical description which, along with the item name and identification number, is the most important 'field' in the database. Then there might be inscriptions (such as the date of creation), a history of exchanges, a history of the object's collection and acquisition; a history of exhibits and publications in which the object appeared, and finally information about the record itself, such as the name of the cataloguer. High-resolution photographs portraying the object from multiple angles are attached.

Allow me to question the nature of these new digital products. What does GRASAC represent? What kinds of activities is it undertaking? How does it function and for whose benefit?

By applying the close, indiscreet gaze of ethnographic research to digital cultural products such as GRASAC, certain urgent questions arise, such as: Who are these products meant for? How can the concept of 'source communities' be further clarified? What does the term "source community" mean in the context of the Indigenous groups these digital repatriation projects were created for? For GRASAC, I believe the term 'community' defines a small group of intellectuals, editors and Indigenous students.

12 "We avoid using the terms 'artifact' or 'object' despite the fact that both are in wide-spread use in the museum world. Many of the items housed in museums are viewed as living beings, or as being embodied with life energy by different Aboriginal cultures. Referring to them as 'objects' or 'artifacts' can be painful or perceived as deeply offensive. The principal architects of this project have therefore identified material culture as a workable compromise to describe items of this class, for the moment". URL [https://grasac.org/gks/pdfs/GRASAC\\_GKS\\_Design\\_Principles.pdf](https://grasac.org/gks/pdfs/GRASAC_GKS_Design_Principles.pdf) (2017-12-15).

13 On this regard Ruth Phillips notes: "Finding ways of naming, presenting, and structuring Aboriginal Heritage that privilege neither Aboriginal nor Western traditions at the expense of the other is one of the major underlying challenges of projects such as the GKS and the RRN" (Phillips 2011, 293).

What emerges first and foremost is a nondiscriminatory, if somewhat vague, use of the concept of source communities. Such a generic, ambiguous and indeed 'politically correct' concept suits the logic of many of the collaborative projects that have spread rapidly throughout the postcolonial world.<sup>14</sup> "Community is an ambiguous and abstract expression: one does never know entirely to what it precisely refers. It's a normative rather than a descriptive notion and dangerously suitable to holistic and unanimous representations of a territory" (Dei 2014, 56).

Interest in artifacts from the Great Lakes region is attributable to the history of colonization itself (Miller 1989). The populations in the area, for obvious geographical reasons, were among the first to come in contact with Europeans, and as a result have commonly been viewed as less 'authentic' or 'traditional' because of the rapid acculturation they experienced. For this reason, they have received less attention from researchers than other Native groups considered 'uncorrupted' (such as the tribes of the Arctic and Subarctic).

Interest in the Great Lakes region is linked to ways in which the notion of 'cultural authenticity' has changed over time, as well as the current interest in cultural mixing, hybridity, globalization and cultural traditions. As the creators of GRASAC emphasize, the Great Lakes region's long history of contact with Europeans makes it fertile research ground for highlighting phenomena of cultural exchange and circulation of material products (artifacts and objects).

## 5 Digital Biographies

A further method of reflecting on enterprises such as GRASAC is to evaluate the results they have achieved. The observations of Edwards and Hart, in their well-known article concerning a box of ethnographic photographs housed in the Pitt Rivers museum, are especially illuminating. As the authors state in their research:

The specific focus of this chapter is Box 54 in the *Mixed Geographical* series of the photograph collection of the Pitt Rivers Museum, University of Oxford. It is a synthetic object of linked but separate parts (the photographs on their card mounts) that have interacted, and continue to interact, with each other and with the institution in which they are housed, to produce a succession of meanings that are broader and more complex than a simple sum of the various parts (Edwards, Hart 2004b, 49).

Box 54 allows me, through the interplay of close and distant observation,

<sup>14</sup> UNESCO applies the same ambiguity to the concept of community when defining heritage 'products'.

to question why the GRASAC database, a fully established 'digital product' formed and organised around digital reproductions of objects that exist in physical form in museums, institutions and archives, looks the way it does.

What actions, thoughts and processes gave rise to its present shape? Paraphrasing Edwards and Hart, I propose taking a closer look at the anthropological, classificatory and exhibitionary principles on which GRASAC was built. In order to do this, it is necessary to shift the focus onto the archives and museums that have allowed these objects to operate in a changing context (that of the digital database) and assume an electronic identity, rather than the individual objects themselves. The biographical pattern described by Kopytoff is pivotal in this regard as he states:

In doing a biography of a thing, one would ask questions similar to those one asks about people: what, sociologically, are the biographical possibilities inherent in its status and in its period and culture, and how these possibilities are realized? Where does the thing come from and who made it? What has been its career so far, and what do people consider to be an ideal career for such things? What are the recognized "ages" or periods in the thing's "life", and what are the cultural markers for them? How does the thing's use change with its age, and what happens to it when it reaches the end of its usefulness? (Kopytoff 1986, 66-7)

So, while the content of GRASAC consists primarily of the objects (or rather digital files of the objects) and can be largely treated as 'ethnographic material', the process of dematerialisation and subsequent reinsertion into this new 'concretion' (the digital database) has lent the objects a new status within a certain organisational structure. In this sense, GRASAC establishes connections between artifacts that did not exist prior to the development of this organising principle (as elements of collections gathered in different eras and by different people, and therefore having different cultural biographies), while other connections (such as geographical sites of production) are reinforced.

Since GRASAC reorganised dematerialised objects (these digital objects were, in fact, created for this purpose) without erasing any pre-existing classifications or relationships – the 'real' objects are still exactly where the researchers found them – we can say that to some extent GRASAC replaced the objects' previous forms. This created a sort of doubling effect, which is the logical consequence of any digital repatriation: the co-existence of the same object (physical and digital) in two different environments. One exists within a physical context: the archive or museum, the other in a digital database, a virtual location that can be accessed anywhere and at any time (by those permitted access). The structure of relationships between the objects is very different in each of these settings. Museums and archives use systems of relationships that are older

and more established, while GRASAC enacts new systems, being itself the product of diverse forms of collecting. GRASAC gathers together, for the first time in history, objects collected in different historical periods by different personalities in the same geographical area, the Canadian Great Lakes region. From this perspective, GRASAC and other databases like it stand out as innovative forms of digital collection based on a new premise: to assemble artifacts scattered across the world. The results of such activities are represented by new collections of data linked by sets of relationships coexisting (and at times interfering) with those used to organise the physical objects, and organised under different principles (geography in the case of GRASAC). In line with what Edwards and Hart write about their "Box 54", GRASAC could be defined as a "synthetic" or "arch-synthetic" (Edwards, Hart 2004b) object alike an archive or a museum because these:

They do more than put objects in their proper space or make a place for them. They are active environments for participating in the histories of objects, active environments that ultimately shape histories, through the preserving contexts, that they themselves constitute. (2004b, 49)

Some objects enter archives and museums and remain in them as discrete singular entities. For the purposes of our argument here, they can be termed 'natural' - and old master drawing, for instance, a run of correspondence in private papers or an album of photographs. Synthetic objects are those objects upon which sense and order have been imposed in their institutional lifetime, creating something that was not there before, making a new entity both intellectually and physically in a way that goes beyond simple taxonomic descriptions, moving into a set of changing values and, further, into a framework of policies, strategies and practices. Within this set of definitions, museums and archives themselves are arch-synthetic objects (Edwards, Hart 2004, 49).

The multiple histories and meanings that an enterprise of this kind produces are evident; perhaps every collection of 'things' in any era has its own multiplicity to investigate. Not unlike a museum, GRASAC, with its structuring and accumulation of heritage pieces, is an artifact that speaks volumes about those who designed it: part mirror and part window (Ames 1992) into the real and imagined Great Lakes Region. I would argue that these kinds of digital products, compared to other cultural artifacts such as objects or archival documents, are characterized by a certain degree of autonomy. Products like GRASAC, which is an 'arch-collection', are relatively independent from the collections that house the physical objects. Once created, they take on a life and history of their own, separate from that of the objects themselves. Digital files of physical objects are more than just simple reproductions or copies, and can be read as a further

phase of the objects' biography (Kopytoff 1986).

To take a closer look: the heritage objects must come from the Great Lakes Region (this is the criteria for inclusion in the database). They are identified and selected from various parts of the world, then photographed, scanned, filmed, measured, digitized and finally catalogued. They go through a process that strips away their physical presence and transforms them into intangible objects. They enter a new, virtual temporality and dimension (the database), accessible at any time and anywhere. They acquire a new identity and autonomy, thanks to the database. In other words, these digital objects are distinct from the real (physical) objects and are embedded in new sets of relationships that connect them to other digital objects. In short, GRASAC can be considered as a new, vast collection, 'arch-collection' of artifacts (more than 4,000 heritage items at present) drawn from collections amassed in other historical eras, according to a variety of different collecting criteria.

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## **IV**

### **Cultural Heritage Either Finds Heart's and Hand's Care or Dies**



## **IV.1**

### Traditional Knowledge and Communities



# **The Problematic Relationship between Traditional Knowledge and the Commons**

Fiona Macmillan  
(Birkbeck University of London, UK)

**Abstract** This chapter investigates two propositions that have become premises of the international debate around the question of the protection of traditional knowledge: first, that the protection of traditional knowledge is primarily a question of the rights of Indigenous Peoples; and, secondly, that the form of the protection of TK is primarily a question of intellectual property law.

**Summary** 1 Introduction: TK in International law. – 2 TK as a question of the rights of indigenous peoples? – 3 TK as intellectual property?. – 4 TK in the cultural commons?. – 5 TK as cultural property?. – 5.1 Stewardship Model. – 5.2 *Res universitatis*. – 6 TK as a geographical indication?. – 7 Conclusions: recognizing the TK community?

**Keywords** Knowledge. Property. Commons.

## **1 Introduction: TK in International Law**

At the level of international law, the concept of TK as an object of protection of some type has a long, if not always illustrious, history. Amongst the most important of the international instruments that contribute to this history is the 1989 UNESCO Recommendation. In fact, the expression *traditional knowledge* does not appear in this instrument. Rather, the Recommendation refers interchangeably to ‘folklore’ and ‘traditional and popular culture’, which it defines as:

the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognised as reflecting the expectations of a community in so far as they reflect its cultural and social identity.<sup>1</sup>

Specifically, for the purposes of the Recommendation, ‘traditional and popular culture’ includes, in a widely drafted list, “language, literature,

1 [http://portal.unesco.org/en/ev.php-URL\\_ID=13141&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13141&URL_DO=DO_TOPIC&URL_SECTION=201.html) (2017-12-15).

music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts". So far as the protection of this 'folklore' or 'traditional and popular culture' is concerned, the Recommendation makes a somewhat ambiguous reference to the possibility, amongst others, of its protection through IP devices and to the 'important work' on this question being undertaken under the joint auspices of UNESCO and WIPO. This reference to the possible role of IPL in the protection of so-called TK is a central concern of this paper.

The 1989 UNESCO Recommendation is, in some senses, a precursor to the 2003 UNESCO Convention. The Convention clearly reflects a number of important themes in the Recommendation and, in fact, makes its debt in this respect quite clear by way of a preambular reference. As in the Recommendation, the expression TK is not to be found in the Convention. Instead, as its name suggests it focuses on ICH, which it defines in art. 2(1) as

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.

In a similar way to the Recommendation, it also draws attention to the role of ICH in creating and reflecting community identity. There are, however, a number of significant differences between the two instruments. For the purposes of this paper, one of them is that the Convention seems less interested in the possible role of IP as a mode of protecting ICH. Its only mention of IP is in art. 3(b), which makes it clear that the Convention does not affect rights "deriving from any international instrument relating to intellectual property". At least implicitly, this provision might be said to draw a distinction between the forms of protection with which it is concerned, and the concept of private property protection through IP devices. At the same time, it confirms the possibility of an overlap in the objects of protection of these two legal forms.

The first international instrument in which the expression TK appears is the 2005 UNESCO Convention, which makes reference in its preambles to

the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion.

The reference to the TK of indigenous peoples is not without significance in this context. In fact, much of the international debate around this question has been focussed on the TK of indigenous peoples. This aspect of the debate has also found expression in the UN DRIP of 2007. According

to the DRIP, art. 31, the rights of indigenous peoples in their CH, TK, and TCEs include the right to protect it in the form of IP.

Putting these various introductory comments together, it can be seen that the debate around the treatment of TK in international law has coalesced around two premises, which are investigated in this paper: first, that the protection of TK is primarily a question of the rights of indigenous peoples; and, secondly, that the form of the protection of TK is primarily a question of IPL.

## 2 TK as a Question of the Rights of Indigenous Peoples?

In relation to the first of these two underlying premises, that the protection of TK primarily relates to the rights of indigenous peoples, the chapter unequivocally accepts that the question of the just treatment of indigenous peoples is one of great importance. Indigenous peoples have suffered, and continue to suffer, grave injustices in the post-colonial period. In international law, indigenous peoples are communities with a common cultural and political identity, but without having legal identity as a state. Without the legal identity that comes from the privilege of statehood indigenous peoples are not part of the community of international law makers. For indigenous groups, therefore, the question of the right to control CH, including TK, is linked to questions of identity, survival and the political project of self-determination, in a world that is dominated by the Westphalian state-based system of sovereignty and law-making (Macmillan 2013). This, of course, suggests that a just response to the claims of indigenous peoples requires something more than simply the protection of their CH. In fact, the focus of the debate on questions such as the TK of indigenous peoples seems calculated to distract attention from much more pressing political claims.

At the same time, this focus also distracts from the undoubted fact that it is not only indigenous peoples that have TK. This fact has not entirely escaped attention at the international legal level. The definition of ICH in the 2003 UNESCO Convention makes this reasonably clear by its reference to the

knowledge ... that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. (art. 2(1))

And, this is confirmed by the representative list of the ICH of humanity established under the 2003 UNESCO Convention, which contains examples of TK of communities other than those regarded as indigenous peoples under international law. However, the effectiveness of this Convention in protecting the ICH of communities is questionable. There are two reasons

for this: one is connected with the statist nature of international law, and the other is a consequence of the fact that the Convention does not unambiguously constitute protection per se for its listed ICH.

So far as the statist nature of international law is concerned, inclusion in this list is a form of recognition of TK in relation to which a state is making some sort of claim. Such a claim does not necessarily entail the recognition of communities not forming a state in international law. Further, the Convention has no mechanism to allow communities forming less than a State to list ICH to which they wish to make a claim. Although states are obliged to include “communities, groups and relevant non-governmental organizations” (art. 11(b)) in the process of identifying their ICH, all entries to the Convention’s lists of ICH are made through State channels. In formal terms, this is as much as an issue for indigenous communities as it is for other communities forming less than the State as a whole. In reality, however, it particularly affects communities that have an adverse relationship with the states in which they live – a description that often applies with particular force to indigenous peoples.

States are obliged to put in place “necessary measures to ensure the safeguarding” of the ICH in their territory (art. 11(a)). According to art. 2(3), safeguarding in this context

means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

It is arguable that the protection that ICH most needs is protection from improper appropriation and use. While the concept of safeguarding is wide enough to encompass such measures, it might be something of an optimistic overstatement to read the Convention as mandating such measures. It is interesting to note that art. 13(d)(ii) requires States parties to

adopt appropriate legal, technical, administrative and financial measures aimed at ... ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage.

This suggests that States might be obliged to limit some types of access, perhaps including appropriation and use, although there is obvious ambiguity in the expression “customary practices”. Would this concept be wide enough, for example, to limit the type of appropriation by those outside the relevant CH community that occurs through devices, unknown to at least some customary practices, of appropriation in the form of private IP? This



seems to be an important question. Besides anything else, a concomitant of ensuring access as part of the rights attaching to CH must also be to limit privatization. So what, then, of claims by the holders of TK to limit access through (private) IPL devices?

### 3 TK as Intellectual Property?

This takes us to the second underlying premise of the debate, which suggests that protection of TK falls within the remit of IPL. The question of the relationship between CH and IP is a particularly fraught one (Macmillan 2013; 2014a; 2014b; 2015). The tendency to elide IP rights and CH rights, including rights to TK, has been remarkably persistent (Macmillan 2008; 2015). It appears to owe at least something to the confusion provoked by their competing invocations of intangibility. IP rights, unlike CH rights, are never claims to tangible property but rather claims to intangible rights (albeit claims that often implicate tangible objects). CH, on the other hand has awkward relationship to the distinction between the tangible and the intangible. While it applies to both, it is possible to exaggerate the significance of the distinction precisely because what makes a tangible thing into CH is its intangible or symbolic association (Blake 2000; Macmillan 2013). Even though these ideas of intangibility are different, the disorientation of the intangible realm seems to augment the dangers of confusing, eliding and overlapping CH and IP. The reason, however, that it is so important to avoid this confusion is because there is a fundamental difference between the two that rests on the fact that while CH is something that 'belongs' to a community (Macmillan 2015; 2016), IP is a rivalrous form of private property. IP's character as a fully alienable and transferable private right means, furthermore, that it is designed to enable investment in liquid assets, with the ultimate effect of promoting the accumulation of capital to the benefit of those best able to reap profits from that accumulation. And, in the context of forms of cultural property, those best able to harvest profits off these liquid assets are the multinational corporations engaged in the production and distribution of cultural and other knowledge products (Bettig 1996; Macmillan 2006; 2008). Such a conception of IP seems to take it a long way from any idea that it is well adapted to protecting the CH, including the TK, of a community.

Even for indigenous peoples, for whom in reality the demand to protect their CH through the use of IP rights is part of a wider agenda concerned with political self-determination, the transformation of community CH into a form of private property is problematic. A central reason for recognising community rights to CH is to defend that property from privatisation. While it is clear that indigenous peoples and other communities in the global south have been victims of the unauthorised appropriation of their

intangible cultural property by private interests through the use of IP rights (Slaughter 2011; Macmillan 2013; Carpenter, Katyal, Riley 2009), it is at least worth pausing to consider the consequences of using the sword as a shield. The argument that underlies claims of the sort contained in the DRIPs, art. 31(1), is that the best defence to the cultural threat posed by private IP rights encroaching on those cultural rights is to turn those cultural rights into private rights. This argument has an intrinsic appeal. Moreover, the post-colonial political context of these claims is not easy to ignore. At the same time, it is perhaps this very context that is responsible for the fact that attempts to use IP rights in this way have been problematic precisely because of the *difficulty in using a private right to vindicate a community right*. In addition to which it should be recognised that there is a significant lack of political interest in changing IPL in order to recognise the claims of Indigenous peoples (Blakeney 2006).

While noting the inherent injustice in the failure to recognise the particular position of indigenous peoples, the idea of turning CH into IP may not be optimal. One result of such a process is that the cultural property has to be corralled into the shape of Western IPL (Blakeney 2000). If the item of cultural property is a story, music, or artwork then it has to be fitted into copyright law; designs and symbols must fit into the netherworld of the relationship between copyright, designs and trademarks; knowledge about local flora and fauna must be fitted somewhere into patent law, plants breeder's rights, geographical indications. This will mean that different levels of protection will apply to different types of indigenous cultural property. In short, the end result is that occidental IPL comes to constitute indigenous (and other non-Western) CH (Fitzpatrick, Joyce 2007). In so doing, it may change the shape of that heritage in ways that are not necessarily the consequence of the reflexive cultural practice that constitutes it. This seems to be inimical to the very purpose of protecting CH.

TK holders in occidental communities do not have exactly this problem. The origins of such communities and of IPL, at least in theory, are not different in a cultural sense. It might also be possible to argue that TK holders in occidental communities do not have the particular political-legal problem of indigenous peoples because the consequence of not being indigenous (in an international law sense) is precisely that one is part of a cultural and political community that is also recognised as a state in international law. Consequently, such communities have a place at the international law-making table, giving them the capacity to influence legal outcomes that protect their rights to, in this case, their TK. However, when it comes to the protection of community rights in TK, it is easy to exaggerate the significance of statehood. This is because, in general, even non-indigenous TK tends to belong to communities forming less than the state as a whole – that is, communities within a State rather than communities comprising a State. The political problems for such communities in having their

particular rights recognised and pursued at the international level by the state may have something in common with the political situation in this respect of indigenous peoples. The difference may be that the request for protection of TK does not have the same political significance. However, in the end one common problem that all communities – indigenous and non-indigenous – share when it comes to protecting their TK is the *difficulty of sustaining a community right using an individualistic private property right*.

But if we don't protect TK as a form of private property, that is as a form of IP, what should we do with it? Should we put it in the cultural commons and treat it as a type of common goods?

#### 4 TK in the Cultural Commons?

The idea that we should leave CH, including TK, in the cultural commons derives considerable support from a vast movement, scholarly and political, that lauds free access to culture and tends to be suspicious of any attempts at what it regards as propertisation of cultural artefacts, especially intangible cultural artefacts. The much-debated idea of the cultural commons or public domain is primarily located in a concern to safeguard community interests in cultural stuff (Boyle 2008; Brown 2003; Hemmungs Wirtén 2008; Holder, Flessas 2008; Mezey 2007). The method by which this safeguarding is said to take place is by using the cultural commons or public domain as a defence against private appropriation. One of the limitations of this concept, however, is that it raises more difficult questions about how to protect communities from other forms of inappropriate uses of their cultural property. The problem is that the unregulated commons or public domain provides no legal architecture for the vindication of specific community interests in cultural property (Macmillan 2010). In this sense, the unregulated commons is like a defence without a fence – a space that is defined by absence, that is the absence of IP rights, and so a space created by IP itself. All this makes the unprotected exposure of cultural property in the commons problematic. As a result, the discourse of the commons has been cogently criticised on the ground that it has the capacity to amount to what is effectively a second, post-colonial misappropriation of the culture of indigenous peoples (Bowrey, Anderson 2009; cf. Mezey 2007). While this particular addition of insult to injury requires specific recognition, the likelihood that the issue has a wider application, and might also apply to non-indigenous communities, should be recognised (Macmillan 2014b). In response, it is – at the very least – clear that the concept of CH, residing outside the scope of traditional private property rights, requires legal architecture.

While it might be going too far to describe the protection granted to ICH under the 2003 UNESCO Convention as tantamount to leaving that heritage in the unregulated commons, it also seems that, for reasons that have

already been explored above, *the protection conferred by this Convention cannot do all the things that a real community right to its CH might imply*. Where, then, can we find the legal architecture to protect the rights of a community to its own CH, its own TK, without constructing private property fences and without denying the *collective rights of the community*, even when that community forms less than the community of a state as a whole? This is far from being an easy question to answer. Such architecture must to be more than just a vague notion defined by the absence of positive property rights, whether private or state-owned. It needs to provide safeguards against the unauthorised appropriation and use of CH. It needs to transcend outdated thinking that divides rights between public (as in state) and private rights holders, by recognising community interests. It also needs to recognise that people often have more than one community identity. If all this was not already a tall enough order, it also needs to avoid the type of essentialism that suggests cultural (and political) closure. In the context of cultural stuff, this type of closure provokes anxiety because it appears to fly in the face of traditions of cultural and creative interchange that have made the world (for better or worse) what it is today.

## 5 TK as Cultural Property?

One possible approach to this conundrum is the development of a concept of cultural property belonging to a community that is capable of providing a type of legal counterweight the notion of private property embedded in the concept of IP. Aside from some civil law regimes that recognise a concept of state-owned cultural property, this is not a concept known to occidental legal systems. On the other hand, it is notable that outside positivist legal scholarship the expression is widely used. Nevertheless, it should be said from the outset that, while the development of such a concept has much to offer, there are a number of good arguments that can be advanced against such a concept and that should, at least, be taken into account in the current context.

A pervasive argument against any concept of community-owned cultural property is that the concept of 'property' will always be problematic precisely because it has a clear legal, political and economic significance that is at odds with its use in conjunction with the qualifier 'cultural' (Prott, O'Keefe 1992; Blake 2000). There are various aspects to this argument that merit further enquiry. First, there is the problem that the legal concept of property is not sufficiently broad to cover everything that is intended to be encompassed in the concept of cultural property (Blake 2000; Flessas 2003; Prott, O'Keefe 1992). For instance, the property concept does not extend to a wide range of intangibles, such as spiritual beliefs (Blakeney 2013) or values that bind together and regulate the relationship between

persons, communities and tangibles (Coombe 1997; Prott, O'Keefe 1992; Strathern 1999). This is, of course, also a consequence of the fact that when we talk about property in a legal sense we, here at the self-declared centre or the world, are generally talking about a Western concept that embodies Western values. Apart from its scope, perhaps the Western value that is most bothersome in the context of cultural property is the concept of rivalrous ownership and possession that is Western property's special bedfellow (Mezey 2004). It is not clear that ownership and possession are always appropriate concepts in this context. This is partly because they may not reflect that way that all cultures think about their cultural property (Brown 2003; Coombe 1997; Macmillan 2015; Prott, O'Keefe 1992; Strathern 1999). But also because, even in the Western context, they trail in their wake other values and practices that might be thought to be undesirable. Rivalrous property rights are at the centre of a market-based thinking that has shown itself to be capable in the neo-liberal period of eclipsing any notion of public (as in non-private) good (Christodoulidis 2013). In the specific context of tangible cultural property, the results of this are evident in the thriving private international market for the sale of cultural artefacts (Prott, O'Keefe 1992; Carpenter, Katyal, Riley 2009). It also seems to be implicated in the practices of museums that claim possessive property rights in their exhibits, which have limited or even prevented return of sensitive cultural objects (Flessas 2013).

In the face of these arguments, it is clear that if we want to employ a concept of cultural property then it has to be one that is somehow divorced, or at least separated, from these traditional Western property notions. One way of doing this might be to conceive property in this context, not as a relation of ownership but rather one of membership (Keenan 2014). This conception of property reinforces the idea of cultural stuff as being intrinsically connected to identity. In fact, referring to property rather than heritage may avoid 'the privileging of preservation' (Flessas 2003, 1091), which has been at the heart of Western concepts of heritage (Flessas 2003; Flessas 2013; Macmillan 2013; Simpson 2001; Yu 2008), at the expense of a dynamic relationship with identity. This type of re-conception also moves us away from a strict division in ownership between public (as in state) and private property, which both operate to exclude community interests in ways which vary depending upon the community in question (Keenan 2014; Prott, O'Keefe 1992). At the same time, the use of the word has an important political significance retaining the ideas of 'embattled space' (Flessas 2003, 1085) and that property itself is productive of community (Keenan 2014; Gibson 2006). Using the concept of property here, instead of heritage, does not only make the conflict between cultural property and other types of property evident and unavoidable, both politically and legally. It also allows us to think about whether property concepts themselves, so well-known to the law, can be used to produce a liberatory tool that can be fitted into or recognised by the law.

The idea that property, or property concepts, might have liberatory or even subversive (Keenan 2014) potential has seductive power, even if (like all subversive ideas in their early stages) it requires careful articulation and constant defence. And certainly, as has already been noted, the concept of cultural property, residing outside the scope of traditional private property rights, requires legal architecture. The discussion below examines three possible models for such a form of cultural property. These are the stewardship model proposed by Carpenter, Katyal and Riley (2009), the idea of cultural property as *res universitatis*, and the potential uses of the existing legal concept of geographical indications.

### 5.1 Stewardship Model

The proposal of Carpenter, Katyal and Riley for a stewardship model of property, which specifically aims to vindicate the cultural property claims of indigenous peoples, seeks to find a liberatory use of the property paradigm that transcends its current narrow legal focus on private rights, and on the distinction between private property and some form of publicly held property. Effectively, this stewardship model uses the property paradigm without replicating those aspects of traditional property law that have already been identified as problematic in the context of cultural stuff. Theoretically, the model is located in Radin's work (1982; 1996) on the constitutive relationship between property and personhood, in which she argues that some forms of property are constitutive of identity in ways that take them out of the normal processes of the market place. To use Radin's work in this way, however, requires a transition from her emphasis on the relationship between individual personhood and property to a concern with the relationship between peoplehood and property that is implicated in the idea of a group claim. Carpenter, Katyal and Riley are fully aware that arguments about community rights often appear to be teetering on the edge of the type of essentialism that suggests cultural (and political) closure. For this reason, their model builds in a notion of community rights that is capable of resting on more than one level of identity thus moving away from an essentialist position.

Whether the elegant and persuasive use of the property concept embedded in the stewardship model, which is intended to address the situation of indigenous peoples, can function as well outside the context of indigenous cultural property claims is open to question. The fact, as they note, that the identity and claims of indigenous peoples as a community are recognisable within the legal environment of many states in which indigenous communities live is, ironically, a reaction to the dispossession and loss of political autonomy visited upon them in the colonial and post-colonial periods. However, it is this very environment of legally recognised identity, in the

context of multi-layered identities, that may make the stewardship model functional. Further, their suggestion that the use of the property paradigm may be a specific response to the massive land dispossession suffered by indigenous peoples everywhere may be interpreted as providing limited support for a paradigm of cultural property outside the context of the cultural property of indigenous peoples. Finally, the particular treatment of indigenous peoples in the post-colonial period, especially the denial of political autonomy, may be a ground for arguing that models designed to protect their cultural property are not, in any case, necessarily appropriate for all communities or groups.

## 5.2 *Res universitatis*

If the proposal for a new legal form does not convincingly resolve a perceived problem then perhaps it makes some sense to consider what forms already exist, or existed. Given that, in this case, the perceived problem arises from the unacceptable closure of intellectual (or other private) property as a form of protection for CH and the problematic openness of the commons, then perhaps it is worth having a closer look at the origins of the commons in intellectual space. The idea of the commons, at least so far as it has made its presence felt in IP scholarship, is heavily dependent on principles of Roman law governing physical space (Rose 2003; Macmillan 2010). Some of the conceptual problems that arose with respect to physical space in Roman law have also emerged in the modern notion of intellectual space. At the same time, the metaphorical existence of modern intellectual space seems to lack some of the complexity of its forbear in physical space.

The relevant Roman law principles recognised various dimensions of nonexclusive – but not necessarily public – property (Rose 2003). The most well-used of these so far as IP/commons debate are concerned are *res communes* and *res publicae*. The former referring to things incapable by their nature of being exclusively owned, while the latter referring to things open to the public by operation of law. These seem to have translated into the modern-day debate about property in intellectual space in the specific form of the concepts of the commons and the public domain. The fact that these expressions are often used interchangeably is probably not much of a surprise given that the Romans had a similar problem with *res communes* and *res publicae*, which reflected the modern-day tendency

to mix up normative arguments for ‘publicness’ with naturalistic arguments about the impossibility of owning certain resources. (Rose 2003, 96)

This confusion between the commons and the public domain, *res communes* and *res publicae*, has done nothing to simplify the epistemological basis of the dichotomy between IP and intellectual public space. It has also tended to conceal the fact that, traced back to their Roman law origins, neither of these concepts seems to provide a particularly strong basis for a vibrant public or non-exclusive intellectual space in today's world (Macmillan 2010). More than this, in the present context, it has been responsible for a tendency to simplify the notion of the commons so that we are left with a sharp division between closure and openness that seems to admit no shades of meaning or complications of form. Besides impoverishing the debate, this also fails to recognise the complexities of the Roman law governing property in physical space. In particular, as Rose (2003) points out, it ignores Roman law concepts that might be of particular use in resolving current dilemmas, such as the one with which this chapter is concerned.

*Res universitatis*, which was one of the categories of non-exclusive property under Roman law, appears to have particular potential in the current context. Translated into modern terms, it refers to a type of property that surrounds the productive activities of a group. From the outside those activities are protected by a shell or shield of property rights, but inside activities are not constrained by property relations. The result is that inside the shell there is freedom from property restraints: freedom of speech, freedom to innovate and create, freedom to produce knowledge, freedom of use, freedom of to exchange ideas, freedom to develop the ideas of others. In intellectual space, this form preserves productive synergies within the relevant group or community while maintaining the incentive to produce such synergies through the exercise of rights against outsiders. As the name suggests, this type of bounded community is commonly reflected in the activities of academic and scholarly groupings (Rose 2003). It may also describe the way in which members of traditional and indigenous communities produce innovations, knowledge and other types of creative expressions.

One of the implicit premises of this chapter is that IPL has difficulty in recognising these types of *creative or innovative communities*. The primary reason for this is that IPL is always anxious to identify the owner of the relevant right, be it copyright's author or patent law's inventor. In doing this, it is likely to disregard many contributions from the relevant community and to muddle up concepts of origination, ownership and use. IP does enjoy a very limited ability to recognise the concept of the bounded creative or innovative community through the devices of joint authorship and joint invention, which it transforms into joint ownership. However, these concepts are so limited in law that they can rarely do justice to the dynamic relations of a creative or innovative community (Chon 1996; Rose 1998). And it might also be the case, as Rose (2003) argues, that the successful use of these existing IP concepts to nourish a vibrant creative or innovative community depends upon an unrealistic degree of goodwill, if not goodness, on the part of all the members of the relevant community.



How many of these problems in recognising and governing the relevant community might also affect other property devices, such as that comprised in the concept of *res universitatis*? Certainly, any concept of community falling short of legal recognition as a state in international law is, I think it must be taken as read, likely to pose a challenge to identification by law. Communities, despite being recognised in political theory as constituting the common political identity that forms the basis of the nation (Anderson 2006), and perhaps also the common cultural identity that precedes a common political identity, have traditionally received little formal attention in international law precisely because their identity has been submerged into that of the nation-State. Nevertheless, as was noted in relation to the 2003 UNESCO Convention, the word “community” has started to creep into international legal instruments. The Convention does not seek to define the concept of community. Nor does it attempt to indicate expressly how a community might be recognised by the law, although the reflexive relationship between community and CH in the definition of ICH in art. 2(1) gives some indication of a possible approach to this issue.

Legal accounts of community, of course, exist. Despite the paucity (both quantitative and qualitative) of references to the concept of community in international law instruments, it is clear there is a substantial engagement with this concept in national legal systems. Given the reflexive relationship between community and CH, which is acknowledged in the 2003 UNESCO Convention, it is not surprising to discover that this engagement sometimes takes place in the CH context. National law recognition of the CH of indigenous peoples or of ethnic or linguistic minorities are examples of this. To some extent, these types of rights reflect obligations (actual or hortatory) in international law even though their origins might not be directly attributable to such obligations. However, there are also other well-known examples in national law of the recognition of community and associated community rights, where community is less than the public at large. It is common, for example, for legal systems to recognise community rights in property based on customary use (Clarke 2015). An interesting variation on this is the recognition, nationally and internationally, of certain rights associated with the marking of products made in a certain geographical location (Aylwin, Coombe 2014). With this in mind, this paper now turns to examine whether the concept of geographical indications might offer a useful form of protection for TK.

## 6 TK as a Geographical Indication?

The concept of protected geographical indications, which already exists at the levels of both national and international law thanks to the TRIPS Agreement, could provide – strangely – a model for the protection of TK and other forms of ICH. This is because, exceptionally, it grants a collec-

tive right rather than a private individual right. Specifically, a recognised geographical indication gives a right to every person that sells products coming from a certain geographical region and having particular qualities on account of that provenance to apply the indication to their products.

It seems to be the case that TK often has a geographical dimension in the sense that it is formed around communities in a particular place who have developed TK and uses as part of the dynamic that holds the community together. Perhaps, then, it would be possible to adjust the already existing concept of geographical indications to protect at least TK, if not also other CH of a specific community. Perhaps this seems a bit too strange: this paper has posed the problem of TK protection as lying somewhere in the conflict zone between IP rights and cultural property rights. If there is something anomalous in the idea of returning, in the end, to a form of protection that is recognised as an IP then that might suggest that the chapter posed the question wrongly. However, it is more likely that *the real anomaly is the concept of geographical indications*, located in the IP camp, but in reality, a community right. In the end, the important thing is that such a right would seem to be capable of responding to many of the needs identified in this paper. It could control the unauthorised appropriation and use of a community's CH, including its TK; by recognising communities that form less than the state as a whole, it is capable of transcending the problematic and antiquated idea that property must be either public (in the sense of belonging to the state) or private; and it could provide safeguards against the dangers of a type of exclusivity that is oppressive and limits cultural interchange and development.

## 7 Conclusions: Recognizing the TK Community?

The problem of recognising a community that forms less than the State as a whole will always be with us as we seek to find a way to *protect the TK community*. However, that problem is not an insuperable one. In confronting this issue, it is necessary to recognise that community comes before the law, which is to say that it cannot be regarded as constituted by law. Nor can community be contained in legal accounts of its existence or life (Christodoulidis 1998). That community interacts with such accounts does not change the fundamental proposition that, as Christodoulidis argues, community can converge

around a political/ethical understanding both capable of upholding a commitment, and dynamic, always potentially disruptable internally; and with no measure of authority, force, persuasion and violence capable of upholding it externally. (1998, 237)

Since law is not constitutive of community the pivotal question here is not whether we can find a basis in law for delineating a community, which might then lay claim to certain community rights. Rather what we may need to find are *indicia* in existing legal accounts around which to build a concept of community that might then be the carrier of certain CH rights and obligations in law.

The types of (overlapping) *indicia* that seem to be important in national systems as they relate to communities that form less than population of the State as a whole are: common political identity; common ethnic identity; common language; common religious identity; common geographical location; common sustenance practices; common history. As will be evident, with the possible exception of common language (Anderson 2006; Hobsbawm 2013) and common religion (2013), these are all also *indicia* of the type of communities that constitute nation states in international law. All these rather specific 'legal' *indicia* of community in fact draw on certain foundational concepts that are generally identified as being essential to the formation of community in any context, whether directly mediated by law or not. It is, arguably, these foundational concepts to which we should return in a quest to identify communities that should be regarded as enjoying CH rights or claims.

It seems that the central foundational concepts around which all these more specific *indicia* of community rotate are identification and memory, which are reflexively linked to one another. For Anderson, communities (with the possible exception of 'primordial villages of face-to-face contact', Anderson 2006, 6) are always imagined. By this he means not that they are fake or false, but rather that they are created by the imagination, that is by being imagined. Accordingly, he observes that

[c]ommunities are to be distinguished not by their falsity/genuineness, but by the style in which they are imagined. (2006, 6)

Anderson's classic account of community is focussed on the way in which community produces nation, and with its nationalism. Nevertheless, his observations on the formation of community also seem pertinent in the context of communities forming less than the nation-State as a whole. These observations do much to enrich the foundational relation of identification and memory. There are three, in particular, that go to the heart of how community is imagined. First, Anderson notes the 'deep horizontal comradeship' (2006, 7) that characterizes the imagined community - something that might also be referred to as solidarity. Secondly, he places emphasis on the temporal aspect of community, 'this sense of parallelism or simultaneity' (2006, 188). The temporal dimensions here are both horizontal and vertical. Horizontal because comradeship and solidarity carry with them some notion of a shared temporal space. Vertical because if memory is

critical to the imagined community then this implies a shared concept of the community's history and its temporal progression. Following on from this, the third aspect of Anderson's study that has particular resonance in the present context is exactly this question of *how a community imagines its relationship with its own past* (Macmillan 2016). The urgent task now is to find meaningful legal mechanisms that can recognise these communities and give them the capacity to protect their CH in ways that are appropriate to their community and that, with any luck, can enrich us all.

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# **Cultural Heritage Practices and Life-Long Learning Activities for Fostering Sustainable Development in Local Communities**

Jasna Bajec  
(ZRC-SAZU, Ljubljana, Slovenia)

**Abstract** The paper highlights the contemporary roles, meanings and appearances of heritage practices, which are no longer conducted only by experts, but also by local residents, who construct, mediate and understand their collective identity by reviving the past. New concepts intend for heritage put into perspective development potentials of cultural resources as well, especially in the framework of introducing and fostering sustainable growth in the local communities. However, the development of the new roles of heritage practices inevitably demand that the local residents are aware of the potentials that culture heritage (i.e. old skills, experiences, achievements etc.) can provide and, on the other hand, a mutual relationships among the other actors, who are involved in the negotiation processes of what to revive and use from the past. The paper first discusses theoretical concepts of CH as a key element in establishing sustainable development in local communities, and then outlines problems, good practices and concrete ideas to achieve coherent, mutual and reflective relations among residents and experts.

**Summary** 1 Introduction. – 2 Methodological Background. – 3 Culture and Its Heritage as the Main Pillar of Sustainable Development. – 4 The Development Potentials of Heritage Activities to Foster Sustainable Local Communities. – 5 Conclusions .

**Keywords** Heritage practices. NGOs. Life-long learning methods.

## **1 Introduction**

Nowadays, CH practices take on different roles, meanings and appearances, due to the latest postmodern research paradigms, contemporary socioeconomic and political circumstances around the world, adaptation of new transnational UNESCO's and CoE's declarations and development of participatory democracy, which in the field of heritage practices enable active participation of different actors. Although the concept of CH has attracted many scientists and experts from different disciplines over decades and variety of heritage's definitions, meanings and practices were highlighted and discussed, there are still ongoing negotiations, what heritage actually encompasses and how heritage products should be interpreted and used. Due to the neo-liberalisation of society, where market have grad-

ually impacted all spheres of life, the special focus in the heritage studies is put also on abuse and neglect of cultural rights, values, experiences, knowledge, skills of local people, who are the main bearer and practitioners of tangible and intangible heritage elements (Borelli, Lenzerini 2012; Silverman, Fairchild Ruggles 2007). Different interpretations, definitions and critics of heritage processes caused that the contemporary definitions are spin around understanding that a heritage covers just about everything that a human has made or changed. It refers not only to material remnants but also to intangible elements including:

the character or feel of a place, its aura as well as customs, traditions, language, dialects, musical styles and religious or secular rituals. There is no need that the tangible or intangible things are architectural or aesthetic features, but it can be painful, ugly, unsafe and unprepossessing; old or new; something that can be valued by society, by a specific group within society and by individuals. (Schofield 2008, 19)

Furthermore, heritage is not restricted only to actions from state officials or bodies, but can include the most basic and ordinary ways of life of people. As a result, in the context of the newest postmodern paradigms and theory of practice (Bourdieu 2002), the main point of doing research on heritage lies less in investigating the materiality or immateriality of heritage elements, but more in understanding social practices and the constructions of meanings and values which particular tangible and intangible cultural elements embody (Byrne 2008; Smith 2006; Fakin Bajec 2011). The new heritage paradigms emphasize that heritage must be understood as a present social action or process, where the focus is on context and not so much on the object itself. Fairclough emphasizes that

heritage is object and actions, product and process. It means not only the things ('goods', properties, immobilier - 'stuff' (and the perceptions or ideas) that we inherit, irrespective of whether we want to keep them, but it can also be taken to mean the processes by which we understand, contextualize (physically and intellectually), perceive, manage, modify, destroy, and transform the inherited world. (2009, 29)

Its theoretical concept is also understood as dynamic and contested; as a construct of contemporary needs, concern, experiences, values and desires of ordinary people, who should have an important role in its management. Special attention is given to recognition of the validity and usefulness of multiplicity of values and ways of valuing. Heritage at its base is still linked with the work, thinking, actions, and experiences of our predecessors; however, it is not only about the past but 'draws on the power of the past to procedure the present and shape the futurequotatio' (Harrison et



al. 2008, 1).

Up until now, the criteria of what constitutes heritage and how its elements should be protected have not always been in harmony with the views and needs of local residents. Traditional heritage methods poorly reflected local or personal concerns such as context or sense of place. But today the question ‘why should we enhance its value and for whom’ (Fairclough 2008, 299) is important. Researchers have begun to stress that “what ‘ordinary’ people value might be different from what expert’s value, or they might value the same things but for quite different reasons, such as for reasons of association, memory, or locality” (Fairclough 2008, 299). Innovative approaches to the investigation of heritage focus on the perception of cultural landscape and sense of place constructed by material and immaterial things, which we identify as CH. As people’s lifestyles change together with world situations, so do perceptions of landscapes and heritage. In the core of this points of view, the processes of formation heritage should not be in hand only of experts, scientist, politicians, national and international heritage organisations (e.g. UNESCO, ICOMOS) that according to the authorised discourse of heritage (Smith 2006) decides what can get the label of national or international monument and what not, but also of civil society or local populations.<sup>1</sup>

Besides, the contemporary concepts of heritage also develop in a way that heritage practices should be incorporated into processes aimed at advancing development of national, regional and local communities as well. New roles of heritage connected with sustainable development and green growth can be seen in various fields, most frequently in achieving better interpersonal relations, intergenerational connections, enrichment of content for informal forms of learning, improvement of ideas for new commercial products (for example in cuisine), preservation and sustainable use of natural materials, and so on.

With the awareness that the concepts of heritage continue to evolve in the light of ongoing social, cultural and economic practices and the role of culture heritage in the framework of sustainable green growth is still developing, the main purpose of this paper is to outline possible ways, conditions, and tools for using culture and its heritage for sustainable development of local communities. The crucial question that paper will try to answer is, how can the activities, such as researching a local history, restoring old material objects, reviving old customs, preparing historical exhibitions, using old skills and knowledge for creating new products, etc., which are conducted by local people or associations, encourage people to be more open for new development concepts like sustainable develop-

<sup>1</sup> The values and meaning that local people connect with the heritage objects and actions is highlighted in contemporary heritage documents as well, like in the 2003 UNESCO Convention or the Faro Convention, adopted in 2005.

ment, gender equality, inclusive society, life-long learning activities and participatory democracy which are recommended by EU strategies. The answer will be given by the presentation and analyses of heritage activities conducted by the Housewives association from the village of Planina pri Ajdovščini in the Upper Vipava Valley of western Slovenia, which has managed through its work to empower and activate local resident from rural areas (especially women) to take more active role in the community, to achieve social innovations and produce interesting products for the further development of a competitive local economy. The paper first reflects on methodological issues of uses heritage practices for development potential and briefly presents the history of association and its work with the expert. It then presents some insights gained from a case study, and concludes with some suggestions of how to sustainable manage, utilize and maintain heritage practices from local communities that they will become a powerful medium for achieving coherent societies, inter-sectoral dialogues, and other kinds of networking among practitioners, who have different knowledges, skills, experiences, ideas and needs for better future.

## **2 Methodological Background**

The findings presented in this paper are drawn from the postdoctoral project *CH - A Medium for the Introduction of Sustainable Development in a Local Place*, financed by the Slovenian Research Agency in the period from 2012 to 2015. The project focused on the development of innovative approaches and methods to make people aware that heritage practices, which among other things represent a bridge between nature and the actions of people, can make an essential contribution towards facilitating sustainable development and making it more effective. Another aim of the project was to define the role of the humanities and social sciences in developing approaches to implement sustainable policy, since in contrast to natural, mathematical and technical sciences, which develop sustainable economies, information, communication and other innovative technologies, humanists and other social scientists assist in the application and implementation of these sustainable products and solutions in the real world. They deliver them to the people who are the main agents of change in a natural landscape.

The main hypothesis of the research was that ways of informing and educating the population in the valuation and use of CH practices are more effective if there is active cooperation between experts and local residents through using different participatory methods (Price 2013; Fikfak 2014). Among many of them, the active participation of the expert with local associations or communities can be highlighted, where members enthusiastically research the past and directly construct local heritage. Since active

members of associations have already established a positive attitude towards local history and consequently also towards their environment, they have become more receptive to obtain additional knowledge about ways of using heritage for sustainable development. The presentation of their activities and products to a wider public can also be a reminder for people who for variety of reasons are not interested in this topic. As an informal way of educating the local population we can also use the ethnographic research method, in which the interviewer through semi-structured interviews not only obtains research material but also makes the interviewees aware of the applications of their knowledge, memories, and experiences for further development.

In the project, particular attention was given to an analysis of activities conducted by the Housewives association and drama group of Planina pri Ajdovščini, which is regarded as one of the most active heritage associations in the Upper Vipava Valley in the western part of Slovenia. The main purpose of the association, which brings together women and girls from the village and actors from the drama group (the total number of members is forty-four), is to enliven village social life and present traditions of their ancestors to younger generations. The earliest members of the society began to formally associate in 2004, when they collected and recorded old culinary recipes. After one year, they presented the collect recipes in a publication, entitled *Lest We Forget. Planina pri Ajdovščini: Customs and Recipes of our Ancestors* (Aktiv Kmečkih Žena 2005). The book provided the association with momentum for new activities. Each year the members of the association research a particular theme from a local history and at the end of the calendar year present to wider public, and the drama group prepares a humorous play in the local dialect based on the selected content. Particular attention is given to culinary traditions, and visitors of its events are served traditional dishes that in recent years are somewhat modified and improved with modern ingredients or preparation methods. All the members of the association participate in researching and presenting annual achievements, coordinated by the president of the association, who has a remarkable feeling for the preservation of local history. Over the years of the association has presented many interesting themes from their local history.

With the exception of the first year, up until 2012 the association carried out its activities without expert assistance. While the president of the association was aware that expert assistance would enrich their operation, she did not want to oppose the other members, who up until recently had reservations about cooperating with experts. Since they regarded their activities as amateur, voluntary work and among other things gave a lot of attention to socializing, relaxed interactions among people, informal conversation and having fun, they were afraid that the presence of an expert would spoil that atmosphere. Expert assistance was also offered in

the drama group, which from the very beginning has always been directed by a volunteer director without any formal training in the field, who writes as well as directs the plays. But here, too, help from a professional director was rejected.

In 2012 the president, despite opposition of association members, accepted my expert's help that I offered in the framework of the research project *CH - A Medium for the Establishment of Sustainable Development*. My personal interests were to research the local history of Upper Vipava valley, to help association members in their activities and encourage them to use local past not only for interpretation of the ways of life of their predecessors, but also for rural development and creation of new products, which can be based on tradition, but modified according to new technologies, skills and needs. Furthermore, by giving them expert support I also try to develop methods of how to raise the awareness among the wider population about the contemporary meaning and role of CH and how the experts should work with the local people.

Collaboration with association members represented a significant challenge for me since I was conducting the research in a space I had not previously been familiar with, and I was a complete outsider for Planina residents. At the beginning, it was difficult to get trust and confidence with members. I somehow managed to establish a certain rapport as a speaker of the same Primorska dialect and since I am closely familiar with work on the farm. In conversations with residents about their lives I often added personal memories, which proved to be a successful way of creating a mutual relationship with older interviewees. As a researcher, I never experienced any problems in interviewing people, but I could sense a certain respect in the relationship. It was only after three years that they began to trust me and invite me to their meetings and training courses. During the research, I used an ethnographic research method as well, especially a number of semi-structured interviews, in which interviewees in addition to sharing their memories of past events also spoke about the meaning of the association for their personal development and life in the local community. Some thoughts are presented below as well, where special attention is focus on different occasions where heritage activities can be used for introduction of sustainable development policy and concrete actions for better quality of life of the residents. Due to the sensitivity of the information the names of interviewees are not given.

### 3 Culture and Its Heritage as the Main Pillar of Sustainable Development

Many discussions on the development and the conservation of the cultural landscape take place in the context of observing the principles of sustainable development, which ought to be a key regulator of economic progress and society. Although the concept of sustainable development has become a politically abused word, its definition, with the main emphasis placed on a careful balance between environmental, social and economic development in order to meet the needs of current and future generations (the WCED 1987), assures welfare development policy. New development strategies also promise that the economic, cultural and social progress of local communities will be adapted to the constraints imposed by environmental capacities and the potential of the cultural wealth. The policy of sustainable development has gradually forced the spread of other social and environmental concept, like green economy, participatory approach, capacity building, community learning, which encompass the notion that the development has to recognise and duly support the identity, culture and interests of local communities and indigenous people and enable their effective participation in the achievement of sustainable development (Blake 2009, 45).

Initially the policy of sustainable development included only three main pillars: environmental, economic and social development. Alongside conservation of nature, sustainable use of natural materials and the development of a so-called green economy, sustainable development should also include preservation or maintenance of social values such as cultural/social identity, mutual trust and cooperation, social justice and well-being (Nurse 2006, 38). Today it also increasingly includes sustainable cultural development, which assumes the continuity of cultural values and identities and builds on the knowledge of the population in a particular cultural environment. Although in every society, new high technology processes, services, and products that enable progress and technological development are critically needed, these should be created taking into consideration the experiences, practices, knowledge, values, and way of life of the local people. Since humans are social beings that develop and improve themselves in communities, an understanding of past and current cultural and social processes is of vital importance in planning development; these processes can serve as a sound and effective development guideline for a sustainable future. *Agenda 21 for Culture* stresses the importance of culture for regional development, grounded in particular in respect for local cultural differences, human rights, intercultural dialogue, participatory democracy, sustainability and peace. With this document, which was adopted in 2002, culture was designated as the fourth pillar of sustainable development.

Culture here is understood in a broader context; as a whole way of life of people or more specifically as 'shared meanings', where through a representational system (such as language) different thoughts, ideas, feelings, memories, experiences etc. are shared among participants, who are the main builders, bearers, and mediators of meanings that cultural elements embody. According to Hall culture "is not so much a set of things [...] as processes, a set of practices" (2003, 2), in which, through production and exchange of meanings of things, people and events, the world is interpreted by citizens in roughly the same ways. In part, we give things meaning by how we use them, or integrate them into our everyday practices. In part, we give things meaning by how we represent them – the words we use about them, the stories we tell about them, the images of them we produce, the emotions we associate with them, the ways we classify and conceptualize them, the values we place on them (cf. Herzfeld 2001). Culture is thus involved in all those practices and carries meaning and value for us. In this sense, culture permeates all of society and its study and understanding underline different dimensions of development, where the processes, how the meaning of things was constructed during different periods, the conditions of its changing, and wider consequences of its alteration are of crucial importance. If the known, already experienced and positively valued practices and meanings of heritage (for example, building with stone), which reflect sustainable management also today, are preserved, protected, restored, upgraded and represented among the local population in a particular local place, the local population will more easily recognize, try, and begin to consider contemporary sustainable guidelines for development of the environment and for building sustainable communities. Thus, culture has an unavoidable role in reflecting past and present experiences, needs, desires and expectations of the local population on the one hand and broader socio-political and economic flows on the other. If the political authorities, experts or economists impose development practices which are valued negatively by local residents or have no tradition in a given environment, the local population will have more difficulty in adapting them and may even resist in some cases. Furthermore, Nurse highlights the importance of how development is understood in a specific society or local community, because "when it comes to sustainable development not all cultures are equal, some cultures are more equal than others, depending on the political and historical context" (2006, 36). As culture represents the meanings and practice of development at its epistemic core, it should be viewed not just as an additional pillar of sustainable development along with environmental, economic and social objectives, but as the central pillar 'because peoples' identities, signifying systems, cosmologies and epistemic frameworks shape how the environment is viewed and lived in' (Nurse 2006, 36). A culture shape what is meant by development in a specific society and it determines how people act, think, and feel in the world (37).

The development potential of heritage practices can be seen in three aspects. Firstly, since our ancestors lived in coexistence with nature and without the use of today's technologies, their knowledge can be important for the development of eco-friendly products and other forms of a healthy lifestyle. Special attention should be given to the role of intangible CH, which consists of not only immaterial things, but especially knowledge, skills, ideas, experiences and understanding of our ancestors. The preservation, restoration, renovation of cultural tangible monuments, like cathedrals, churches, castles and vernacular architecture will not have an impact if we do not consider the new, contemporary content of these monuments. The tourist stories, interactive exhibitions, musical festivals, culinary competitions, etc., which are based on utilization of the intangible CH can provide an interesting ideas and opportunities for qualitative contemporary content according to new needs and desires. Secondly, heritage activities as social activities can help in establishing social cohesiveness, intergenerational connection, forms of lifelong learning, conditions for a creative environment, etc. And thirdly, CH activities can provide some useful methods for establishing cooperation and networking among local politicians, experts, the local population, and businesses (Fakin Bajec 2014). Here should be highlighted the new roles of the experts, who have to work for the benefit of the local community and become mediators or 'translators' between local authorities and residents. It should be outlined that the role of an expert/researcher from cultural or research institutions is not just research, observation and sometimes criticism of different practices, but also to encourage local residents to achieve better living conditions. Moreover, by using an interdisciplinary approach researchers should focus on different generations (children, youth, the employed, the elderly, the ill, etc.) to empower their activities and consequently to satisfy their needs for achieving a knowledge-based society. Nonetheless, the problem is that different experts are not able to work together, or to make compromises between different approaches, as everybody defends his/her discipline as most important. In order to achieve sustainable development, the interdisciplinary approach must become an essential methodology for tackling all environmental problems. Besides, another challenge which has appeared is how the experts should work and collaborate with the local residents, who until recently have not be actively involved in the decision-making processes. Although the experts at the theoretical level are aware of the importance of an interdisciplinary relationship between different expert points of views and criteria as well as the importance of including the local population, in reality such approaches are very difficult to achieve. Experts in different projects are not prepared to compromise, and the will, energy, and in particular money to include the local population in a wide range of processes are often lacking. The inclusion of the local population in development projects for the preservation and marketing

of heritage is most often reflected in the inclusion of experts drawn from the local environment who are familiar with local problems and also draw attention to them, but if they do not inform and educate the entire local population – including those with a lower level of education and those who may be passive or uninterested, who usually comprise the majority – then no development strategy will take root and will exist only on paper. Therefore, of crucial importance in the contemporary society is of how the experts should work with local residents.

According to my experiences from the different applicative projects (such as INTERREG) the experts must first become familiar with the meanings and values that are embodied in the community by the cultural elements that we wish to include in its development (for example architectural buildings, cuisine, crafts). This requires that experts who are collaborating in the revitalization of, for example, settlements of historical significance, in economic development (in the form of tourism development) or other forms of creating heritage come into contact with people and learn more about their past and also the environment in which they live, in order to become acquainted with their (human) experience, understanding and feeling for the cultural landscape. Only in this way can the logic of the community be constructed from their history, experience, and current practices, and guidelines provided for the future based on valuing important elements of their life. It often happens that experts work in their cabinets, following European and national strategies, conventions and agendas on formulating development guidelines for a particular environment, yet never even talk to anyone who actually lives there. On the other hand, it is also true that local residents hardly find free time, will, or interest to begin thinking about what kind of environment they would like to live in. For this reason, the local population must be sufficiently informed and educated to recognize the values of CH as development components from which the economic, cultural and social advancement of their place of residence is realized. As part of this, methods of raising awareness must be perfected not only through organizing expert workshops and consultations, but also through the active participation of the expert public with local associations and active local communities, where members enthusiastically research the past and directly construct local heritage.

Here is where ethnographic research can come in useful: the techniques of interviews, participant observation, and analysis of historical sources (cf. Low 2008; Palmer 2009) enable experts to better recognize the history and contemporary way of life of local residents. The role of the expert, in addition to offering expert assistance in the research, preservation and presentation of heritage, is also to encourage the local population to value past practices for contemporary development needs. In so doing the expert on the one hand becomes familiar with the logic of the community, experiences and the desires of the population, while on the other



the local population can become an active participant in shaping further development guidelines. Active participation and therefore education is reflected in part in individual interviews, which allow experts to inform and educate people/questioners about the problem which is being researched while also themselves learning about the specific features of their way of life and the main values for a given environment. As Stig Sørensen notes, interviewing is one of the most commonly used methods in social studies. But it is also “important to recognize that interviews can have different purposes: they can and should aim at different kinds of insights and discoveries, and in turn their form, how they are conducted and, even more significantly, how they are evaluated must respond to such differences” (Stig Sørensen 2009, 168). Last but not least, experts must cooperate with municipal and national authorities so that the meanings and needs of the local population and the proposals put forth by experts will be taken into account in identifying spatial guidelines. Achieving these goals requires continuing education and training of municipal councillors through expert articles in local municipal newspapers and expert lectures in the framework of municipal meetings.

#### **4 The Development Potentials of Heritage Activities to Foster Sustainable Local Communities**

In line with the presented challenges, which have to be resolved by experts, the main purpose of my active collaboration with the local association was to examine the ethnographic methods (interviews, participatory observation) for encouraging sustainable development in a local community. According to my perspective, ethnographic methods not just enable researchers to better understand the ways in which individuals make sense of their everyday life (Geertz 1973), but it could be used as methods for community building or life-long learning (Ličen et al. 2015). As it was already mentioned, the common activities between the local association and me started in 2012, when we together decided to work on the importance of corn in the local history of Planina. Based on ethnographic methodology, I proposed that we first conduct interviews with older local residents in order to learn the role that corn played in the history of the way of life in Planina, then based on this research collect the main valued products towards which the locals have a positive attitude and which can be built on in contemporary times using new knowledge, techniques and needs. After conducting field research and a survey of the ethnological and agricultural literature, I performed an analysis and synthesis of the data gathered, which I presented textually in a brochure titled “We ate polenta every day, sometimes even for breakfast: on the cultivation of corn,

husking, and cooking of polenta in Planina in the past and challenges in the future” (2012). The text was written in the spirit of a search for possibilities for using knowledge, experience, and old customs of ancestors for a better and higher quality life in the future, in which local tradition and heritage will represent elements for new innovations and a more competitive residential environment.

The research showed that a corn variety called *guštanca*, which was adapted to Vipava weather and geological conditions, was indispensable in Planina. Since the cultivation of older local varieties is once again on the rise, since these are better adapted to the natural conditions of the environment, the brochure concluded with the idea that in the Vipava Valley, which has always been known as a good region for growing grains, we start discussing the renewed cultivation of different varieties from which products typical of the Vipava Valley would be produced (corn flour for making corn bread and meal for a better tasting yellow polenta). In the future, we could also think about reconstructing the formerly widespread water mills, in which the old, domestic seeds of grain could be ground using old processes and ways. Since tradition is a process which changes with the times and is improved by modern trends and knowledge, the polenta and bread made from *guštanca* could be enriched with newer foods and dishes. It was known that polenta used to be eaten only with sour milk, fat from lard and cracklings, more rarely also with prosciutto and sausage, but today excellent Vipava chefs also serve it with new local delicacies. Local tradition could be cultivated and built on also in the area of other corn products and goods; using the leaves removed from the cobs, making brooms from cornstalks, and making stoppers for bottles from the corncob.

In the course of several conversations with some members of the society on the importance of heritage for sustainable development, members themselves came up with the idea of a new competitive product: pasta made from corn flour, which can also be suitable for people with celiac disease. Since there are many young people included in the society, the president and I tried to involve their creativity. We proposed that the young people take part in workshops building on the earlier tradition of making things from husks. In the past only doormats were made from husks, but at the workshops the young people displayed their creativity in making advent wreaths, wedding bouquets, dolls, and brooches in the shape of butterflies. The drama group staged a play on the theme of learning about the features of sustainable development in which they emphasized that the entire policy is based on the idea that the knowledge of our ancestors, who in some way already followed the guidelines of today’s organic agriculture, should be made use of and enhanced. The play titled “Here are Some Domestic Seeds” depicted in a very humorous way the importance of cultivating old domestic varieties and intergenerational connections, in which older people teach young people about work on the farm in the

past, and young people teach the elderly about the importance of using visual media, especially the internet, where one can likewise acquire new knowledge. Since the spaces in which association members present their play and culinary specialties are packed with people of all generations, similar nonprofessional activities can be an extremely good example of the development of informal methods of learning and teaching to acquaint a wider public with global concepts such as sustainable development, gender equality, alleviation of poverty and unemployment, and so on. The play used a very simple approach and the local dialect, and people learned about the importance of reviving traditional varieties of field crops and familiarity with the traditional skills of our ancestors in order to develop for example organic farming. At the same time, older actors and spectators were learned about the potential of new visual media (e.g. the internet) as a source of new knowledge from people from other parts of the world.

In the next years, more small projects were developed in collaboration with the members of the associations and me, as during the ethnographic and historical research a good relationship were established. Special benefits of heritage practices in the framework of introducing sustainable communities was achieved in the project in 2014, where the association published the second book, titled *Lest We Forget II.: Customs, habits, and recipes from Planina pri Ajdovščini* (Rosa, Fakin Bajec 2014), where they collected traditional dishes and new recipes, which reflects the skills, experience, courage and boldness of modern-day housewives. The authors of the book were among experts (among me, where I presented the customs and habits associated with a variety of holidays habits of calendar's festivals, also designer and journalist) also the association members who collected old recipes and further by using their knowledge adapted them to modern times and ingredients that previously were not accessible or known. At the same time, the recipes still retained their local character. The book is further enhanced by subchapters titled "Lest We Forget", which present old skills for making use of the natural resources of a particular area. In this way, the reader learns how to obtain seeds from traditional crop varieties, how to make fermented sour turnips, how to prepare wine vinegar, how to make a medicinal syrup from grape, etc. All this knowledge has exceptional importance today for achieving sustainable development policy, as shown by the book in overcoming significant development challenges. At the same time, the book shows the key role of women in achieving results of sustainable policies. Since women in rural areas were not just mothers, housewives, and good cooks but also had to be responsible for the development of the farm, in the book special attention was put on the importance of women in the collecting, preserving and production of seeds for indigenous field crops, which today, given the importance of organic farming and the development of healthy cuisine, people want to preserve and cultivate again. Seeds are also a symbol of new wealth, hope, and a better life.

The book is further enriched by the thoughts of association members on the mission of home cooking and the importance of socializing in the association. Especially meaningful are the words of members whose participation in the association enriches their personal lives, filling them with new strength and courage. Among others we can read:

We share happy as well as less happy life events with other members; they encouraged me to continue my studies and boosted my confidence. I can therefore say that they are not just my fellow members but even more, they are my friends. (Rosa; Fakin Bajec 2014, 64)

The association...learning, life, singing, laughter, socializing and friendship. I am proud to have been a part of this since the beginning. (76)

In reflecting on the last ten years of the association's activity, I was struck by the realization that I came to know my neighbors and fellow villagers only through my membership in it. (98)

Close by thoughts the photographs of the members are displayed, what proved as a successful way of how to empower the female authors of the recipes and using their knowledge for innovative product, which is result of heritage activities. Because of that, the book is a tribute to their activities. As a member enthusiastically explained:

The book is a product that will remain for posterity. This is our heritage. What has been recorded will remain. The purpose of the association is not just to go there and chat for a bit and gossip, as we women are often accused of doing. We don't just gossip, we also get things done and we have something to show for our efforts. I give the book as a gift since it is a part of me and I'm very proud of it. It's not just a book, it's something more. (interview, Planina pri Ajdovščini, 11 May 2015)

At the same time, the book also shows how a variety of forms of cooperation can be achieved through intergenerational connections (members come from both older and younger generations), mutual encouragement, and exchange of experience: between younger and older, between experts and laypeople, between men and women. Young people in particular contribute greatly to the association since they are somewhat bolder in the presentation of products and uninhibited in the presentation of village farming culture whereas the older ones are still ashamed of it.

Members of the younger generation said this about their participation in the association:

The association teaches me a lot, through it I experience new knowl-

edge and have fun with it. As a member of the association I feel useful and capable. I enjoy discovering history, past customs and habits of our ancestors and transmitting them to others. (Rosa; Fakin Bajec 2014, 46)

The association is like one big family. We are connected by our joy in our work, creativity and revival of old traditions. (140)

The preservation of tradition, socializing, relaxation, mutual teaching/learning ... I soak up the knowledge of other housewives like a sponge and I am proud to say that I am a member of the Housewives Association from Planina. (166)

These thoughts and presented approaches lead to another added value of heritage in the social dimension. Both, the president of the association, and director of drama group pointed out that the members over the years undergo tremendous personal growth and become more self-confident, daring, more persuasive, and happy. One of the member stressed that in the association:

We encourage one another. We have a good president, very knowledgeable, and her husband encourages her. This means a lot to us and we can be take pride in the association and our many achievements. This gives us determination and the awareness that we have done something good. What a good feeling it is when people come tell us they like what we do. Money isn't important to me, but a simple thank means a lot. (interview, Planina pri Ajdovščini, 11 May 2015)

## 5 Conclusions

CH in the modern, global world, which is facing drastic environmental, economic and cultural changes, should be understood in the context of new development components and content. Although the social, economic and development roles of heritage practices are intertwined and operate in the direction of ensuring a better future, its development role for establishing sustainable communities and fostering local economy based on tradition and innovation is still neglected. The key to solving the problem presented can be seen in better cooperation among the main stakeholders involved in heritage practices, especially between experts and residents from particular local areas. The latter most feel the difficulties and burdens of the modern world such as social inequality, poverty, climate change and political pressures, but they are frequently without a clear idea of how to deal with the resulting crises. Although the local population are becoming increasingly aware of the importance of the knowledge of their

ancestors and realize that the past is not a symbol of poverty, technological backwardness and a hard life but rather something of value which can in conjunction with modern innovative approaches be enriched for a better tomorrow, often they have no clear vision of the means of implementing past practices. Experts can contribute greatly to this effort, but they must take on the role of consultant, facilitator, and proposer of different ideas and thoughts which the local population are willing to accept and supplement and enhance with respect to their own expectations and needs.

Despite the uncontrolled commercialization of culture and its heritage in the tourist industry and the devaluation of the cultural legacy of our ancestors, which this article has not directly addressed, the development role of culture heritage is inevitably important in numerous processes of alleviating contemporary social problems, especially in overcoming the passiveness of local residents, reducing social poverty, assuring gender and social equality, generating ideas for innovative economic products, constructing creative living areas, healthier societies and the well-being of local residents. Of course, many wider conditions should be resolved to obtain successful results, but the most important thing is that the local residents take an active part in construction heritage and understand it as an important media for better relationship among different kind of partners among residents and other sectors.

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## **A Long Journey**

# Metamorphosis and Safeguard of ‘Traditional Knowledge’ in the Frame of Intangible Cultural Heritage Convention

Valentina Lapicciarella Zingari

(Università di Siena; Coordinatrice Simbdea-ICH, Italia)

**Abstract** Starting from an overview of international Conventions between culture and nature, the paper analyses some aspects of the heritage-making process. We explore the connection between ICH and TK in the light of two case studies: cultural policies in the French Savoy and in Venice, Italy. In Savoy, a movement is connecting civil society, local economies and policies in a decentralisation process, between conflicts and compromises. In Venice, civil society and scientific communities work together for the safeguarding of ICH. We argue that only effective ICH safeguarding policies, well connected to the economy, can support and make productive this dialogue on the current process of change.

**Summary** 1 Introduction. – 2 An International Overview from the Biodiversity Framework and Landscape. – 3 Some Contributions from Human Sciences. Cultural Diversity and Heritage’s Revolutions in Europe. – 4 “Folklore au frontières de l’empire”, culture populaire, TK, ICH? The Core Contribution of International Conventions. – 5 The Venetian Lab: Culture against Cultures? The Arsenal as a Case of Cultural and Productive Sterilisation?

**Keywords** Traditional Knowledge. Intangible Cultural Heritage. Cultural communities.

## **1 Introduction**

*Traditional knowledge* (TK) has been gaining international attention by different scientific disciplines and policy sectors in the latest decades. Its definition is still broad and dynamic. In 2002, the ICSU provided the following definition of TK:

a cumulative body of knowledge, know-how, practices and representations maintained and developed by peoples with extended histories of interaction with the natural environment. These sophisticated sets of understandings, interpretations and meanings are part and parcel of a cultural complex that encompasses language, naming and classification systems, resource use practices, ritual, spirituality and worldview. (ICSU 2002, 24)

In a policy perspective, it is not a case that a significant part of the work of the WIPO (World Intellectual Property Organization) is devoted to TK. WIPO defines TK as “a living body of knowledge passed on from generation to generation within a community”<sup>1</sup> and highlights the fact that TK is part of a people’s cultural and spiritual identity, including a variety of aspects from genetic resources to TCEs (Traditional cultural expressions).

Besides definitions, TK appears in a number of specific international instruments and conventions, chronologically as follows:

- 1992 CBD (Convention on Biological Diversity), art. 8(j) on “knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”;
- 2001 International Treaty on Plant Genetic Resources for Food and Agriculture of the FAO, art. 9.2 on the protection of TK relevant to plant genetic resources for food and agriculture;
- 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage;
- 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
- 2010 Nagoya Protocol to the CBD on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization referring to traditional knowledge associated with genetic resources.

One may easily note that the concept of TK is on a long and dynamic recognition process from different perspectives. First within the human rights and indigenous people’s framework. Then the concept rises in the context of environment and only later in the one of culture and heritage.

But we should also note a further historical shift: from TK considered as an object to the people and communities as active subjects, producers and protagonists of culture, constantly creating and recreating TK and TCEs.

Within the UN process the identification and involvement of active subjects in TK and TCEs is referred to as ‘indigenous peoples’, creating separations and misunderstandings on the consistency of TK and TCEs in any other groups or communities in civil society not classified as ‘indigenous’, i.e. artisans and farmers. Consequently, the effective place and role of groups and communities on TK and TCEs in a wider cultural and natural perspective has not yet been fully considered and captured. Today a widespread process is in progress: the empowerment of civil society and the various local actors recognised as subjects and protagonists in the construction and safeguard of cultural and natural heritage in a perspective

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<sup>1</sup> <http://www.wipo.int/tk/en/> (2017-12-15).

of socially-based sustainability. So far the 2003 UNESCO Convention is the only international legal instrument connecting individuals, groups and communities with TK and TCE in an open, dynamic and complex vision of socio-cultural processes and in a sustainability perspective.

## 2 An International Overview from the Biodiversity Framework and Landscape

In an inspiring work published in 1999, UN brought together policy and science contributions by groups and communities on the theme of cultural and spiritual values of biodiversity (UNEP 1999). This exercise collected evidences for the practical foundations and development of participatory methods in field projects and local-regional programmes. The fact that cultural and spiritual values were raised in a biodiversity, say from a 'natural', perspective, contributed to the implementation of participatory field projects starting from national protected areas, mainly national parks, and forested areas where local inhabitants with their TK have been eventually involved in the different steps (analysis, decisions, planning and management) with their rights, responsibilities, knowledge, skills, practices, perceptions and representations. Contributors to this publication include a variety of people: local groups, communities, experts and scientists from all over the world, scholars, political and spiritual leaders, indigenous elders, traditional farmers, shamans and curers, poets, artists, song-writers, journalists and others. They raised some key points and messages on culture, traditions and heritage, among others the following:

- inextricable links between nature, society, language and culture are carried throughout generations and testified by local people, groups and communities;
- consideration to be given to:
  - different frameworks for the evaluation of the diverse peoples who are grouped together as 'indigenous' or local;
  - direct individual voices and depositions by myriad of indigenous, traditional and local peoples reinforce formal declarations and statements by national and international agencies on the vital values of diversity;
- clear evidences show that the best way to safeguarding the diversity of cultures and nature is through the empowerment of the people with their local knowledge, skills and experiences;
- anthropologists and ethnoecologists, aided by advances in information technology, might be able to adequately describe TEK (Traditional Ecological Knowledge) systems. But scientists themselves admit that they will never get more than a inkling of the whole, intricate webs

- of symbols, values, practices and information that have evolved in unique systems for each society;
- the only way to employ all the force and sophistication of local communities is to allow them to develop and design their own systems for change, conservation, land and resource use. All evidences show that this can be done best through communities in equitable relationships, true partnerships, with scientific and technical advisors and that it works best when the scientific experts are in the role of advisors, not commanders;
  - there are some serious multi-disciplinary and multi-cultural dilemmas. Some of these are methodological, as well as philosophical and political: how can local concepts be used as criteria and indicators in the development of baseline studies of biodiversity? And how can these become central, for example, to environmental impact assessments, monitoring activities and national biodiversity surveys? How can spiritual and cultural values be incorporated into planning and policy decisions? Can any of this be assigned monetary value? If not, how can other value systems be respected and weighed?
  - these questions do not depend on political will alone to implement change, but also require considerable intellectual work to develop integrated methodologies to guide the practical tasks for such studies;
  - likewise the legal basis for protection of indigenous, traditional and local community rights is far from complete, given that the people involved have rarely been seriously consulted on what the basic principles for codes of conduct, and standards of practice, and new, appropriate laws might be. The latter, it must be said, depends more upon changes in political and economic policies than on methodological difficulties.

A Special Session of the UNGA was convened to evaluate progress years after the Earth Summit. Most observers found that the tally for Nation/State action was poor. But some of the parallel processes that have accompanied the global environmental movement are finding considerable successes. Indigenous peoples, for example, have become significant players in debates on sustainability, trade, environment and human rights. Traditional farmers have become well-organised and their demands increasingly heard through debates in the international arenas.

### 3 Some Contributions from Human Sciences. Cultural Diversity and Heritage's Re-Evolutions in Europe

A considérer la culture comme on la pratique, non dans le plus valorisé par la représentation officielle ou par la politique économique, mais dans ce qui la soutient et l'organise, trois priorités d'imposent: l'oral, l'opérateur et l'ordinaire. Toutes trois nous reviennent par le détour d'une scène supposée étrangère, la "culture populaire", qui a vu se multiplier les études sur les traditions orales, la créativité pratique et les actes de la vie quotidienne. Un pas de plus est nécessaire pour abattre cette barrière fictive et reconnaître qu'en vérité il est question de notre culture, sans que nous le sachions. Car les sciences sociales ont analysé en terme de "culture populaire" des fonctionnements restés fondamentaux dans notre culture urbaine et moderne, mais ténus pour illégitimes ou négligeable de la modernité (de Certeau 1990, 1: 353).

It can be really interesting to reflect on the impact of policies on the development of heritage's imaginary, and to reflect on some ethnographical experiences of the last decades focussing on the political frames of ethnographical commissioning. The thought of Michel de Certeau (1976; 1990), French philosopher and historian, had a major impact on policies, heritage practices and scientific ideas in France over the twenty years from 1990 to 2010 (Lang 1983; Mirlesse, Anglade 2006).<sup>2</sup> The orientations of cultural policies during that time determine the multiple and widespread public investments, in a territorial vision of culture, plural and socially-based (Lapicciarella Zingari 2012).

I propose here some reflections based on my ethnographical experiences in a boundary region between France and Italy, Alpine Savoy. Here, between 2003 and 2009, in the frame of interministerial programs on culture, some local associations in dialogue with researchers and policy-makers, were engaged to build a new vision of local history based on concrete memories and identities, where an invisible and implicit battle opposed the concept of popular culture as folklore, to a more inclusive and politically strong vision of heritage. To put in light the concrete historical context of this region, we can start this reflection reading Michel de Certeau.

Depuis 1880, l'enseignement primaire a structuré une cohésion nationale et profondément marqué la culture et la société française.

2 See Mirlesse, Anglade 2006, 18-22, for an interesting analysis on the relation between Michel de Certeau and the Ministry Jack Lang. URL <http://www.eleves.ens.fr/pollens/seminaire/seances/politique-culturelle/politique-culturelle-francaise.pdf> (2017-12-15).

N'a-t-il pas aussi, en répandant l'instruction (un savoir: ce qu'il faut apprendre) et l'éducation (une morale civique : ce qu'il faut faire), accéléré la destruction de cultures locales ? L'impérialisme culturel, était l'envers d'une grande ambition sociale et centralisatrice, n'a-t-il pas créé cette " incapacité " qui consiste à n'être pas conforme aux critères des sciences distribuées d'en haut, intellectualisé la culture au détriment d'autres types d'expériences, et donc appauvri les régions parce que qui fortifiait la centralisation? (...) Une ignorance massive laisse la masse dans l'oubli. Elle tient sans doute au privilège que possède l'écrit, à la répression qu'il a exercé sur l'oral et sur des expressions différentes, devenues des folklores aux frontières d'un empire. (1976, 147)

Recalling the wide "lands of silence" in its remarkable pages devoted to the "social architecture of knowledge", de Certeau tells us of centralising pressure of France and of the effects on local cultures. In Savoy, at the "borders of the Empire", in a land that came the latest inside the borders of the Exagone,<sup>3</sup> in the heart of a huge colonial empire, the centralising and repressive forces have been powerful. Its definition corresponds to a situation that I personally lived in my ethnographic fieldwork in Savoy. Memories, complex and solid systems of TK of Alpine communities, were actually perceivable as "folklore at the borders of the Empire". On those fields, I could listen shy testimonies of social groups heirs of a powerful Alpine culture, subaltern to the dominant French culture infused of modernism in the myth of scientific and technological progress connected to the social one (Lapicciarella Zingari 2012).

The writings of de Certeau had a strong impact on the policies of the '80s. *La culture au pluriel* can be considered inspiring to the ministry of Jacques Lang and at the origin of a number of cultural policies reforms in France. Signs of this evolution are found in the writings of Isac Chiva and Daniel Fabre, anthropologists working at the big design of cultural policies and involved in the preparation and implementation of the ICH Convention in France. Some relevant writings are available on the website of the ministry under "Démocratisation culturelle, diversité culturelle et cohésion sociale".<sup>4</sup>

What can we read behind some ethnographical fields, funded by inter-ministerial French programmes?

The website of the French ministry shows the articulations between the

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3 The annexation of Savoy to France is rather recent in the national history, 1860, just one year before the formation of the Italian State.

4 URL <http://www.culture.gouv.fr/culture/div-culturelle/5-salmet.html> (2017-12-15).

inter-ministerial, national territorialised and regional programmes.<sup>5</sup> The term of “territorial re-identification”, used in official documents, should be noted. The website of the French ministry shows the articulations between the three inter-ministerial, national territorialised and regional programmes.

The decentralisation policy was turned to soften the line of national identity, not exempt of strong contradictions also expressed during the debates on the crisis of the notion of ethnological heritage (Lapicciarella Zingari 2012). Scientific research remains strongly rooted in the national dimension, centralised in the orientations and disciplinary splitting, territorialised in the practices. In the grid of the ministerial orientations, ethnologists take spaces to work on the rural and urban memory (Althabe 1996; 2001). This is the matrix of different scientific projects at that time like a compromise between the ministerial orientations, local policies concerns and the emerging social needs incorporated also by a number of administration services. The inter-ministerial programme on *Cultures, dynamiques villes et sociales*, was implemented at the regional level in a multi-year project, still in progress, as a study and enhancement of memory and plural memories that live and are defined at the regional level. Some vision conflicts that I analyse in my doctoral work,<sup>6</sup> reveal friction between the scientific guidelines dictated by the Ministry and the local political/social projects, geared to reach out to the widespread need for identity and recognition of populations and specific local traditions.

In the case of the border and railway city of Modane, a project oriented by construction values of dialogue between populations and contexts of social welfare tied to the traditions of “border solidarity”, was confronted with a scientific project, oriented to a knowledge objective, the national historical memory of border territory. In other contexts, such as rural and mountain villages of Villarodin-Bourget and Bessans, the memory of TK and practices, knowledge of nature, rituals are a strong fabric that opposes the lifestyles and the imaginary mountain agro pastoral evolution of a violent modernisation, imposed by external agents to the local population as an inevitable destiny.

Unexpectedly, interviewed people wanted to talk about their forgotten traditions, about their natural environment rich in resources overwhelmed and threatened by the industrial progress of the valley, about the knowledge, skills and practices, about lifestyles of the past agro pastoral and a mythical and fabulous universe, further and further away from their everyday life and so vital to their cultural and spiritual survival. In recent years, this area

5 <http://www4.culture.gouv.fr/actions/recherche/culturesenville/fr/programme.html> (2017-12-15).

6 Lapicciarella, Valentina (2014). *Storie dalla frontiera, frontiere della storia. Paesaggi di montagna, storie e voci di confine* [PhD dissertation]. University of Siena.

experiences activities of rebirth of local traditions by local associations in the first row. The association Patrimoine sans frontières in Modane, the Association de Saint Antoine in Villarodin-Bourget, the association Bessans jadis et aujourd'hui in the upper valley of Maurienne, are the protagonists of countless activities of transmission of knowledge and traditional practices, as well as the birth of new social practices. The ethnographic research on the "heritage and local memory" become the expressive space of desires and claims of development decisions often in conflict with other powers at work in those areas, resulting in a shift of the analysis to the subjects and social processes. A shift that widens the perspectives of research to the possibility of building common knowledge and heritage projects together with the tradition bearers. I analysed the passage of vision, in France, from a heritage of objects to a "heritage in project": a change that implies the transformation of tools in our profession (Lapicciarella Zingari 2012).

In the context of the Italian anthropology and demological studies, Fabio Mugnaini took over the sense of the lesson of the demologist Alberto Cirese:

Studies that we call demological must in any case consider, and not-generically, with the social and cultural contemporary life, with the forces and ideologies that animate it, and with the rigor of the concepts that his study requires, transforming them accordingly. (Cirese 1977, 310)

Mugnaini wrote:

The path can be summarised in the following points: the content of folklore or demological studies [...] does not disappear with the socio-cultural transformations nor with the technological innovations that have modified the overall structure of production, communication and use of cultural events. Expressive verbal and artistic resources, rituals, practices of sociability and interpersonal communication, continue to convey different conceptions of the world from those hegemonic (official, elitist or simply spread by the mass media) that refer to many collective subjectivities (of social or cultural nature) that make up the social systems, variously disposed with respect to power and access to resources, both material and cultural. (Clemente, Mugnaini 2001, 21)

If traditions do not disappear with the socio-cultural transformations and technological innovations, the domination and power processes can however endanger the expressive spaces and the contexts of the transmission. In this sense, the project of international policy as expressed by the international Conventions calls scholars to their responsibilities in the negotiation with the cultural institutions in the role of mediation with the "cultural



communities”.<sup>7</sup> What I have just mentioned, between Modane, Villarodin-Bourget and Bessans, is a concrete evidence of the “proliferate in social” of traditions, including intimate and everyday sphere, associations, heritage action that is linked, in sometimes conflicting combinations, with action of scientific territorial research linked to the national programmes.

The emergence of heritage and museographic projects can be considered as places claiming recognition of cultural diversity in the public space. On the other hand, as we read in some texts that analyse transformations of cultural policies in France, in the years of the ministry of Jack Lang, French cultural policies were supported in this respect by the commitment of scholars like Michel de Certeau and Claude Lévi-Strauss. Between the late '90s and 2010, in the French regions the DRAC (Directions régionales des affaires culturelles) representing the institution of culture, have in the ‘conseillers à l’ethnologie’ the interlocutors responsible for programmes and funding with a dual role, which can be seen as a top-down, reflecting the guidelines of the research programmes of the decisions taken at the ministerial level policies of the central state, and bottom-up, being their action targeted to the emergence of regional and local land projects negotiated in relation to ‘local needs and projects’. As part of these programmes, partnerships with National Parks, local communities, cultural foundations allow anthropologists to explore ‘local systems’, whose knowledge goes from the words of people to the construction through dialogue and negotiation of narratives, as part of the progressive emergence of participatory methods, already present in the need of ‘restitution’ of the studies with scientific or heritage character to local communities.

The progressive transformation of cultural policies and the ratification of international conventions come to legitimise, by changing the political coordinates, a vast society movement which likewise tend to the recognition of rights to culture and cultural diversity. The process of *heritage-making* reveals the complexity of structures that connects different levels and actors, on the one hand marked by the character of process in the making that we find already expressed very effectively by Gérard Lenclud in a writing that is today a reference for the social studies.

En quoi consiste alors la tradition? [...] Il s’ensuit que l’itinéraire à suivre pour en éclairer la genèse n’emprunte pas le trajet qui va du passé vers le présent mais le chemin par lequel tout groupe humain constitue sa tradition: du présent vers le passé. Dans toutes les sociétés, y compris les nôtres, la tradition est une “ rétro-projection ”, formule que Pouillon explicite en ces termes: “ Nous choisissons ce par quoi nous nous

7 Following a distinction proposed by the Mexican anthropologist Lourde Arizpe between “cultural community”, without reference to the territory and territorialised communities, presented by Antonio Arantes at the first forum of researchers ICH, held in Paris in 2012.

déclarons déterminés, nous nous présentons comme les continuateurs de ceux dont nous avons fait nos prédécesseurs ” (ibid). La tradition institue une “ filiation inversée ”: loin que les pères engendrent les fils, les pères naissent des fils. Ce n’est pas le passé qui produit le présent mais le présent qui façonne son passé. La tradition est un procès de reconnaissance en paternité. (1987, 32)

Connecting to international instruments that make it legitimate instrument of recognition. In this second sense, the Valdimar Hafstein reflections are particularly relevant. After examining the historical developments that accompany the emergence of the ‘traditions’ notion, he affirms:

Comme le patrimoine immatériel, la propriété intellectuelle crée des sujets. Je me suis référé plus haut à l’invention du sujet-auteur, summum de l’individualisme possessif bourgeois. Mais la propriété intellectuelle des cultures traditionnelles constitue des sujets collectifs, autour d’expressions culturelles traditionnelles soumises à une propriété intellectuelle collective ou à des marques commerciales de savoirs traditionnels brevetés, c’est toujours parler d’une culture incorporée. Il faut des sujets collectifs organisés pour détenir et gérer les droits de propriété intellectuelle, pour négocier avec l’extérieur et pour bénéficier des rémunérations d’où elles viennent. Si ce sujets n’existent pas (et c’est habituellement le cas), le régime de la propriété intellectuelle les fera exister. Comme le patrimoine immatériel, la propriété intellectuelle participe donc de ce que, dans un autre contexte, Michel Callon appelle la “prolifération du social” (Callon, Barry & Slater 2002). Cette ‘culture traditionnelle’ est donc incorporée, au sens où elle fait exister des entités collectives corporatives: des communautés dotées des pouvoirs administratifs. [...] Ils aident à construire des nouvelles formes de revendications, des nouvelles façons de se faire entendre. Ne vous laissez pas bernier par la rhétorique traditionaliste. Les pratiques culturelles dont nous parlons ont beau être résiduelles, les collectifs qui s’organisent autour d’elles sont émergents. (2011, 80)

Analysing the complex relationship between heritage regimes, institutions and “new emerging subjects”, in a complex space of negotiations and powers, Hafstein concludes:

Les nouveaux sujets ont un pied dans les régimes du patrimoine et de la propriété intellectuelle; il leur reste une jambe sur laquelle se tenir et une petite marge de manoeuvre. Des nouveaux groupes surgissent constamment. Pour eux, le patrimoine est un instrument de changement. (2011, 92)

#### 4 “Folklore au frontières de l’empire”, culture populaire, TK, ICH? The Core Contribution of International Conventions

Some experts and researchers, also participating to the collective reflection developed by the ACHS (Association of Critical Heritage Studies), are at work to identify the current changes in and through the 2003 Convention system analysing the evolution of implicit criteria expressed by the different practices and policies for the implementation of the Convention and by the evolution of terminologies. In a recent writing Marc Jacobs (2015), analysing the characteristics of the European nominations to the Representative List of the ICH, develops a comparison between the disciplinary traditions and the European cultural policies, structured in the frame of an opposition between elite and popular culture in which prevails a monumental, architectural and authorial vision of heritage, with the use of the same list in other continents. In fact, the ICH Convention is the result of an international effort to bring together different heritage-regimes (Bendix, Eggert, Peselmann 2012), introducing some radical changes while respecting the European institutional frames. In an official document that retrace the history of the Convention, “elaboration of a Convention”, the definition of ICH is developed starting from “monuments and collections of objects” toward living heritage.

ICH does not end at monuments and collections of objects. It also includes traditions or living expressions inherited from our ancestors and passed on to our descendants, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts. While fragile, ICH is an important factor in maintaining cultural diversity in the face of growing globalization. An understanding of the ICH of different communities helps with intercultural dialogue, and encourages mutual respect for other ways of life. The importance of ICH is not the cultural manifestation itself but rather the wealth of knowledge and skills that is transmitted through it from one generation to the next. The social and economic value of this transmission of knowledge is relevant for minority groups and for mainstream social groups within a State, and is as important for developing States as for developed ones. ICH is:

- Traditional, contemporary and living at the same time: ICH does not only represent inherited traditions from the past but also contemporary rural and urban practices in which diverse cultural groups take part;
- Inclusive: we may share expressions of ICH that are similar to those practised by others. Whether they are from the neighbouring village, from a city on the opposite side of the world, or have been adapted by people who have migrated and settled in a different region, they

all are ICH: they have been passed from one generation to another, have evolved in response to their environments and they contribute to giving us a sense of identity and continuity, providing a link from our past, through the present, and into our future. ICH does not give rise to questions of whether or not certain practices are specific to a culture. It contributes to social cohesion, encouraging a sense of identity and responsibility which helps individuals to feel part of one or different communities and to feel part of society at large;

- Representative: ICH is not merely valued as a cultural good, on a comparative basis, for its exclusivity or its exceptional value. It thrives on its basis in communities and depends on those whose knowledge of traditions, skills and customs are passed on to the rest of the community, from generation to generation, or to other communities;
- Community-based: ICH can only be heritage when it is recognized as such by the communities, groups or individuals that create, maintain and transmit it - without their recognition, nobody else can decide for them that a given expression or practice is their heritage.

In a recent article, introducing in the process of discussion of the ICS ICH (International Cultural Studies on Intangible Cultural Heritage) 2015, Marc Jacobs writes:

Between 2003 and 2016, a strategy of the organs of the 2003 UNESCO Convention was to reduce the vocabulary to a limited set of appropriate words, primarily those used in the authoritative French or English versions of the Convention. The organs tried to be careful and restrictive when expanding that set of words in the subsequent operational directives, in the official nomination and request forms that were used, and in the decisions taken by the Intergovernmental Committee and the General Assembly of the States Party of the 2003 Convention. However, as time progresses, it will be useful or even necessary to introduce new terms like, for instance, “cultural brokerage”, “mediation”, “access and benefit sharing”, or “stakeholders”. [...] Until 2015, the word stakeholders was not used in any of the four versions of the operational directives (2008; 2010; 2012; 2014). In several of those directives, there is, for instance, an extra specification about prior and informed consent, which implies a process for which stakeholder analysis is needed. But in the Evaluation of UNESCO’s Standard-setting Work of the Culture Sector Part I—2003 Convention for the Safeguarding of the Intangible Cultural Heritage Final Report (2013), the concept of stakeholder is manifestly pushed forward. The Internal Oversight Service of UNESCO underlines that safeguarding should be done in: “a participatory manner and through negotiation within the relevant community and between all stakeholders concerned. [...] In the decisions of the Windhoek meeting,

the word stakeholders is used many times, including in the new draft chapter of the operational directives and in the decisions about the codes and tools of ethics that should be updated “through a participatory process involving communities, groups and relevant stakeholders”. Henceforth, stakeholders are officially part of the appropriate language of the 2003 safeguarding paradigm—just like the sleeping beauty, ‘updating’ has finally been awakened and activated. (2015, 3)

The argument of the article is that the 2003 UNESCO Convention, in a context of public disinvestment is encouraging and legitimizing the empowerment of civil society and of the various actors recognised as protagonists of culture, contributing to the construction of heritage as a widespread social phenomenon, living, transformative and trans boundary. Thanks to this new paradigm and political frame, TK are contextualised as heritage, in a complex process that connects different stakeholders placing at the centre of the process the communities, groups and individuals, practitioners and traditional bearers first responsible of transmission, all involved in a dynamic and transformative vision of heritage. Founded on the values of cultural rights as human rights, the Convention is accompanying conflictual and complex processes of active citizenship. This sheds light on the reasons sustaining the projects of production and recognition of cultural traditions as a heritage, in a process that can transcend the boundaries of States, while organizing themselves within the national frames. It can be interesting to connect three levels and contexts:

a. The international context of the ICSICH

These are places of debate, confrontation and mediation between political (national, international, regional and local), scientific, legal, institutional and social actors; these translated into regular appointments, concrete meeting places, work and training. Here communities, groups and individuals move with strategies, tactics and interests in the name of some shared values. A community of particular interest is the one made by NGOs accredited by the Convention to perform advisory functions (Lapicciarella Zingari 2014). Every year, before the work of the Committee, the NGOs Forum steering committee organise a thematic seminar,<sup>8</sup> which sees a growing participation of NGOs and researchers. The gradual organization of this space of action reveals the complex relationship between the “establishment of culture”, government policies, the positions of the HC (Faro Convention 2005, art. 2(b). See Zagato 2015), the knowledge of scientific communities.

8 See the web site of the ICH NGO forum, <http://www.ichngoforum.org>.

- b. The national contexts, in which are engaged some NGOs accredited by the ICSICH and researchers.
- c. They are all in various ways involved in the processes of heritage-making within national “heritage regimes” (Bendix, Eggert, Pesselmann 2012). At the national level, inventories of ICH are relevant tools for the identification and recognition of TK and practices within heritage regimes. In Italy, SIMBDEA with other accredited Italian NGOs<sup>9</sup> and Institutions, as the Lombardia working group of the regional register of ICH (R.E.I.L), support the implementation of “participatory inventories of intangible cultural heritage” including cultural mediation, co-production, co-governance (Jacobs 2014). In these contexts, some pioneering experiences related to European projects<sup>10</sup> are providing significant outcomes of “transboundary ICH inventories”, recognising TK as ICH elements. In some cases, as the European project AlpFoodway, national policies and programs, as the French national inventory of ICH,<sup>11</sup> are connected to regional trans-boundaries projects.
- d. The local fields, where community groups and individuals move on to transmit and revitalise traditions, between environmental, policies and economic crisis, recognition of values, legitimacy and systems of power.

The case of Venice is, in this regard, quite significant. As an important touristic city of world attraction and UNESCO World Heritage Site, Venice is an excellent observatory to monitor the uses of heritage by different stakeholders involved in the local life, strongly influenced by globalization and mass tourism. Here some cultural and artisan associations, as El Felze,<sup>12</sup> association of artisans contributing to the construction of the gondola embody different challenges of the CH in contemporary post-industrial and post-modern society. With a key mediation role of some researchers in human rights and anthropology, different associations of civil society and professional artisan corporations started a challenging and complex dialogue, trying to make use of the international Convention as tool for change.

9 The Italian network is connected with the international network [www.ichngoforum.org](http://www.ichngoforum.org).

10 I refer to the European Project INTERREG ECHI and to the inventory ICH online at: [www.intangiblesearch.org](http://www.intangiblesearch.org)

11 See the website of the French Ministry “Inventaire National du Patrimoine Culturel Immatériel” (<http://www.culturecommunication.gouv.fr/Thematiques/Patrimoine-culturel-immateriel/L-inventaire-national>) and the Project on the inventory in the Parc des Bauges: “Savoirs et pratiques alimentaires et culinaire dans le Massif des Bauges” (<http://www.parcdesbauges.com/fr/actualite/savoirs-et-pratiques-alimentaires-et-culinaires-111.html#.Wk37T0tJkWo>).

12 URL <http://www.elfelze.it/> (2017-12-15).

Since 2010, some scientific meetings, seminars and publications (see Picchio Forlati 2014) have been opportunities to share ideas and projects, and start together with the traditional bearers and civil society associations to discuss doubts, problems and possible solutions. In this period, a first experience of ICH scientific inventory was implemented, via the Italian model of BDI catalogue system.<sup>13</sup> But the voices of artisans raise more and more the dramatic context of crisis of the lagoon shifting to a playground for mass tourism associated to the growing difficulties of the artisan activities that disappear due to a lack of any consistent project of safeguard. Venice, the city of the Biennale<sup>14</sup> and crossroad of the artistic contemporary expressions, does not show a concern on the deterioration of its lagoon, a complex ecosystem deeply human-conditioned, and by the dramatic of TK and activities for example connected with navigation and transport. In such a gloomy context, some artisans, last keepers of TK and practices of the lagoon, decided to make use of the ICH Convention. In the web page on the project of El Felze,<sup>15</sup> a UNESCO nomination project on “the tradition of gondola as intangible heritage, to save in Venice” is announced. But what are the expectations of an association of artisans when choosing this way for the safeguard of traditions that are the heart and life of their activities and heritage?

## **5 The Venetian Lab: Culture Against Cultures? The Arsenal as a Case of Cultural and Productive Sterilization?**

The paradoxes and the suffering of the Venice of today help to identify and face these challenges: a cultural community, a cultural association reacting to the aggression of globalization and the lack of attention of local powers. This association transmitting the heritage of the artisans, El Felze, and connecting with the wider Venetian HC (including all the signatories of the Charter of Venice),<sup>16</sup> together with the contribution of the scientific community and in dialogue with other stakeholders, try to use international instruments for the safeguard and transmission of TK and the practices of handcrafts of the lagoon facing a most severe crisis. A small, too small number of artisans can transmit today a large and deep heritage which is not only made by TK and techniques on boat-construction, but includes

13 URL <http://paci.iccd.beniculturali.it/paciSito/> (2017-12-15).

14 URL <http://www.labiennale.org/it/Home.html> (2017-12-15).

15 URL <http://www.elfelze.it/lassociazione/progetti/> (2017-12-15).

16 URL <http://www.elfelze.it/>.

a life style in the lagoon, a complex repository of values, rituals, social practices and oral traditions.

Referring to the definition of HC, Venice will appeal to Europe to meet the challenges of its future.

But which are the criteria that must be met in a sensitive, complex and fragile context such as the one of the lagoon? Which alliances for strategies building to make TK and its people fully recognised as the heart of processes to secure to Venice, its ecology, history, identity, economy and tangible and intangible CH a sustainable future?

How to manage the growing conflicts of interest and visions at work in the corridors of post-modernity (Appadurai 1998) that a city-symbol of the CH in the global world embodies?

What is the role of the scientific community face to the challenges and emergencies reported by 'artisans of the lagoon'? Can participatory methodologies in the identification of the ICH (Bortolotto 2011) combined with methods for mapping the "natural and cultural capital" (Charter of Rome 2014),<sup>17</sup> produce new narratives, new awareness and alliances?

Which tools can become the most effective instruments of recognition, intergenerational transmission/intercultural, legal protection, economic sustainability, critical knowledge, continuity and creativity?

In a word, 'safeguarding', according to the definition given by the UNESCO 2003 Convention (art. 2(3)).

In a recent interview, some Venetian artisans call the decision-makers for a real juridical change on the work legislation. For this change three strategic points are raised. First, the revitalisation of urban residence in the historical town; second, the safeguarding of productive activities; third, the knowledge and promotion of traditional artisan knowledge as a living language. A different approach to and attention by the institutions should lead to laws bringing a new awareness on the value of ICH as a vital element of productive activities.

As recently referred by an artisan of Venice, Alessandro Ervas, the new "forges project" of the Arsenal proposed by the community of artisans should be a place to meet and work, to learn and transmit the knowledge and skills. There is no other place in Italy for water-related restoration activities and here in Venice it would be extraordinarily representative. Denying the specific nature of this place would mean denying its very origin and sense and neglecting the safeguard of its values.

Therefore, the proposal is to make the Arsenal a place of training and learning, with safeguard and creative laboratories, for example using the collaborative potential with the Biennale of Contemporary Arts. This will

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17 Italian Presidency of the Council of the European Union (2014). *Charter of Rome on Natural and Cultural Capital* [online]. URL [http://www.minambiente.it/sites/default/files/archivio/allegati/biodiversita/conference\\_ncc\\_charter\\_rome\\_24october.pdf](http://www.minambiente.it/sites/default/files/archivio/allegati/biodiversita/conference_ncc_charter_rome_24october.pdf) (2017-12-15).



avoid the current trend of denying the cultural and historical sense of place with its memories and values, leading to a standard, trivial and sterilised container for any kind of events. Once memories disappear, the very sense of place vanishes.

In the Venetian dialogue and conflict, the idea to make use the USL (Urgent Safeguarding List) is in progress. In an UNESCO world heritage site, this innovative and engaging tool could provide a strong alliance for the future of the lagoon. The Convention is the only international instrument putting the communities and the very knowledge-bearers at the centre of the process of cultural transmission. It is the only instrument foreseeing the identification and description of the communities, groups and individuals together with the recognition of the social, spiritual and economic value of that specific heritage for its own community.

The importance to use this instrument is in the strong commitment of an urgent safeguarding plan, inscribing the project in a long-term perspective and associating the identification of community group and individuals, the description of the 'element', the TK and practices of carpenters and artisans of the lagoon boats with a shared safeguarding objective that calls for the involvement of institutions in the process.

The long journey of ICH in a globalized world seems to move towards a challenging and promising road made of research systems, mediation, collaboration and network monitoring. The Venetian experiences, building representations that help the negotiated understanding by "seeing the connections" (Wittgenstein 1967), indicate possible points of contacts: between the different disciplines and the local knowledge, skills and practices, within the community of traditional bearers and the different stakeholders, and among the criteria for safeguarding ICH and those of ecological, socio-cultural, and economic sustainability (Jacobs, Neyrinck, Van der Zeijden 2014).

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## **IV.2**

### Traditional Knowledge, the Lagoon, Sustainability



# **Italian Minor Rivers in a Bio-Regionalist Vision: the Case of the Low Plain between the Euganean Hills and the Venetian Lagoon**

Francesco Vallerani

(Università Ca' Foscari Venezia, Italia)

**Abstract** The most urgent issue currently affecting the quality of lived spaces in the Western world is the remarkable spread of the urban sprawl phenomenon. This leads to irreversible loss of the main support underpinning the basic eco-systems, with special regards to the dynamic of the hydro-geological system. The presence in Italy of a complex hydrographical network comes into collision with the expansion of the urban sprawl, thereby posing serious problems for correct territorial management. The case study here considered is the low plain between the Euganean Hills and the southern Venetian lagoon. Only recently we should note the growing social demand for green spaces and attractive landscapes as river corridors actually are. This specific point of view might allow the development of a sort of hydraulic humanism, that should underpin the recovery and reorganization of Italian hydro-geological management.

**Summary** 1 Preface. – 2 Traditional Countryside: Sense of Place under Assault. – 3 The Bio-regionalist Option as Strategy of Therapeutic Planning. – 4 Recovering Waterscapes. – 5 Minor Rivers and Historical Canals from Euganean Hills to Venetian lagoon.

**Keywords** Urban sprawl. Hydrography. Waterscapes.

## **1 Preface**

The most urgent issue currently affecting the quality of lived spaces in the Western world is the remarkable diffusion of the urban sprawl phenomenon. The major concern is the huge consumption of land, most of it valuable fertile land designated for agriculture. This leads to irreversible loss of the main support underpinning the basic eco-systems, with special regards to the dynamic of the hydro-geological system. We are in the presence of the arrogance of *hybris*, the ungovernable force of individualism which does not hesitate to offend the natural order of resources, deemed to be endless, and takes a hazardous cornucopian view of the world (Camerotto, Carniel 2014).

It follows that it is almost a vital necessity to be aware of the events that affect the environmental backgrounds of our daily existences. It is therefore important to appreciate the value of the space we live in. Through

such awareness, it is easy to appreciate that something has broken in the mechanisms of place production. The intense urban sprawl into the delightful Italian countryside and the transformations that have taken place as a result of the global agribusiness have been causing numerous problems by disrupting reassuring points of geographic reference for large sectors of the population, erasing their existential ties with the places they live in and their cultural and affective roots which find their nourishment in everyday place (Albrecht 2005).

## **2 Traditional Countryside: Sense of Place under Assault**

For some years now, the great dissipation of Italian rural landscapes has shown signs of slowing down due to the continuation of the global economic recession. However this does not mean that a wiser town-planning outlook and a more careful consciousness of aesthetic and ecological quality of rural landscapes are prevailing. On the contrary, such continuation of the crisis is increasing the tendency to break town-planning rules, seen as an intolerable obstacle to growth, especially as regards the construction of large infrastructures such as motorways, high-speed railways and oil drilling operations in rural areas of major environmental importance (as resulted in new large projects being implemented). These projects are considered to be of pre-eminent national interest and are not therefore subject to the stringent application of environmental protection laws. The recent episodes of corruption tied to the assignment of contracts, cost increase compared to estimated initial and the almost absolute power given to government Commissioners, without direct State control are all aspects that have resulted in conditions of very serious environmental injustice (Andolfatto, Amadori, Dianese 2014).

But apart from such large-scale interventions, that justifies the definition of sick landscapes is precisely the continuous accumulation of episodes of environmental degradation of restricted geographic dimensions, which are evident throughout the country, but in particular in the flatter areas, along the coasts and in the Alpine and Apennine valleys crossed by very busy roads. This is a still very active urban anarchy which is also clearly evident to visitors from abroad, offensive to the eyes and the effects of which on the quality of life have been clearly underscored by extensive research (Rognini 2008). There is no doubt that the prolonged inefficiency of regional and local institutions is responsible for the lack of protection of historical landscapes and ecosystems. Everyone knows that political consensus and private interests easily coincide when it comes to investments in development projects for the profitable real-estate market, until very recently determining an irrational use of the land which backfires against the most elementary aspects of daily living as in the case of the quality



of surface and underground waters, air pollution, waste disposal and the degradation of the country's historical and artistic heritage (Soule 2006).

This produces a loss of sense of place and belonging to the sentimental dimension transmitted by the landscape and impoverishes shared sociality, leaving a vacuum easily filled by electronic and television 'friendships' supplied by the global hi-tech market. These are the times of the "liquid modernity" evidenced by Zigmund Bauman (2012), in which social forms and living spaces flow rapidly and leave people without reliable instruments for interpreting new realities. All that's left is to retreat into the closed and narrow dimension of individualism, sacrificing relationships between human beings to the advantage of competitive and aggressive attitudes. In the specific case of environmental degradation, geographic analysis could well consider the loss of ties between the human community and place of existence which had been functionally organized to ensure the sustenance and correct implementation of daily living. The rift which has occurred has resulted in the group also losing its material references and failing to recognize the sense of the evolutionary dynamics of its own living space.

When the countryside is transformed into a chaotic mass of hybrid territories, incomplete and hard to interpret, where built-up environments only respond to market logics, it is easy that, in period of recession, such landscapes can be transformed into abandoned places, at a great social cost and with a feeling of great suffering among the inhabitants. Until only a short time ago, not enough focus was placed on the malaise caused by the deterioration which is penalizing living spaces, not only in suburban countryside areas, but also in contexts with strong rural characteristics undergoing infrastructural projects. It is not hard to grasp the close relations between 'geographic trauma' and 'psychological trauma', a far from negligible lesion of the social and individual signification system, on which depend the ties of inhabitants with their daily individual and social spaces (Baroni 1998; Giani Gallino 2007). The degradation of scenarios even further increases the malaise when it comes to intervention linked to speculative procedures, directly traceable back to the benefits of a few crafty investors who, with the connivance of corrupt politicians, use the simple rhetoric that defines such intervention as "absolutely necessary and useful to the public".

And it is precisely in the countryside where the latest and perhaps most bitter conflict is taking place between a development and technocratic outlook involving the personal profit of the large (and also less large) economic powers and a growing social demand for environmental quality, ethics and beauty to which it is easy to relate an alternative lifestyle able to propagate strategies of resilience preparing for an overpopulated future with less resources (Mercalli 2011). In actual fact, the growing demand for countryside, especially locations closest to the more or less attractive amenities of urban systems, is in itself the cause of the chaotic spread of

housing, industrial and commercial development considering that market forces have ably managed to sneak into the rural rehabilitation process, offering easy relocation opportunities not too far from urban centres, in any case in rural contexts already affected by extensive development.

### **3 The Bio-regionalist Option as Strategy of Therapeutic Planning**

There can be no doubt that whosoever undertakes to study the evolutionary dynamics of the Italian landscape has the heavy task of the doctor faced with a seriously ill patient, whose clinical analyses fail to yet show whether the illness is curable or whether the contamination of the illness is such as to require the use of the expression 'terminal'. Roaming among the by now widespread diffusion of settlements, with the extension of quarries on the plains and hill slopes, or turning the gaze from the foothills towards the plains, we notice numerous and invasive worksites which consume precious farmland to transform the remaining greenery into houses and commercial and manufacturing facilities: it appears evident that the cement metastasis is at our doorstep (Ryan et al. 2010).

This leads to the loss of our right to places, important catalyser for a balanced and long-lasting well-being, for a harmonious co-existence with the universe, to acquire the capacity to live alongside others. The right to places involves ethic, as meaning that economic decisions ought to produce shared geographies, where landscapes are seen as common assets, where social practices of an aware and collaborative society make pointless the disquieting fortress-like houses, with their video surveillance and high fences, which exclude individual solitudes resting in their well-tended lawns with respect to the rapid spread of oppressing grey concrete "beyond the hedges" (Vallerani, Varotto 2005). Urban sprawl kills places, reduces them to goods; they are of interest only if they generate income. More than part of well-being needs, they belong to the more brutal 'well-having'. How many felled trees, covered ditches and fields lost forever under concrete crusts, in turn obtained from sands and gravels stripped from rivers and hills, are to be found in the Italian countryside? How much suffering and anguish for the traumatic loss of places of the heart, how strong the need to give voice to the 'invisible' defenders of common wealth, unheard and despised by the powers that be? (Preve, Sansa 2008). All that is left to us is the instrument of the written text, the power of the pen, whereby to launch messages of resistance and make people understand that the recent and continuing condition of economic recession is dramatically showing that the certainties of the single thought.

By now many insights have been developed, well highlighting how tra-

ditional growth indices do not automatically and univocally show parallel improvements in the quality of life. It is no chance occurrence that over recent years, well before the current recession, economists had started to address issues traditionally deemed to be implicit, such as happiness, residential satisfaction, quality of social relations, social capital (Layard 2005; Cannone 2012). Only an aware and participated interpretation of local geographies, also bearing in mind its global interlinks, makes it possible to appreciate the extraordinary cultural, civil and community (as well as ecological) importance of a new way of approaching projects and town planning: from this aspect derives the need to 'take care' of everything that contributes to the life of the unrepeatability uniqueness of places, as regards their specific, traditional, memorial and affective traits (Scott et al. 2013).

In such a context of continuous erosion of the environmental quality in the Italian countryside, and consequently the substantial decline of natural and cultural values compared to production values (i.e., those linked to artisan-industrial dispersion and the proliferation of intensive monocultures to the detriment of quality farming polyculture), the most discerning and proactive geographic research paths (Dematteis, Governa 2005; Magnaghi 2010) are focused on what is left of rurality, with plenty of attention dedicated to the unexpressed potential of territorial innovation remaining in those same marginal and declining sectors. And in fact, advantageous considerations can be made based on what has been happening for a few decades now in abandoned rural sectors as a result of the Italian industrialization process.

In the case of traditional villages discreetly close to centres with urban functions, it is possible to witness an interesting tendency to counter urbanization, with the promotion of the suggestive functional rehabilitation of such territorial situations, above all in relation not only to the growing demand among the public at large for a better quality of life, amenities and a healthy environment, but also for a nostalgic need for the past. So it is that the current discourse on geographic 'marginality' envisages the rehabilitation of the most particular and suggestive aspects, which had instead been completely denied during the most dynamic phases of urban development, that is when the rural contexts were seen as a simple space-support for highest-profit strategies, blurring and declassifying deep-rooted ties. These are the preconditions for the gradual defining of a territoriality of transition between urban and rural, wherein the aspirations for a better geographic quality increasingly associate with the countryside: here will be possible regenerating organic farming, leisure activities and finally the cultural growth provided by sustainable tourism and farm tourism facilities (Borghesi 2009).

As many abandoned European landscapes show, it is easy to encounter those "middle landscapes" (Marx 1987), that is an interpretative skill effectively used by Mauro Varotto in his work dedicated to the abandoned

landscapes of the Brenta canal, an isolated pre-Alpine valley, located however only a few kilometres from the most dynamic urban sprawl centres of central Veneto (2007). Of these intermediate landscapes one grasps above all the hybrid nature, the mix of archaic survivals and digital connections, including the seasonal densification of tourist population and the temporary presence during weekends of owners of holiday homes, with the subsistence vegetable gardens of elderly insiders and the recovery of top-quality locally-grown produce with the conspicuous contribution of capitals by amateur and motivated neo-rurals (Van der Ploeg 2009). It is therefore possible to grasp how individual prospects for the safeguarding and promotion of precious territoriality and the delicate carrying capacity of the portions of countryside still existing in Italy, and with special regard for contexts of urban extension, require not so much generic and ambiguous strategies suggested by the now tired rhetoric of sustainable development, but rather an aware re-composition of the environmental and human heritage. Such option, for the purpose of restoring life to daily authenticity, besides availing itself of the profitable contributions related to neo-ruralist dynamics (the already-mentioned amenity migrants) could promote and facilitate a return to the land, even appealing to young people, thanks to effective political decisions and shared and articulated planning actions that could be implemented with the support of the European community and central governments (Resina, Viestenz 2012).

Here the matter obviously encounters political decisions to which suggestions have been launched for some time to escape the rigid patterns of a single way of looking at things. Among the many existing possibilities, it suffices to mention here bio-regionalism, wherein focus is placed on the personality of places and ecological identities, leaving on the tables of technicians the arid and false objectivity of the regional technical maps, where landscapes are silenced in the name of Euclidean certainties. This is a challenge that could also involve the most compromised sectors, recovering and mending sceneries and re-listening to the weaker voices, giving back dignity to the marginal elements like ditches, hedges, dirt roads, abandoned railways, mills and the whole rural built heritage (Iovino 2016). The path towards the setting up of bio-regions has for some time been recognized as one of the most effective means for the implementation of suggestive “local projects” (Magnaghi 2010), a complex theoretical process that began with highly praised participated planning and which in a homogeneous territorial context could find some fruitful realization. By other scholars of bio-regionalism, it is seen as a “strategy of survival” which the more modest and vulnerable local realities must adopt just as soon as possible to address the spread of the less positive effects of globalization (Lynch, Glotfelty, Armbruster 2012) and in this sense, we must start precisely with ecological specificities and with traditional forms of subsistence to be promoted in a harmonious coexistence with the strength of economic driving forces.

## 4 Recovering Waterscapes

Another geographic ambit where the *pietas* of places could trigger concrete actions relating to environmental recovery and gratifying restitutions of territoriality is the waterscapes heritage, including both natural and artificial waterways. The presence in Italy of a complex hydrographical network, of great interest from the historical and environmental perspectives, comes into collision with the expansion of the urban sprawl, thereby posing serious problems for correct territorial management. Up to a few years ago these water landscapes were undervalued, but recently we should note the growing social demand for green spaces and attractive landscapes as river corridors actually are. Such revalorization process of water landscapes plays a relevant role not only in urbanized areas but also in the sectors of the lower Po Valley Padana plain that were transformed in the past by large drainage projects to make the land suitable for agri-business.

These are particularly significant opportunities in the contexts of more intense urban expansion, a kind of environmental corridors where river landscapes show signs of the centuries-old interaction between nature and culture. Qualifying the river stretch as a 'cultural corridor' also expresses an innovative and more aware approach to territorial planning, to the extent that in those countries where industrial change first took place, and therefore where evolution has been less traumatic, as in the case of the UK, Belgium, France and Germany, the rivers and linked internal navigation waterways have, for over half a century, been at the centre of strong planning commitment towards protection, restoration and tourist and recreational re-use (Bristow 1988; Cotte 2003; Shill 2011). Particular attention must be given to drainage systems flowing in areas of greatest proliferation of urban sprawl, i.e., Northern Italy, above all due to the absence of an equally widespread wise coexistence between hydrological dynamics and expansion of development projects, especially in the light of the growing social demand for leisure-time environments. Unfortunately, in this respect, a decisive taking up of positions is still lacking on the part of local authorities to plan the complexity and conflicts which affect the current relationship between human needs and water courses; in fact, only isolated and spontaneous initiatives have been implemented in this sense by local committees and environmentalist groups.

One of the opportunities for effective and easy recovery strategies can be deemed the growing interest for sustainable recreation and excursionist tourism; in this sense, major cases have occurred of the expansion of positive perceptions with regard to riverscapes (Prideau, Cooper, 2009). Good examples are the cases of the rivers Po, Sesia, Ticino, Adda, Brenta, Sile, Piave: each one runs in Northern Italy and large stretches of their courses have been involved in initial timid projects for the physiognomic and functional rehabilitation of river channels. New ways are therefore

being expressed of looking at the landscape and its protection, in order to look after public assets, to which must be added a gradual rediscovery of the recreational opportunities offered by this extensive water network. In this sense, the conditions of territorial marginality in which a large part of the water system finds itself within Italian urban sprawl could well show itself to be an unexpected strong point for creating attractive strategic scenarios within which to collocate an adequate and mature promotion not only of specific river contexts, but of all the chaotic urban sprawl which so penalizes the scenic and ecological quality of a large part of the most densely populated sectors. We must therefore be convinced that the recreational requalification of waterways plays a lead role in the complex dynamics of territorial competitiveness, inasmuch only a pleasant environment, protected as far as its ecological cycles are concerned, is able to provide residential and existential gratification and stimulate the serenity and confidence of citizens of the future.

## 5 Minor Rivers and Historical Canals from Euganean Hills to Venetian Lagoon

As well as the main rivers, it is equally important to take into account the dense network of smaller rivers, especially when flowing through the peripheral fringes and therefore considered more as an obstacle to housing development than as an opportunity to restore the environmental quality of landscapes. The smaller rivers are also part of the memory of these places, with a rich repository of history from which we can learn useful lessons on the negative impacts of an untidy and regardless human presence. Historical documents enable us to reconstruct the evolution of relationships between the local population and the hydrographical network: this could prove to be a valid starting point for a regeneration of river landscapes that is particularly challenging along waterscapes in urban sprawl. This specific point of view might allow the development of a sort of *hydraulic humanism* that should underpin the recovery and reorganization of Italian hydro-geological management.

The case study here considered allows us to deal with a specific territorial asset where environmental evolution is narrowly related to Venice spreading in mainland, after subduing flourishing city-States like Padua and Vicenza. The low plain between Euganean hills and the southern Venice lagoon was actually a strategic area where a complex hydrographic system had been adequately managed since the twelfth century in order to foster inland navigation connecting the thriving markets of the above mentioned Vicenza and Padua with the port of Chioggia. Clear evidence of the importance of these connections can be seen in the increasing demand

for slabs of trachyte for use in the flooring of *calli* (roads), *campi* (squares) and *fondamenta* (quay sides) of Venice. For centuries, the quarries of Monselice and Lospida supplied stone, contributing to the spreading and consolidating of Venice's materiality.

The consolidation of the complex waterways network in the area is the result of relevant engineering interventions affecting the lower Bacchiglione and Brenta rivers, whose natural water flows were constantly regulated in order to improve both commercial navigation routes and land reclamation. At the core of such hydrographic setting, the Battaglia canal was dug at the end of twelfth century, joining Padua to Monselice, a relevant stronghold defending Paduan southern borders. This canal allows in turn the strategic connection with Venetian lagoon through effectual waterways fed by Bacchiglione river runoff (Vallerani 2013).

From archive sources, a very close relationship between hydrographic network and socio-economic dynamics emerges, with special regard to the progress of hydraulic engineering, aimed at the agronomic reclamation of vast marshland areas eastward Euganean hills, with the subsequent effectual construction of a productive countryside. In such territorial reorganization, nautical relations should not only be related to the specific complexity of the hydrographic network, but also to the well distributed presence of modestly sized residential settlements, mostly located near the banks of lower Bacchiglione and Brenta natural rivers or pretty close to artificial canals (Cosgrove 1993, 135-62). Such tiny waterfront villages were the knots of a vernacular network of spontaneous and local based system of relations (not always well documented), where the practice of navigation involved short haul transport, within a single day, most frequently related to the daily needs of riverside life style (transfers from one side of the river to the other, fishing and hunting, collection of marshland herbs and reeds, domestic transport), rather than longer haul traffic.

Such elements are still detectable in contemporary landscape features, allowing a profitable scoping of tangible heritage worth to be preserved as relevant territorial assets. There is a plenty of cartographic documentation between the sixteenth and eighteenth century attesting the peculiar amphibious territoriality between the Euganean Hills and the Southern section of the Venice lagoon, where a thriving system of minor navigation routes involved modest rural villages such as Pernumia, Cartura, Cagnola, Bovolenta, and Correzzola. These were effectively infrastructures with significant and articulate physical features, whose nautical service intersected narrowly with the aims of reclamation and irrigation, thus showing the intrinsic features of an effectual and well-planned waterscape.

This short-expanded stretch of low plain shows most of the hallmarks of a bioregional unit, that is a geographical area that can be described as a specific combination of ecological assets, geomorphology, climate and hydrographic network, where communities developed over the centuries

the formation of specific rural landscapes. In the case here considered water features not only can be taken into account as boundaries of a distinct territory approximately bordered by Battaglia canal, Brenta and Adige rivers and lastly the southern edge of Venice lagoon, but also as a relevant environmental and cultural heritage. Here hydrography is furthermore the main track to follow in order to recover the huge repository of intangible heritage strongly connected to irreplaceable fluvial stories.

It follows that the primary source of information, maybe the most active and generous in detail and nuances, is the powerful narrative of people from this very land, who provide valuable testimonies in the attempt to reconnect social contexts torn and scattered by the indifference of man and time. Up until a decade ago, a sizable group of former boatmen were able to tell their lived experiences and help reconstruct navigation events regarding the inland navigation network. Their vivid memories provided a wealth of valuable oral sources to gain detailed information about life on board, nautical skills and manoeuvres, and the names of boat equipment and items, all of which made possible the collection and protection of their peculiar sailor lingo.

Such retrieving of intangible memories can be evaluated as the first step for the further recovery of traditional boats and other objects related to navigation and as a consequence since the eighties of last century a relevant deal of material culture has been accumulating that were stored in an historical building in the Battaglia village, right close the canal. The Museum of Battaglia thus stands as a pivotal hub for the enrichment of an identity that expands throughout Veneto's lowlands and even further within a broader European cultural movement, aimed at the educational and touristic rehabilitation of the ancient waterways that went out of service following the decline of commercial navigation. Such initiative would lead to enlightened planning engaging the broader regional contexts characterised by the vast and ancient fluvial networks employed by man, as is the case of Veneto's lowlands. This new project would aim at rebalancing the geo-economic arrangements responsible for the considerable waste of resources and environmental degradation that has occurred in the recent past. Within this perspective, museum institutions entirely similar to Battaglia's have been playing a primary role in recovering the memory and dignity of ancient ways of existence and complex fluvial skills, with the purpose of transmitting them to new generations and political and technical government bodies.

What appears therefore is a new way of calculating the environmental accounting, a glimmer of hope not to be ignored in order to achieve an authentic quality of life, more reactive to the appeal of hyper-consumerism and more closely focused on the theme of happiness, aiming at the recovery of social relations, residential satisfaction and the beauty of landscapes. The key to achieving all this is to return, in our daily lives



and political decisions, to ethical commitment and recalling the duty of responsibility in order to transform the easy flattery of immediate benefits into more long-term strategies envisaging the sharing of common duties (Jonas 2009).

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## **Participated Planning of a Heritage Walk: a Conscious Involvement of the Community**

Marta Tasso

(Progetto Le vie dei fiumi; Cestudir, Università Ca' Foscari di Venezia, Italia)

**Abstract** This paper focuses on how to give value to the cultural context of a specific territory by engaging local communities in a process of knowledge and non-formal education. Starting from the recommendations of the Faro Convention, this paper investigates heritage walks as a possible practice to create cultural, social, and economic value. The main aim is to propose a new methodology that may consider the positive effects of the planning phase on the realization of heritage walks, making heritage walks the result of a creative process of cooperative learning.

**Summary** 1 Introduction. – 2 Implementing Faro . – 3 *Le Vie Dei Fiumi* Project. – 4 Participating to a Heritage Walk. – 5 a Pedagogical Approach for the Planning of a Heritage Walk.

**Keywords** Heritage walk. Study circle. Participative approach.

### **1 Introduction**

In 1948 The UDHR declared that “everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”.<sup>1</sup> After almost seventy years, the needs of the world population have changed following social, economic and political changes; however, it is still necessary to pursue the promotion of cultural participation within the communities.

The Faro Convention represents the international instrument to activate a *shared re-appropriation of culture*. In this instrument, CH is meant as the result – in constant evolution – of the interaction between people and places. The Faro Convention fosters a concept of CH that embraces and comprehends all tangible and intangible aspects which contribute to express values, beliefs, traditions, and knowledge of the people. Furthermore, the meanings and uses that are attributed to objects and places are crucial in order to determine the value of CH.

CH is fundamental to valorize cultural differences, promote intercultural

1 UDHR, art. 27.1.

communication and sustainable economic development, and it represents a major source of social activity and human development.

Art. 7 of the Faro Convention – “Cultural Heritage and Dialogue” – deals with the issue of CH in a social perspective:

The Parties undertake, through the public authorities and other competent bodies, to:

- a. encourage reflection on the ethics and methods of presentation of the cultural heritage, as well as respect for diversity of interpretations;
- b. establish processes for conciliation to equitably deal with situations where contradictory values are placed on the same cultural heritage by different communities;
- c. develop knowledge of cultural heritage as a resource to facilitate peaceful co-existence by promoting trust and mutual understanding with a view to resolution and prevention of conflicts;
- d. integrate these approaches into all aspects of lifelong education and training.

This article is part of the second session, which is focused on the contribution of cultural heritage to society and human development. It is rather clear, then, that the role assigned to CH concerns the constructive process of an inclusive, democratic and sustainable society. The Faro Convention emphasizes the need to question the choices which the presentation of CH is grounded on. Given that this article mainly addresses to public authorities, the question is deontological: is the interpretation of a CH unique and unambiguous? Different communities can assign to the same CH different values and interpretations. Art. 7 of the Faro Convention urges that the principle of diversity of interpretations should be implemented and used also (and above all) in lifelong learning and training. In para. c), CH is considered as an important resource for cultural diversities and the knowledge of CH becomes the instrument to realize an actual and peaceful coexistence between members of different communities or between inhabitants and tourists. Knowing the culture of a certain community makes it possible to build a relationship of reciprocal trust and to better comprehend one’s own differences. Knowledge and relations create the conditions to actually appreciate the other overcoming fear and reaching the following steps: caution, tolerance, acceptance (Clutterbuck, Poulsen, Kochan 2012).

In para. d), art. 7 continues by declaring the intention of integrating these approaches into all aspects of lifelong education and training. How is it possible to achieve these goals? In this paper, I will propose how to answer this question by adopting a pedagogical approach to the CH, that is by exploiting it to create social value.

## 2 Implementing Faro

During the meeting of 27-9 May 2013, the CDCPP adopted an “Action Plan to promote the Faro Framework Convention on the Value of Cultural Heritage for Society 2013-15”.<sup>2</sup> This plan suggests a scheme of operational strategies, such as the Faro Free Applications (FFAs) devoted to encourage the implementation of the Faro Convention in Europe and to stimulate the ratification of the Convention by signatory States, including Italy.<sup>3</sup>

The FFAs were conceived as operating tools which have been exploited in pilot projects and afterwards the intention was to move those strategies in other contexts (D’Alessandro 2005).

Moreover, the CoE promotes cooperation by asking associations and other public bodies to extend and to update – on the basis of their practical experience – the directions and descriptions provided by CoE. Urban Revelation Workshops focus on achieving the social target of integration – people belonging to different communities – by re-discovery, re-using and updating forgotten sites and places in degradation status. This operation is a useful policy, which allows or promotes value increase of the place and at the same time it helps to establish a sense of identity and community among those who actively take part in the revelation process.

Discovering or rediscovering the social, historical and cultural value of something that previously was detached, helps in supporting communities to create useful connections with their landscape. These connections are crucial in order to manage CH. Metropolitan trails allow us to discover suburban areas and look at them from an inclusive point of view; moreover, they can establish connections between downtown and suburbs.

Among various proposals of FFAs an important role is played by the cooperatives of inhabitants requiring strong organisational skills and a good collaborative work within the HC.<sup>4</sup> Cooperatives are relevant bodies that organize guided tours and touristic accommodations in private houses in order to meet, save and transmit CH and improve quality of life and local economy. For facilitating the concrete adoption and success of such actions, the cooperation with public bodies is important. To this purpose, it can be useful to set up an heritage commission devoted to

2 <http://www.coe.int/en/web/culture-and-heritage/faro-action-plan>.

3 Seventeen member States of the Council of Europe have ratified the Convention (Armenia, Austria, Bosnia and Herzegovina, Croatia, Georgia, Hungary, Latvia, Luxemburg, Montenegro, Norway, Portugal, Republic of Moldova, Serbia, Slovak Republic, The former Yugoslav Republic of Macedonia, Ukraine) and five have signed it (Albania, Belgium, Bulgaria, Finland, Italy, San Marino).

4 Faro Convention, art. 2(b): “a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations”.

gather proposals and needs from citizens, associations and heritage communities. Hence, the heritage commission becomes the necessary link between the needs of citizenry and local administrators policies. One of the smartest tools among those indicated by the Action Plan and the CoE are the *heritage walks*, which trigger virtuous mechanism and promote an authentic knowledge of the landscape, specifically considered as a connection between mankind and environment. Heritage walks are *cultural routes* aimed at rediscovering territory and its history through direct contact with witnesses: people who lived and live in these regions holding a strong memory of them.

Undertaking these actions can have positive consequences. For example, a free direct involvement of citizens through an active presence support cultural dialogue, improve the quality of life and the empowerment of mankind. Moreover, the direct management of the FFAs increases interest and knowledge of the local territory and this activates a mechanism of re-appropriation and recognition of the CH in which people are included.

### 3 *Le Vie dei Fiumi Project*

In Regione Veneto, the Venice Office of the CoE and the CESTUDIR<sup>5</sup> engage themselves along this policy by activating a synergic action, both scientific and institutional, in order to disseminate and promote the application of the Faro Convention.

The goal of the project is to introduce a concrete application of Faro Convention's principles, developed through a strategy conceived by Ca' Foscari University: a project which proposes an operational approach aimed at detecting and integrating the application tools of the Faro Convention. A multidisciplinary approach places an academic research project into an area in which theoretical statements are systematically transformed in practical activities, allowing a prompt and real feedback to be produced.

*Le Vie dei Fiumi* project, active since 2015, is coherent with the principles of the Faro Convention featuring an operative and local concern. The project considers as area the territory surrounding Brenta river, with a particular focus on the environs of Nove in Vicenza district: a territory famous for artistic pottery handcraft.

Brenta river has always been crucial for pottery: wood for furnaces has been transported through flotation, stones were necessary for pottery mixture and water power run mills.

So Brenta is a natural path, full of history, in which human work pro-

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5 For more information about CESTUDIR: <http://www.unive.it/pag/31191>.

duced artworks worth of attention.

In 1729, Gio Batta Antonibon set up the first factory of majolica in Nove (cf. Ericani, Marini, Stringa 1990). Over the years, techniques and repertoires were enlarged: potteries, majolicas and crockeries, ordered by wealthy customers, became more and more artistic and handworks of excellent quality. Since the mid-nineteenth century, the manufacturing has specialized on objects exploited for practical use in country life. This new 'popular' production has been characterized also by a specific artistic style which was the industrial expression of manufacturing (also known as *neorococò*) (cf. Baroni 1932). It is easily understandable how the landscape of Nove preserve an intimate and precious relationship with the polyhedral world of pottery, despite it is not a growing sector anymore and it is strongly affected by social and economic influences - not only local but also global - which are the effect of recent modifications of international markets.

Brenta is a route that brings with itself culture, history, traditions. Since many crafts no longer exist, the role played by memories is in this context even more meaningful.

*Le Vie dei Fiumi* project is a cultural operation to valorize and focus on an ICH which must be known and shared. It is articulated along three main axes which include the different activities. Communities are involved through the language of Theatrical Animation. The artistic medium is recognized as a way of instant communication capable of stimulating and setting up metaphors and similarities, linking the past, present and future.

*Le Vie dei Fiumi* Project is devoted to record all the features of the involved CH, especially the less known ones, through the digitalization of (tangible and intangible) CH in order to favour preservation and accessibility. The *modus operandi* of the project is based on a network approach capable of involving social actors, discussion of topics and sharing of resources.

The participants to the project are: the CESTUDIR, the Management Department of Ca' Foscari, the Scuola Grande Arciconfraternita di San Rocco (Venice), Municipality of Nove, Arti Rappresentazione Association (Vicenza), Nove Terra di Ceramica Association (Nove), Faro Venezia Assocation (Venice) and Bochaleri Association (Venice).

Aiming at an effective cooperation, relationships with secondary schools constitute a priority for the *Le Vie dei Fiumi* Project: the intent is to actively involve those schools and institutes with an artistic specialization in a patrimonialization work, concerning territory and cultural landscape. The creation of a network of schools engaged in the project is fundamental in order to gather, exchange and preserve identity, history and continuity of the different territory knowledge and perceptions.

The project's scope is to embrace the art, know-how, memories of places

and the connections between mankind and nature. This approach is possible through a historical, documentary, artistic and performative *fil rouge* which could be formative for new generations, stimulating attention on important aspects and profiles about knowledge and CH which often are considered only secondary. The project is devoted to establishing a connection aimed at improving knowledge of a part of the territory of Regione Veneto.

The means that can be exploited for motivating this process are various: historical and artistic tools concerning a peculiar feature of Veneto's heritage; performative arts preserving the memory of events and the direct contact with the people who live, work and know the territory.

Relating institutional approaches and participatory methods may stimulate conscious reflections about history of places. Against the prevailing trend of a touristic monoculture, which is trivializing also the Venetian culture, focus must be directed on more human-scaled and full of history touristic routes.

#### 4 Participating to a Heritage Walk

The focus is now into one of the Faro Convention's implementation instruments: the heritage walk.

In the occasion of the 2016 European Heritage Days dedicated to "Culture is Participation", the Office in Venice of the CoE promoted and coordinated the organization of heritage walks extending the area beyond the Venetian lagoon. *Le Vie dei Fiumi* project organized and managed two initiatives, respectively in Nove and in Vicenza. The latter has been organized in cooperation with the UNESCO Club of Vicenza and it proposed two itineraries, one on the river and the other around the city centre, which both offered opportunities to know the city from different perspectives. In Nove (Vicenza), home to the ceramic artistic crafts, the participants in the heritage walk *Nove l'Arte della Terra* had the opportunity to visit the Alessio Tasca's factory; he was an artist and ceramic designer who, in the '80s, operated the renovation of an ancient ceramic factory and managed to turn it into an environment filled with art and passion. Fabbrica di Rio varotta is usually inaccessible to the public audience though it has a high cultural value which would deserve to be known, shared and valorized (cf. Meneghello 1989).

Our witness has been Marina Tasca, Alessio's daughter, who moved and involved the guests by narrating the story, the aspirations and desires of her father while he carried out this unique project.

The walk continued with the visit to the Baccin Cecchetto Stringa Mill, also called 'Mulino Pestasassi', as it was used to ground the stones of the Brenta river then used to create the ceramic paste, paint and glaze. Since June 1991, the Mill complex is under the protection of the Soprintendenza



ai Beni Ambientali e Architettonici del Veneto and has been declared an especially important building by Italian Ministero per I Beni Culturali (cf. Stringa 1968). Besides getting to know its important history, which highlights the connection between the Serenissima Repubblica and Veneto's mainland, the participants had the chance to talk with one of the Stringa brothers, owners of the site, who addressed curiosities and doubts of participants about also the current ceramic business.

The third and last part of the heritage walk was the Ceramiche Barettoni ex Antonibon factory with Mr. Barettoni, its owner who was a great witness and storytellers about his factory, his workers and decorators, and his family. Barettoni Company is the most ancient in Nove (VI) and on 18 April 1732 received concessions by the Serenissima Repubblica for ceramic objects production. The social privileged reserved to certain professional figures working in this domain allowed to reflect upon the role of the craftsman artist and his evolution in time. At the end of the heritage walk, an artistic performance called "Sorgenti" was proposed and organized by Arti della Rappresentazione Association; it was a generative metaphor of Mother Earth about which the painter Marilena Cipro has created and exposed some artwork inspired by the theme of the performance. Curators, storytellers, artists and participants shared a convivial experience where feedback and impressions have been collected.

The brief report on the experience is necessary to introduce and analyse the characteristics of the heritage walk instrument. First of all, the heritage walk promotes the knowledge of the *genius loci* of a territory and to create with it identity and awareness' connections. A heritage walk is structured upon three fundamental elements: the topic, both transversal and multi-disciplinary, the places and the witnesses. The chosen places for such an activity must be significant, as they represent the connection with the identity of the territory and of its inhabitants. Sites usually inaccessible to the public audience are usually chosen, in order to promote the knowledge of something culturally highly valuable but external to the traditional touristic itineraries. It is important to underline the importance of the action of opening a closed space to the visitors, so that the community takes possession of the CH and includes it again in its imaginary and knowledge. A witness is someone who works and lives in the context who is being visited and he/she represents the living historical memory of the events and history of the cultural landscape.<sup>6</sup> In the attempt to detail our topic even more, it could be interesting to examine what a heritage walk is not.

Firstly, this tool has nothing to do with traditional school education, as it excludes the Teacher-Learner relationship; knowledge is in fact acquired through interaction. Secondly, in such a context, marketing and

6 URL <https://farovenezia.org/azioni/le-passeggiate-patrimoniali/> (2017-12-15).

business are not taken into consideration since the goal is not political or commercial promotion, but knowledge and authentic valorization. Finally, a heritage walk cannot be considered a mainly tourist product in its traditional meaning. This consideration arises from the fact that during this kind of activity we do not transfer processed knowledge and the figure of the tour guide is substituted by the one of the witness. The favoured logic in this process is the one of the encounter, that means meeting someone and share emotions, experiences and stories. This direct contact with the CH consents the creation of identity connections with the territory and to build or rebuild the reality as it is perceived and lived by the community.

Moreover, the heritage walk is planned by the same members of the heritage community involved, becoming thus an instrument of aggregation, knowledge, sharing and cultural participation.

The latter evidently represents one of the three pillars that makes the heritage walk a complete and functional cultural offer. First, it allows to express and respect the right of CH: every citizen has the right to take part to the cultural life, promoting thus an active awareness aimed at re-taking possession of the tangible and intangible CH, which includes values, stories, traditions of the cultural landscape.

Citizen is involved and included in cultural transmission and valorization process. The role played by the concept of *common good* is particularly important in this context: during a heritage walk we have access to places which - in a more or less recent past - conserve a specific identity value, as in a traditional sport practice, a cultural practice, a traditional knowledge. In this sense, thus, a place constituting a collective property and implying and collective usage by the community, it is fundamental to build the connection citizen/inhabitant and territory. From a cognitive perspective, the communicative method similar to storytelling starts a profound memorization process, since various connections between different types of memory are made (active working memory, passive working memory, long-term memory).<sup>7</sup>

The single participant to a heritage walk activates an empathic and generative listening, to increase one's knowledge and meta-knowledge dynamically and recursively.

Given the above it is evident how taking part to a heritage walk is useful and constructive. The user is enriched and stimulated, he lives personal experiences that brings him/her to knowledge also through emotions and human relations, he improves his personal culture.

In this analysis, we want to underline how taking part to the planning

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7 URL <http://www.christopherspenn.com/2014/08/the-cognitive-importance-of-storytelling/> (2017-12-15).

of a heritage walk develops virtuous dynamics. Focusing on the process, the heritage walk becomes the output of a *formative participative process*.

The consequences in this case are deeper, with results on the HC both on the short and long term. Among the different consequences, we can count intergenerational and intercultural meeting, activation of complex competencies and learning networks and the usage of a real participative approach in order to implement an authentic valorization of the tangible and intangible CH of a territory. Finally, it is possible to point out that the community is not only invited to know, but it also becomes the protagonist and maker of a cultural, social and value productive process.

## 5 A Pedagogical Approach for the Planning of a Heritage Walk

This final section is devoted to refining the format of the heritage walk with a proposal concerning its design and planning. The Faro Convention proposes a collective process for taking consciousness towards

a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time. (art. 2(a))

As yet, no guideline of any sort defining or structuring the planning phase of the heritage walk exists. However, it is clear that the heritage walk represents a product made by citizens for citizens. The process must be bottom up wise, not the contrary. But the question is: how? Which is the best way to stimulate the participation of a single person to such project? Moreover, how is it possible to let people have the right to be an active part in the cultural life of a city or territory in general?

Giving a model to this creative and designing phase, could extend the importance of the heritage walks. In this way, the it acquires added value and becomes more effective from several points of view: since it achieves social and pedagogical goals, as well as cultural ones.

It will become a Faro Convention application tool that reaches real different and important social goals as well as educational and cultural goals.

Specifically, it is suggested to adopt a particular formatting and educational tool, which is relevant for the projecting of a heritage walk: we refer to the learning approach called 'Study Circle'. This methodology represents a good practice of active citizenship and it's useful for the empowerment of both individuals and communities. In such a way, each HC can find the right place in the society and it is supported in recognizing

its value and knowledge within a context of democracy.

The Study Circle is a self-managed educational modality for adults. Both goals and programs of the Study Circle are directly decided and scheduled by the participants. In this context, the mentor has a very important role, as he/she is the person appointed to monitor the activity of the group in all the meetings and helps to support the execution of the educational program. At the end of the activities the lesson learned are made concrete through a specific product, i.e. anything useful for the growth of the community. This product is well selected and designed by the participants.

The Study Circle features the following characteristic:

- non-formal: this means it is not a traditional teaching. The program is flexible and structured by the participants themselves according to their own requirements or needs;
- self-directed: both final goals and products come out exclusively from participants decision and therefore they are decided by the Study Circle itself;
- experiential: each single participant carries his/her own experiences into the group, so he/she contributes with his/her individual knowledge and experience to the overall circle;
- collective: the effectiveness of the Study Circle depends from the level of cooperation and sharing of knowledge and experience. Only if each participant offers his/her personal contribution and shares within the group the acquisition of new integrated knowledge may become possible.

*The Mentor manages and coordinates the Study Circle:* he/she facilitates the learning inside the group by creating the best working conditions for cooperation and good relationships among the participants. He/she establishes a positive context and creates good motivations.

According to this model, the heritage walk plays the role of the product of a Study Circle. A group of citizens personally and actively participate to the understanding and valorization of its territory.

The single individual, the participants, the group, the HC and the overall population will benefit from this learning process, whose outcome is constituted by the cooperatively designed heritage walk. This can be seen as the result of an educational process, self-standing, bottom up, in the hands of the citizens.

So far, heritage walks have always been thought and designed by single individuals or associations. On the contrary here it is proposed a different *modus operandi* taking into consideration the process which leads to the design of the heritage walk.

On these basis, it can be claimed that participation is the best way to obtain a real democracy in culture. It's well know that culture is one of the factors that contribute to improve the quality of life and a better use of free

time which can favour longer life expectations (Grossi, Ravagnan 2013). According to this statement, the fundamental aspect of this proposal is the learning process performed during the design phases. The methodology used within the Study Circle is coherent with the one of Ricerca Azione Partecipativa (Orefice 2006): starting from concrete real-life topics of and going through a path which involves analysis and research guided by the mentor. The educational goals are effectively reached thanks to the relationships and connections held and developed during the knowledge process: mutual exchange and sharing activate learning process which is very different from that delivered by standard school or Academia.

The Cooperative learning (Comoglio 2000) which underlines the *study circle method* involves individuals and makes them work together for a common goal, featuring: positive interdependency, individual responsibility, face to face interaction, support to a more effective way to use personal abilities and job evaluation.

Several researches and studies expressed the idea that when correctly used, 'cooperative learning' gives superior results in terms of quality than the traditional education as it guarantees a better learning, it facilitates the development of high level cognitive abilities, it promotes a strong attitude to work in team and helps people to have faith in themselves (2000).

In conclusion, the Study Circle is a tool mainly addressed to the local development exploiting a concept of development which is in line with the concept of change: the focus is not on quantitative growth but more specifically on quality, social and cultural values. For these reasons, it is important to improve the FFAs by making them more effective, and it is also important to promote such participating cultural praxis, above all when it concerns long-life learning for adults and school education.

Going back to art. 7 of Faro Convention, para. b) urges to find a way to equally manage all those situations in which CH is understood in different ways by different communities. This kind of participatory learning may provide a starting point. Knowing ourselves and our historical and cultural context foster everyone to become an active citizen within a process of building up a cohesive society and it also activates virtuous dynamics against the loss of European cultural values.

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## **Drifting Gondolas**

### **The Precarious Present of an Artistic Artefact**

Elisa Bellato

(Università degli Studi di Verona, Italia)

**Abstract** Gondolas are still potent Venetian icons. Nonetheless, now they face a profound identity crisis, as a consequence of market trends and the use of new materials and techniques which are radically changing the way they are built. From a wider perspective, the juxtaposition between the new ‘gondola *simulacrum*’ an empty symbol without any artisan quality and the traditional ‘gondola valuable handicraft’ reflects the clear dividing line between the city of Venice crossed every year by almost 30 million tourists and the living city animated by inhabitants and original activities. In this way the process of gondola’s heritagisation (recent attempts to candidate it in the UNESCO List) becomes a lens to read the destiny of an entire city where resilient energies, not properly native but deeply rooted, look for forms of survival to mechanisms of mass tourism.

**Summary** 1 Introduction. – 2 Icons and *Simulacrum*. – 3 Subversive Artisans. – 4 ‘Autochthonous’ Gondola. – 5 A New Heritage Identity.

**Keywords** Venetian craftsmanship. Gondola’s heritagisation. UNESCO.

## **1 Introduction**

This paper aims to report the challenges and the main results of an ongoing research which has begun some years ago. My involvement has started after the El Felze association’s decision to propose the craftsmanship of the gondola to be included in the UNESCO Representative List of ICH. I was asked to cooperate due to my experience in CH field, particularly in view of the identification and cataloguing of ICH, as required by UNESCO to application path.

The first meeting organized by email took place on the ridge of San Sebastian on 2 December 2011. After the visit to the different artisan workplaces (*squero* of San Trovaso, *squero* of Dorsoduro, the workshop of *remèr*), the meeting ended at the Malcanton’s seat of the university.

I consider a characteristic feature of this experience the merger and the alternation of the academia and of craftsmanship. And this precious balance has been made possible thanks to a sort of *cultural mediator* such as Saverio Pastor, president of El Felze, who is in some way between these

different worlds.

That day at the beginning of December caused a substantial change in my relationship with the city of Venice or at least with a part of it. From being a resident of the hinterland (few dozen kilometers far from Venice) confined to an outside look, and being only a curious tourist more or less tolerated, I gained an involved, privileged role of those who have access by invitation to niches of intimacy of one of the most popular places in the world. A town used for defence to stereotypical convenience facades, if not explicit hostility. After that symbolic investment (even if without formalized assignments), the overall sense of my presence in Venice has changed. I began to feel a little part of a place geographically close but always perceived as an 'elsewhere' reserved to a few. A reality accessible only through the exterior of the appealing beauty, but isolated from every trace of true life. After that first passage with initiatic value, there were many meetings and occasions to share views) with El Felze's artisan and other venetian residents involved in the topic.

The study has been conducted using the classic ethnographic research methods through participant observation, bibliographic insights, interviews, informal chats and a lot of reflections shared by e-mail too. Between 2013 and 2014, a part of the research was funded by Regione Veneto. The raise of awareness of the Venetian context towards the topic suggested the Bureau of Strategic Projects and Community Policies to involve the craft of the gondola in the cataloguing program provided by the project *Adria-Muse*<sup>1</sup> focused on traditional maritime professions. Within this regional project, I recorded interviews to El Felze<sup>2</sup> craftsmen, contributed to the realization of short documentary films about some construction phases as well as about the launch of the gondola and some aspects of the social life in Roberto Tramontin's *squero*.

Now the investigation continues with the dilated times of free research and with the integration of the Facebook tool which almost daily provides updates inside its typical dimension, disengaged and alternative, between real and virtual. It provides me updated information about initiatives, news, public and private concerns, about artistic craftsmanship and the transformations of the Venetian social context.

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1 Project *AdriaMuse* is a cross-border project of the Cross-Border Cooperation Programme IPA Adriatic 2007-13, co-financed by the EU.

2 Giuliana Longo milliner, Ermanno Ervas smith and restorer, Saverio Pastor builder of oars and *fôrcole* the rowlock or oarpost, Roberto Tramontin *squerarolo* gondola builder, Antonio Peroni ebanist, Matteo Tamassia boat builder, Michele Pulliero apprentice gondola builder.

## 2 Icons and *Simulacrum*

A gondola is still a potent icon, a unique symbol recognized internationally. Nonetheless, despite being a peculiar Venetian product, it faces a profound identity crisis, as a consequence of the use of new materials and techniques which are radically changing the way it is built. Authenticity, quality, beauty, uniqueness - these are just some of the celebrated requirements called into question by a Venetian market which put pressure on artistic craftsmanship. As means of transport, gondola has always been included within a series of models and techniques which are evolving so as to keep pace with to contemporary needs. Nonetheless, a violent break is about to come and this cannot be brought within the terms of an evolving tradition. Now transformation is too violent to be re-absorbed by a naturally moving tradition

and gondolas seem destined to be transformed into mere shadows of their former selves, emptied of all their value and traditional knowledge; the same elements that made them a symbol of the 'Venetian thousand-year-old water civilization'. (Saverio Pastor, speech at the *Scuola Grande di S. Teodoro* Conference, Venice 9 May 2012)

What is actually happening is an almost invisible metamorphosis, apparently inconsistent to inexperienced eyes.

It might seem paradoxical after what we said, but gondola, as good, is enjoying good health: it is still the Venetian symbol that has never put into question. Even though there is neither the risk to disappear nor the possibility to be confined to a museum as many other historic artefacts of recognized value, it is no longer clear what should be considered a 'gondola'. In other words, *what makes a gondola a gondola?* Is it possible to identify an essential core which allows -beyond the changes- to recognize the gondola?

Over the centuries, several small and big transformations had an impact on its shape and on its typical imbalanced line. Let us mention here some of them. It can be clearly noticed in paintings and historical photos that the gondola used to have a less curved line: the *imbananatura*<sup>3</sup> (banana shape)

<sup>3</sup> The *fracadura* is the procedure through which the gondola takes its typical half-moon shape. The degree of the hull curving is decided by the gondolier. "When there will be the *fracada* 'banana' shaping of the boat, the stern and the bow will be, while heating, squeezed by some points from the ceiling until it turns out to have the line that the gondolier requires. Some prefer an impressive gondola and you notice this vessel coming ahead. It is like a curvy woman, it is stunning. The low ones are anonymous instead". Interview of the writer with Roberto Tramontin by his *squero* boatyard in Dorsoduro (January 2014) during the cataloguing of the ICH of the small-scale traditional Venetian boatbuilding, sponsored (2013-14) by Regione Veneto.

is only a contemporary trend. Moreover, the Felze – a discretely curtained shelter for the passengers – was removed because it did not respond to the contemporary needs of tourists and it increased instability. And today, high water, which is more frequent than in the past, led to choose a hinged *ferro* ('ricciolo' metal design) on the stern, which can be moved to one side to facilitate the passage under the bridges. Another element is that even the typical black colour was a result of a turning point which occurred at the beginning of the 17th century. Also the techniques changed over the years, at the end of 18th century the hull was pitched by the caulkers while today it is painted; the importance of the pitch still remains in frequent common expressions such as: "*impegoeà, che pegoea...*".

The old hatchet masters used to buy durmast trunks, 12 meters long, and keep them inside the *squeri*, as long as it was necessary to have them completely dried. Today the process is industrial and no longer takes place in Venice.

The changes confirm the dynamic evolution of the gondola as well as of the *craftsmanship community* surrounding it. This can be considered as part of a natural process of renewal. Nonetheless, the transformations recently introduced by some *squeri* are well beyond what is necessary to guarantee a renewal of the tradition, and they rather wipe out centuries of history, keeping just the façade of it.

The gondola is celebrated as part of the most interesting Venetian tradition and represents centuries of high refined skills that are transmitted from generation to generation. Nonetheless, what remains today is only a minimum of manual skills at the expense of historical craftsmanship whose market is shrinking. Accordingly, the *gondola's system* is at the centre of a paradox: the profession of *gondoliere* is thriving, and the category includes 433 licenses, 180 substitutes, and young trainees ready to become substitutes and be included in the list of places made periodically available by the City Counsel.

While the demand of tourists for 'gondola tours' does not decline, some of the historic workshops involved in the process of construction of the gondola and that sell accessories shut down or face unbearable difficulties. The artisans who preserve the 'traditional' procedure focused on quality, who create original pieces avoiding mechanized reproductions and who continue to employ premium raw materials are the ones to be most affected.

This contribution starts from the experience of a group of artisans who gathered in the El Felze<sup>4</sup> association in 2002 "to count how many they

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4 The association gathers the following artisan's categories: *squeraròli* who build the gondolas; *remèri* specialized in the oars and *fórcole's* production; *intagiadori* create chisel and carving decorations; *fravi* forge and restore the stern and bow's 'ferri'; *fondidori* make the brass accessories; *battilloro* obtain by beating the very thin gold leaf and *doradori* who lay the gold leaf on the wood parts; *tapezzier* make the *pareci* fabric decorations such as

were, to be considered, and to tell”<sup>5</sup> (Pastor 2014, 54). Their purpose was to offer a different meaning to their personal and professional experience and to attract the attention on a process that otherwise could have remained unknown; considered as a sad but inevitable adaptation of the gondola to modern times.<sup>6</sup>

The peculiarity of some of the protagonists, -figures split between the world of the craftsmanship and the one of the research- led to the creation of dynamics and relationships, which raised the attention of some local institutions such as the University and the Region. On this issue, UNESCO and, in particular, the 2003 Convention provided theoretical and partly practical tools to renew the role and the meaning of the work of the gondola’s artisans, who have become the symbol of what Venice is losing with the progressive reduction of the local residents to the advantage of the exponential increase in the number of tourists:

The mixture of the functions of the historical city dies and the tourist-hospitality monoculture steps in. (Settis 2014, 12)

The difficulties of gondolas is typical of the contemporary craftsmanship, but at the same time worsened by the Venetian context with high rental costs and a real estate market that is out of reach for the local residents. Administrative and normative formalities disadvantage workshops, while unfair competition deriving from the black market labour and the new techniques (still to be considered as craftsmanship) which are appealing in terms of low costs and time required to obtain the final product. From solid wood subject with a long drying process it is changing toward cheaper marine plywood which requires less maintenance work. Accessories which were traditionally entirely handmade and often personalized accordingly to the gondolier’s preferences are now replaced by series production: *forcole* (rowlocks) can be reproduced by machines; *ferrì* (metal hood ornament) on the bow are neither hand shaped nor adapted to the gondola but they are now printed on a stainless-steel plate resistant to the salt air;<sup>7</sup>

the seat covers; *baretèra* make straw and wollen cloth hats; *sartori* are specialised in the production of the gondoliers’ uniforms.

5 “Per contarsi, per contare, per raccontare”.

6 For instance, Saverio Pastor remembers the shutdown during the post WWII of the Arsenale as State shipyard and at the end of the ‘50s the affirmation of the engine which caused the end of several traditional vessels (2014, 53).

7 Ermanno Ervas senior blacksmith and restorer highlights as the *ferrì* made in stainless steel and with the milling machine are chunky while those worked with the forge are drawn thin up to 2 millimeters. He also stresses that the iron requires some maintenance and needs to be protected in order to avoid rust and erosion caused by the salt air. Once it was used to pass them with pork fat. Today the protective substances have changed and

the brass prancing horses<sup>8</sup> which required long polishing sessions are now available in plastic. The overall result is a gondola or its simulacrum that allows a cut by two thirds of the production costs and time, also reducing the need of maintenance.

Overall, the changes concern the whole small shipbuilding industry of the Venetian lagoon where now the boats are almost entirely in fiberglass or in marine plywood; cheap materials, steady and easy to handle that make superfluous the know-how acquired after long training which is indeed necessary to build planked wooden vessels.

Renovation, based on reduced costs and practicality, has led to consequences in the shape of the boat, such as the loss of the smooth and blunt lines, core elements of the nautical design and proof of the boat building ability to bend wood:

The curved line represents the cognitive horizon of the boat builders, their challenge and their destination. (Sanga 2009, 123)

Curving that is never perfectly replicable, it is fruit of sensitivity stemming from a long experience and it is the deal between the artisan and the seafarer<sup>9</sup> in a progression, almost anatomic, of adhesion to the unstable flow of the water which rejects any straight line. We can therefore understand the deep change of these new boats characterized by simplified lines, which put an end to the natural relationship of mutual adaptation between the man and the water to be sailed. Thousands of connections are undermined by the revolutionary introduction of the engine and of synthetic building materials. This changing is almost more critical when involved the gondola, “the greatest example of constructive sophistication of the Venetian boatbuilding” (Munerotto 2011 in Pastor 2014, 55).

### **3 Subversive Artisans**

In the middle of this critical situation, while an entire world was being dismantled, a significant event was capable of renewing the perspective of the El Felze association artisans. In Venice, in October 2010, a conference

the mineral wax has replaced the animal fats. Interview of the writer with Ermanno Ervas at his smithy in Preganziol (TV) (February 2014) during the cataloguing of the ICH of the small-scale traditional Venetian boatbuilding.

8 They support the ropes on the side of the passenger’s seat.

9 “Its oar cuts the water as a razor and at the same time as a feather it lines up to the sequence of the movements guaranteeing the boat’s flow without jerks and without waste of vain energies...”. Comment collected from Facebook which gives an idea of the type of communication which takes place between client and artisan (Saverio Pastor).

took place<sup>10</sup> entitled *Tangible Properties, a Human Heritage to Save* with a dedicated session to the venetian reality.<sup>11</sup> Local traditions in terms of ICH were officially at the core of the debate: from the gondola to the Venice carnival, from Murano glass to Burano lace, to the tradition of refined venetian fabrics. More specifically, the application to Unesco's ICH list was described as an easy step considering the extraordinary characteristics of 'gondola'. From that moment, the gondola craftsmanship entered a new era: the gondola has become part of the heritage landscape, so new meanings have been put into play and some of the actors showed to be able to manage a practice of heritagisation as an opportunity to deal with new strategies of survival. In that respect, it is interesting to point out the possible ambiguous meaning of the expression 'bottom up' referred to initiatives which, when studied in depth, reveal the involvement of experts. They in fact are the only ones able to think about and to model process of heritagisation by applying the UNESCO Conventions.

Furthermore, it is worth pointing out the emergence on the scene of a typical process: as soon as a cultural reality becomes an object of interest by the UNESCO, it is transformed into a metacultural production. It is revealed as part of external system and so used between quotes (Ciminelli 2008, 326). In several occasions, even official, it has been repeated in an ironic tone to take some distance from the logics that are perceived as unrelated to which some try to adapt: "We, artisans, have realized to be 'healthy bearers'<sup>12</sup> of ICH". The process of the gondola's heritagisation coincided with a rereading of the traditional Venetian craftsmanship and highlighted merits that had already been known as well as recognizing different ones suitable to contemporaneity. For instance, the civil value of handmade work of quality has emerged:

We ask for the support of our 'bearers of intangible heritage' because they contribute to improve the society by witnessing thoughts, knowledge, creativity and manuality. (Saverio Pastor, speech at the *Scuola Grande di S. Teodoro* Conference)

The requests put forward within the working place have found echo inside the local disorientation suffered by those who are directly experiencing

10 Organised by VTP Events at Venezia Terminal Passeggeri S.p.A. operator of Porto Passeggeri di Venezia.

11 The title of the session: "The Intangible Cultural Heritage: a World Stage for the Venetian Traditions".

12 The translation does not make the idea of words game: *portatori sani*. It is an ironic expression that paraphrases a medical figure of speech in order to stress the strange impression to discover to be 'studied' and of interest because of their traditional job now defined ICH. In this sense *portatori sani* are who bear some illness without knowing it.



Figure 1. Launch of the gondola commissioned by the gondolier Mauro Barugolo to Tramontin's squero (Dorsoduro Venezia), 25 April 2014. © Photo by Ugo Perissinotto

the evolution of Venice into a 'no-place' (Augè 1999) or *nobody place* (Sloterdijk 2006): that is spaces that are only crossed and not lived, where relationships are not built and therefore lack of any sense of belonging and identification. They are functional only to practical and basic needs managed by the great economic systems: to move, to eat, to enjoy, to sleep...

The hatchet and forge masters and their colleagues are united by the quality of the gondola's production chain and have become the spokesmen of a common feeling that can be recognized by the defence of values at risk: the mastery, the quality of work and material, the uniqueness of the pieces, the products personalization, professional ethics, the respect cultivated in long relationships between the client and the artisan, the rarity of the techniques, the tradition that looks into history, the sense of belonging to a rooted corporation. These aspects are celebrated in craftsmanship, but they also work as metaphors to identify a life system that is perceived as a connection to the destiny of a city which is at the mercy of the crowd. Mass of people fast moving and superficial, rapacious and offensive because it is insensitive to the context and its local residents. "What time does Venice close?": this is only one of the several anecdotes





Figure 2. Music at the gondola's launch party. 25 April 2014, squero Tramontin (Dorsoduro Venezia). © Photo by Elisa Bellato

told by residents that synthesize the local imaginary about tourists' attitude toward a Venice-amusement park.

From a wider perspective, the juxtaposition between the 'gondola simulacrum' an empty symbol without any artisan quality and the 'gondola valuable handicraft' reflects the clear and sad dividing line between the city of Venice invaded every year by 30 million tourists and the

true, living and liveable city animated by inhabitants and original activities integrated into a healthy and respected lagoon. (Pastor 2014, 69)

In the Venetian urban context, in fact, gondolas are nothing more than tourist attractions while workshops and *squeri*<sup>13</sup> are very visited and pre-

<sup>13</sup> The celebration for the inauguration of a gondola at the *squero* boatyard can be interpreted as a 'total social fact' (Mauss [1924] 2002), an event where come to play several elements that define a community: work structure, propitiatory rituals, food distribution and party drinks (in today's Venice it is strictly fish and prosecco wine), music and dance to celebrate, the clients gondoliers and their family's structures and all the guests, friendship

serve feelings of solidarity and local estimate.<sup>14</sup> It seems it is possible find in craftsmanship a common ground of shared values as symbols of difference.<sup>15</sup> The reference is to those “convivial forms of territorialisation” that are essential for

the communities that are able to find in the local characters of living their reason of existence, in a profound reconsideration not only of the settlement styles but also of the ethics that governs the choices of a community. (Bonesio 2009, 113)

Thus, the craftsmanship model fits into an existential model linked to a certain quality of lifestyle which explicitly refers to Richard Sennett’s work ‘The Craftsman’ which underlines the civic value of quality handmade labour as a guardian of pluralism and creativity as well as sponsor of social and community relationships. He eventually posited that: those who learn to work well will also become a good citizen able to recognize and activate procedures of good government (2008).

This pondered vision of their own profession led the artisans of El Felze to disagree with the text of the economist Stefano Micelli “Futuro artigiano” who argued in favour of a combination of craftsmanship and high technology and therefore for a collaboration between engineers and communication experts. They found in Micelli’s analysis a glimpse of mystification on the role of the artisan which is misunderstood as a manufacturing worker, a maker without tradition employed by the industry. For them the cultivated and experienced idea of the artisan is quite different and appears to be incarnated by those who are responsible for all the stages of the production in an autonomous and creative way.<sup>16</sup> Autonomy, the total control of the whole process (from the design also in collaboration with the client to the direct sale) are considered crucial and incompatible with

relationships, work corporation relationships (gondoliers and artisans), the organisation of the space, the ritual’s aesthetics...

**14** El Felze from this point of view benefits from a shared support. Who writes, for example, attended a dinner offered to the association as surprise by the hosting facility that didn’t want to be paid since “You, artisans, represent the ‘true Venice’ and it is a pleasure to welcome you”.

**15** In that respect, consider the success of the initiative ‘Disnar per la Storica’, collective dinner organised 26th August 2016 at the initiative of El Felze and with the contribution of several rowing associations. The tables were prepared in 12 different parts of Venice and showed a participation of over 2000 people who were enthusiast to take part at an event that recommends different ways to live the city and above all encourages the participation to the Historical Regata as a manifestation that is symbol of the venetian nautical tradition.

**16** Speech of Alessandro Ervas (a blacksmith expert in restauration techniques) member of the El Felze association at the *Patrimonio culturale. Scenari 2015* Conference, organized at Ca’ Foscari University in Venice 26-28 November 2015.

a single action in an industrial chain context where the different stages are fragmented. Nowadays hand-craft of quality becomes inconvenient, poorly understood and almost subversive in an age prone to rationalisation and to acceleration based on standardisation. Master *remèr* Saverio Pastor clarifies how anachronistic seems the traditional process considering the time required to reach the outcome:

From the moment the tree is cut down to the moment the *forcola* touches the water there is a time lapse of three years (personal communication)

The interventions of inlay décor of a gondola, for instance, may take months between the project of the design shared with the client and the execution with the chisels:

first there is the agreement on the subject with the gondoliers who may already have some samples or they may already know what they imagine, the drawing on paper and then, once the design is approved, the pattern can be finally traced on the wood and the real carving work can start and it may take up to two months.<sup>17</sup>

To perpetuate these procedures means to carry on with almost a form of guerrilla which contradicts the serial making, the standardised and easy know-how and the modern system which nurtures them. In this respect, the antagonist role carried out by the artisans of El Felze is in contrast with the dynamics currently established in Venice<sup>18</sup> and it is linked to distant suggestions that confirm, although in a different way, the specific contribution of the role of the artisans and their workshops where they learn to work with continuity and with codified rules that could be also alternatives to the models of the society of reference. In this way, the apprenticeship does not exhaust with the training of handicraft work but becomes a real social pedagogy (Herzfeld 2003).

#### 4 'Autochthonous' Gondola

The gondola of the post WWII has lost its original bond with the city. From means of transport *de casada*, a sort of water carriage for wealthy families,

17 Interview made by the writer to Antonio Peroni, a wood carver at the *squero* Dorsoduro (March 2014) during the cataloguing of the ICH of the small-scale traditional venetian boatbuilding.

18 It refers to a globalised market that is always more and more common in Venice which is based on the sale of imported industrial products of low quality and price that are more or less obviously counterfeited.

distinctive symbol of representation based on the richness of the structure and of the décor, now it has turned out to be strategic for the marketing of a territory that synthesizes Venice only as a tourist attraction. Gondola is thus a symbol of success, then, but is increasingly losing all inner meaning related to the place where it is rooted. The whole gondola system, from its repertory of 'traditional'<sup>19</sup> songs chosen for their international appeal to the clichés proposed by gondoliers to their clients, solely responds to the logic and mechanisms of mass tourism. This form of tourism needs only slogans, quick and simplified messages and stereotyped reading of the local area. Expression of this alienation from the local context are the gondoliers themselves in what seems to be a knee jerk reaction to the tourist invasion. Indeed, gondoliers have been ready to react to the tourist invasion of a place to which they are profoundly bound. This category was born as a closed 'casta', therefore almost limited to few 'indigenous' families connected to the historical city because of their origin. For long time, the license could only be transmitted from father to son or acquired through a long apprenticeship to replace an old gondolier without sons. Over the time this closure has also taken a form of endogamy imposed by a need since Venetians did not welcome the wedding of their daughters to a gondolier (Vianello 2011, 31). Then the reality of this profession has considerably changed and in 1993 a law was adopted to equalize the gondolier license and an ordinary commercial license allowing for free trade. As a matter of fact, the majority of gondoliers still belongs to families whose members have been gondoliers for generations and generations. For instance, the acquisition and transfer of licenses respond to internal dynamics and rest within a restricted circle of sons, relatives and acquaintances according to logics peculiar of a profession with great earning but also with a strong sense of pride and group identity,<sup>20</sup> due also to the 'Mariegole' tradition.<sup>21</sup>

On the opposite side, there are the artisans of the traditional boatbuilding who are an open corporation in direct contact with clients, mostly local. They do not inherit the job by bloodline but they conquer it on field through passion and commitment and it is a production that, when tested on the water, makes the difference. Thus, being a native-born Venetian is not necessarily a privileged condition. Nowadays several artisans come from the mainland or from other Italian regions.

19 The writer witnessed a venetian on a bridge to reproach on dialect about a song which was not properly local. The singer who was performing on the gondola replied justifying the song part of the tradition of Naples called 'Santa Lucia', as a tribute to the saint who gives the name to the Venice train railway station.

20 The category that, for example, described itself as "rebel, free and independent" (Vianello 2011, 63).

21 Ancient rules that regulated the gondoliers' corporation organised on *fraglie* and now on *stazi* places of arrangement and boarding.

## 5 A New Heritage Identity

From 2010, the El Felze association has been committed to obtain an application to UNESCO and it can be noticed that the 'UNESCO system' provided an instrument of empowerment (Ciminelli 2008, 328) giving strength to an image of gondola that does not depend on simple market mechanisms. Gondola made in series, cheap and requiring an easy maintenance, receives enthusiastic response from the majority of gondoliers who are interested in reduced costs and practicality. UNESCO's documents suggest new interpretative keys in support of an articulated analysis of the phenomenon that highlights also the value of what is getting lost: skills transmitted from generation to generation, professional communities, social balance and sustainable economy... Additionally, the heritagisation process elevated the gondola's tradition beyond the destiny of the single artisan becoming a sort of public good with a universal significance due to the interest in being part of the UNESCO lists.

The consequence is to share the commitment for the protection of the tradition:

if we are carriers of cultural heritage and this heritage is collective then it should be the community to bear at least part of the responsibility. (Saverio Pastor, speech at the seminar *Heritage Communities and Creative Enterprises in Venice*, organized by Regione Veneto and University Ca' Foscari, 24-26 January 2015)

It is therefore important to acknowledge the existence of a legal instrument such as the 2003 UNESCO Convention which introduces a new principle of heritage in favour of situations that were previously neglected. As Richard Sennet affirmed (2008), Western history has essentially underestimated the handwork. This general assumption in the little case of Venice means for instance that artisans belonging to El Felze are more and more discouraged and they conclude that "there is no longer room for us, artisans that produce artworks of high quality". In that respect, UNESCO and its legal instruments that introduce new approaches and guidelines for cultural policies and tools, such as the lists, are important actors supporting fragile cultural realities.

At the same time, however, we should acknowledge that some responsibilities need to be taken creating hopes where there is no chance. Until now, the attempts to propose the gondola as a candidate in the UNESCO List have brought no results:

The 2003 UNESCO Convention provides a representative list of the ICH of humanity, a register of the good conservation practices and management but also a list of ICH of urgent safeguard. We tried to add the

gondola craftsmanship on the first list (which seemed unreachable) we looked for good practises of safeguard experience on the territory (but frankly we could find none)...The last attempt will be the addition to the list of goods with a high risk considering the trend of our city's economy to exclude more and more our activities from its birthplace. (Saverio Pastor, Facebook page, 23 December 2014)

This comment was shared on Facebook in December 2014 by the president of the El Felze association who demonstrates the in-depth knowledge of the UNESCO procedures looking also at the Venetian craftsmanship overall situation and describes a condition of stagnation which has remained unchanged.

Otherwise, there is a dimension of heritage identity that is rejected or lived with discomfort. Maria Luisa Ciminelli analyzed the unforeseen consequences of the action of the intangible heritage safeguard under the auspices of UNESCO, pointing out how all this is a *metacultural production* that confers to the cultures in danger "a second life through the exhibition of themselves" (Ciminelli 2008, 364). Linking this observation to the case of Venice, it explains how to be artisans is not enough, since artisans need to show what they are and represent their own profession. This is perceived with uneasiness: "We, artisans, want to be artisans and not tourist guides".<sup>22</sup>

It is also true that the artisan's *habitus* has been changing and in order to survive to contemporaneity it needs to diversify its competencies. The El Felze association witnesses how the artisans today in Venice cultivates not only the typical skills of their profession but also create networks on an international level with a social capital that clashes with the image of the small workshop as a modest and isolated place. Moreover, they have to split their work time with communication activity, promotion, organization of events, conferences, publications, workshop attendance and video-making, proving to be cultural and social entertainers. The Venetian gondola's craftsmen act inside a new scenario which is characterized by a specialized workforce, a renewed awareness and new inputs. This perfectly reflects the innovative roles attributed to CH. It seems to be vested with a new responsibility, shifting from a context mainly characterised by aesthetic-cultural terms to a social, economic and political commitment capable of canalizing the needs of our time (Bellato 2015).

These expectations found a confirmation in the 2005 Faro Convention. The Convention posits that it does not make sense to talk about heritage if not related to the people who live that heritage as such. The legal instru-

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<sup>22</sup> Personal communication repeated in several occasions by different artisan members of the El Felze association.

ment identifies specific areas of action. For instance, if considered in relation to the Venetian case, it is recognized the heritage's cultural potential as factor of sustainable economic development (art. 10). Such affirmations are broad and can create legal obligations on States only upon ratification, but they for sure witness the importance of good quality of craftsmanship that has a positive impact on the social and environmental context:<sup>23</sup>

Through our work and history, we can offer a tangible model for 'the other economy' anxiously searched in the current severe state of economic crisis. Our professions do not exhaust the territory, they do not require any devastating infrastructure but they promote and strengthen the widespread and local economies, they have been producing certified products of quality which have been used for centuries and they have knowledge and skills able to create products that live their own time. (Pastor 2014, 68-9)

Finally, it is possible to affirm that the heritage dimension has offered theoretical instruments to this group of Venetian artisans to reinterpret their situation of difficulty and to support their own requests, which must be recognized as legitimate:

We know to be the carriers of knowledge and cultural heritage that are universally recognized and we ask to be able to work still under those same principles. (Saverio Pastor, speech at the Seminar *Heritage Communities and Creative Enterprises in Venice*)

Starting from 2010, these years of conscious heritagisation process have given an added value to the traditional craftsmanship of the gondola and, as a consequence, defended it from forms of 'touristification' and 'folklorization' which are perceived as an imminent risk for Venice. Nonetheless, it is difficult to assess the impact of these achievements on a practical point. The condition of difficulty for the El Felze artisans has remained unchanged in these years. And, meanwhile, there is a growing doubt on forms of exploitation and sensationalism. In that respect, the words of Marisa Convento, a *perlèra*<sup>24</sup>, shared on Facebook, reflects her own experience of artisan in the front line, and tells us a lot about the fears, the bitterness but also about her inner strength. This nerve comes from the capacity to read her own situation, and also from playing through possible solutions

<sup>23</sup> The environmental impact of the fiberglass vessels and the problem of their disposal is one of the topics emerged in meetings organized by the El Felze association as part of the annual review entitled "Storie sotto El Felze".

<sup>24</sup> A *Perlèra* is a woman working with Venetian glass beads.

(story-telling and ICH) that are suggested as safety nets.

More than a thousand years of history to see a city turning into an amusement park with no limits, free and reduced to a selfie factory just to prove that 'I have been there' and us, as artisans, we have been transformed into a jukebox of intangible heritage, of which soon no one will care about. (12 July 2016, Facebook)

The material culture is under all aspects a communication system. It can be interpreted as a real language that expresses the non-verbal and opaque aspect of the society. The gondola's precarious present in this sense has much to say thanks to its protagonists, the artisans, who provide interpretations broadly shared by the local communities. The gondola "autochthonous vessel" (Vallerani 2009, 9)<sup>25</sup> becomes the lens to read the destiny of an entire city where resilient energies, not properly native<sup>26</sup> but deeply rooted, look for forms of survival to the "globalized logic of the myth of 'growth' and its destructive and deculturating practices" (Bonesio 2009, 109).

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25 "Autochthonous vessel means a type of vessel used up to a recent past to cross a specific part of a river, lake or lagoon corresponding to the requirements raised by the peculiar structure of the hydraulic flow".

26 "Venetians were not born but made" is a statement that circulates frequently to justify, among other things, the strong bond with the city of those who have chosen to reside in Venice but coming from elsewhere.



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# **The Educational Valorisation of Traditional Knowledge: an Intervention-Research with *Tuleros*, Mayan Artisans of Atitlán Lake in Guatemala**

Glenda Galeotti  
(Università degli Studi di Firenze, Italia)

**Abstract** The article presents an Action-Research with the Tuleros Association of Santiago Atitlán, Guatemala, focusing on the analysis of skills that these Mayan artisans employ in the production process of *tul*, to create typical objects of Mayan and *tzutuj'il* culture. The aim is to test how educational valorisation of their traditional knowledge promotes the safeguarding of local biocultural diversity and the sustainable management of natural lacustrine resources. The ecosystemic analysis of the *tul* production integrates individual and collective perspectives on skills, but also detects how productive skills broaden within the context of reference, thus transforming it.

**Summary** 1 Introduction. – 2 Handcraft Production and Skills: the Eco-systemic Relationship between Dexterity and Intellectuality, Practices and Context. – 3 An Intervention-Research with *Tuleros* of Atitlán Lake. – 4 Educational Valorisation of Productive Know-how of *Tuleros* for Sustainable Management of Lacustrine Biodiversity. – 5 Conclusions.

**Keywords** Biocultural paradigm. Ecosystems research. Adult education.

## **1 Introduction**

The naturalistic view of human development considers the “production process” as a key activity for livelihood (Cirese 1984). It is made up of a series of procedures aimed towards accomplishing a goal – survival – that generate products, create social relations, and share ideas, knowledge and values. The object of these activities are the natural resources, that thanks to human action become social products that are historically activated and defined in their ecology by practices of control and by knowledge developed in the relationship between humans and nature over time.

At the same time, the environment is not a neutral reality in which humanity can intervene, project its ideas or its representations. It intertwines with the lives of the individuals entrenched in the experience of “specific bodies in a specific context” (Ingold 2004; Ingold, Palsson 2013). The latter includes both biophysical components and social, technical and cultural

elements (Cavalli Sforza 2010; Descola 2010). Overcoming the dualism of culture/nature, the biocultural perspective allows us to interpret the relationship between natural resources, traditional production practices and specific organisational forms.

Besides the qualitative and quantitative availability of natural resources, social structures of a given society influence the production. These arise from the interaction of the productive forces with the organisational forms and with the distribution systems of material goods; they depend on the social relationships, norms and ideologies but also on the technologies available (Godelier 1975; Leroi-Gourhan 1977; Warnier 1999; Angioni 2004, 2011). Therefore, production is always a form of adaptation to the natural and social conditions that are also the results of production modalities. This dual causality allows progress of productive forces and transforms society and its members. It activates an organic sphere between man and nature and leads to a specific experience of living the world in active, operational and collective forms common to all processes of human production.

A pedagogical perspective allows reflecting on the acquired knowledge that is used in the production and highlighting how that is closely linked to the human training process (Bruner 1973; 1986; 1990; 1996). In fact, the realization of a product implies in-depth knowledge on the life habitat and know-how to adapt and transform it through the material and immaterial appropriation of its resources (Ellen 1996). This mutual exchange between nature and humans modifies the environment and humans themselves, creating and sharing new and increasingly complex knowledge. It is the result of relations among individual and collective aspects, with rational, emotional and sense-motor dimensions involved in the human training process and, at the same time, medium and outcome of knowledge, uses and adapted to the living environment.

Therefore, the creative and productive work is possible thanks to the human mind in action. It is an embodied mind<sup>1</sup> that guides the action, producing meanings useful to settle in an area over a historical time, leaving tangible and intangible products of civilizations that make possible to live in human aggregates. These aspects are object of the studies developed by the so called pedagogy of labour, “a pedagogy that, alongside to the mind and emotions, focuses also on the arms” (Federighi 2010). This field of study and pedagogical practices interprets ‘work’ as a training environment for human development, and adopts the perspective of the theory of action (Leont’ev 1978; Engeström 2005). Here human action is described

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**1** Cognition (or mind) is embodied when it is deeply dependent upon features of the physical body of an agent, that is, when aspects of the agent’s body beyond the brain play a significant causal or physically constitutive role in cognitive processing (Wilson, Foglia 2011; Varela, Thompson, Rosch 1993).

and interpreted by referring to the *motivated activity directed at an object* and to the contextual factors that determine it.

Set in this framework, the article shows an intervention-research with Mayan traditional artisans, focusing on the analysis of skills that these people employ in the production process of *tul*, a plant that grows alongside the Atitlán Lake, used to create typical objects of Mayan culture. The aim is to test how educational valorisation of their know-how promotes the safeguarding of local biocultural diversity and the sustainable management of natural lacustrine resources.

Considering knowledge as a complex object, result of the relations between the biological and cultural components involved in the training process and those between human beings and life habitats, the study has adopted an eco-systemic approach (Bronfenbrenner 1979; von Bertalanffy 1968; Minati 2010) to detect how artisan's know-how broaden within the context of reference, transforming it in a sustainable way. On the other hand, the educational valorisation of this know-how transmits this sustainable knowledge to the whole community, transforming them into a shared heritage.

## **2 Handcraft Production and Skills: the Eco-systemic Relationship between Dexterity and Intellectuality, Practices and Context**

In spite of the variety of forms that are determined historically and culturally, production has always been a constant factor of human existence. It is expressed in units of dexterity and intellectuality. Manual skills develop through repetition of predetermined movements over time, whereas technical intelligence develops through the imagination, which then leads and guides manual ability. These two dimensions are not separable and they manifest in means and modes of production, as a set of operational concepts translated into action. The interchange between these two components is achieved mainly in the path from searching for solutions to the detection of problems.

Being an activity aimed at a goal, the skills and knowledge gained in the production are also expressed in the product design and in the planning of process, where physical and intellectual faculties are employed together.

Design skill provides the ability to anticipate, not only the immediate and overall results of the action, but also the prevision of their instrumental use, as well as of the means and tools useful in the production process or to produce other means and tools for the same scope (Cirese 1984).

Dexterity and intellectuality depend both on explicit and tacit knowledge

(Polany 1966) of the production process. The explicit dimension can be articulated and explained; it accompanies or is based on a tacit dimension previously internalized and incorporated that concerns sets of skills and abilities hardly formalized but rather transmitted by example and practice (Sennett 2008).

Automatisms put in place in certain circumstances allows selecting and implementing, often unconsciously, an effective action – direct to a purpose that is part of this second type of knowledge. Tacit knowledge does not only concern motor skills, but also includes the sense of objects, the world, the people with whom we interact, the emotions experienced in the body or dependent on the social relationships (Angioni 2011).

They are based on the vision of reality as an experiential corpus, in accordance with the definition proposed by Michael Polany and taken recently by Richard Sennett (2008). Experiential knowledge based not only on the operating rules and procedures, but also on the ability to adopt strategies based on complex cognitions that are the result of critical reflection, insight, deep understanding of the contexts.

For Sennett, the transformation of information and practices into tacit knowledge is a fundamental process for all technical skills. Learning a skill, we develop a repertoire of complex procedures to reach a continuous interaction between tacit knowledge and self-conscious awareness: the first one works as an anchor, the second one express a critical and corrective function. Tacit knowledge is connected to the material culture through the coupling between the sensory-motor behaviours and the objects, which embedded contribute to the subjectivities results in the acquisition of self-awareness (Gibbs 2005).

Therefore, know-how is not just about technical skills, but also contained into highly subjective perceptions, represented by subtle sensations, practice repeated in time and space, coordination among parts of the body and mind with the working tools and objects or materials.

On the other side, this knowledge is also the result of a specific production organization, in which each step has its own sense if connected with others and contributes to the shared heritage of working habits that combine ideas with things, thoughts with actions, meanings with practices.

Routine and systematic knowledge (embedded knowledge), barely formalized, are the result of experiential learning that manifests itself in the complex conduct of the body (embodied knowledge), immediately understood by those who share same frames of sense (enculturated knowledge). Here the emotional and rational, the individual and collective dimensions of knowledge are integrated in production processes and in the unity of intellectuality-dexterity of the craftsman.

Production knowledge also has a social and relational significance, linked to specific forms of language and communication, to values and identity shared by a specific community (Sennett 2012). Sennett also uses

the concept of embodied experiences to illustrate how physical work can instil in people a dialogic social behaviour.

To create an object in a context of collaboration implies the informality of interactions with others in bodily sensations, by means of the relationship based on credibility, trust and cooperation. Body gestures implements this relationship, because they are learned behaviours that create an emotional bond: in becoming experts in gestures, informality acquires a somatic and expressive quality.

Therefore, skills may relate to the fabrication of a specific product, but also to the organisational dimension of work. They can be expressed by a single individual or by a community of individuals engaged in the same production process. In this second case, the relational dimension determines the spread and distribution of knowledge among several individuals and even in the artefacts and tools used by the community for their production, in terms of social and cultural practices. In this way, skills emerge from social interactions within a given cultural space, so the context with its practices and mode of action not only contributes to create know-how, but is also competent and constantly developing through these processes.

To summarize, the knowledge used in a specific production derives from internal (mental and bodily) and external (social, cultural and environmental) processes for an individual subject, who operates in a context with specific resources (be them technical, instrumental, natural) to reach an objective and to realize a product. This knowledge is the result of complex learning resulting from the smart connections among a plurality of processes (individual, collective, rational, emotional and sense-motor) that unfold in the human training.

### 3 An Intervention-Research with *Tuleros* of Atitlán Lake

The action-research with the *Tuleros* Association of Santiago Atitlán aimed to test how educational valorisation of their productive know-how promotes the safeguarding of local biocultural diversity and the sustainable management of natural lacustrine resources.

It was an empirical study to identify strategies and actions for the protection of natural resources through the educational enhancement of Mayan traditional production, know-how and environmental knowledge.<sup>2</sup>

The methodology used in the study is PAR (Orefice 2006; 2013). It involves the multiple levels and fields that make up the knowledge system of

<sup>2</sup> The research has been realized in the international cooperation project "Urban environmental sanitation in Santiago Atitlán", that aimed to improve environmental management with the implementation of a Municipal solid waste treatment system. The project has been financed by Emergency Program of the Italian Ministry of Foreign Affairs in Guatemala and

individuals and groups; it combines the cognitive exploration of feeling and thinking; it detects existing relationships between the different elements that contribute to human training, also connecting it with CH generated.

This methodology was applied at both investigation level and intervention levels, that will be separately illustrated for sake of clarity, but that are integrated with each other. From the research point of view, the activity has consisted in participatory analysis of the *tuleros' production process*, in order to detect skills and knowledge used in it and to identify how they contribute to take care of and manage local natural resources.<sup>3</sup>

The intervention of adult non-formal education took the form of a training course that also involved other local key players such as traditional producers, politicians and representatives of civil society. It focused on the analysis of local practices of use and management of natural resources, in developing critical-reflective attitudes useful to re-read the experiences, production problems and hence promote changes in the local life system with new interpretive lenses.

Since this was a participatory research, *tuleros* were involved in all its phases, making the study “a democratic and participatory process aimed at developing practical knowledge” (Reason, Bradbury 2001). Connecting action and reflection, theory and practice, participation is aimed at finding practical solutions to people’s problems and, more generally, to the development of individuals and their communities.

Following these methodological criteria, phases of action-research are showed in the table below, together with the objectives, activities and outputs produced for each of them.

Table 1. Phases of action-research

Research Phases	Objectives	Activities	Output
Contest Analysis	To generate knowledge of the local context and related problems of natural resources management	Collecting and analysing data from secondary sources and other documents	Report on first analysis of the Municipal management system of natural resources

it was implemented by the Italian NGO Africa 70, in collaboration with Legambiente, ADEC-CAP, Municipality of Santiago Atitlán and the Italian company Ambiente Energia Brianza.

<sup>3</sup> At this stage of research, I have developed sheets on the production process of *tul*, from data collected in the focus group and interviews with *tuleros* and publications on the subject .



Research Phases	Objectives	Activities	Output
Participatory analysis of the <i>tuleros</i> production process	To identify problems of traditional producers related to natural resource management	Participative observation Semi-structured interviews at individuals and group	Report on the knowledge and skills used in the production with <i>tul</i>
Definition of hypothesis for problem solution	To formulate an hypothesis for the sustainable management of natural resources starting from the knowledge and skills involved in the production	Adult Education activities	A proposal of Municipal Regulation of environmental management of Atitlán Lake's banks
Verification of hypothesis	To assess possibilities of implementation of Regulation	Focus group with members of Consejo Municipal de Desarrollo	Road-map for assumption of regulation in Municipal Law
Evaluation of process	To evaluate formative outcomes of participants To evaluate research activities	Evaluation of activities with participants to training Meetings with key players for research results dissemination	Agreements among local and strategic players for the sustainable management of natural resources

The *tuleros* are Mayan artisans of Lake Atitlán and use a plant<sup>4</sup> that grows along the banks of the lake to create a wide range of domestic and ritual objects, such as *petate*, a mat present in every indigenous area home.

Strongly linked to tradition and cultural identity of this population, the *tul* processing has maintained the same characteristics over centuries. Although vegetable archaeological findings are not available because of difficult conservation in tropical area, depictions of *tul* objects or rulers sitting on mats are frequently present on the Mayan polychrome pottery

<sup>4</sup> Scientific name *Scirpus Californicus*, belonging to the family of *Cyperaceae*, *tul* is a perennial that can reach a height of three meters. It has a geographical distribution that goes from the United States to Argentina; Guatemala is located between 0 and 1,700 m above sea level on the banks of the lakes. For someone, the word *tul* is a corruption of *tule*, a Nahuatl term that in Mexico means 'rush', but that does not appear in the vocabulary of Mexican language compiled in 1571 by Alfonso de Molina, where instead appears the word *tollin* with the same meaning. In *tz'utujil* and *kaqchikel*, the two Mayan dialects spoken around of Lake Atitlán, *tul* is called *ch'upup*, which means 'to cut'. Finally, in the *kaqchikel* dictionary of Thomas de Coto, compiled in the sixteenth century, in addition to the word 'ch'up' related with the action of the cut, the rush was called "*ru pop choy*" which can translate into "petate (mat) of the lagoon". (Monteroso, Azurdia Bravo 2008; Casa de Estudios de los Pueblo del Lago Atitlán 1999).

and codes. These artefacts were also part of the ceremonial complex or were in daily use of the *élite*.

In colonial chronicles it is reported that the main use of *tul* was to produce the *petate*, a woven mat used to cover the floors and walls of the house, to realise the seats of the nobility, which confer prestige and authority to them in religious ceremonies and in political meetings.<sup>5</sup> In the Mayan classic period, the title of *Ajpop*, “Lord of Mat” was used to refer to the rulers; the first month of the Maya calendar, *Pop*, has depicted in its glyph a *petate*.<sup>6</sup>

Even today *petate* maintains its sacredness for ‘Cofradías’, which use it to cover the statues of the saints in the various religious events, as is the case for the “Cofradías de Maximón”<sup>7</sup> of Santiago Atitlán.

To date, the techniques of this craft production have remained unchanged over the centuries, and in particular, those for the realization of the *petate tul* which is the most common for domestic use.

The *tul* has very important environmental functions: it filters nitrates and excess organic matter by improving the quality of water; it protects the lake banks from excessive erosion, it is home to ducks, migratory and other birds and breeding ground of native species of fish, crabs and shells.

Despite the great importance of this plant for the maintenance of biodiversity and CH of Lake Atitlán, its significant contribution to the community life remains unknown to many Guatemalans. As with other native species, even the *tul* is at risk of extinction because of its intensive exploitation. *Tul* crops are threatened by human activities around the lake, by demographic pressure on the ecosystem and progressive loss of ecological TK.

In Santiago Atitlán, *tuleros* are organized in an association that is more than 40 years old.<sup>8</sup> This is the place for sharing knowledge and values related to the *tul* production, to incentivate intergenerational transmission. It also represents an arena of political and social participation for the affirmation of the rights of these traditional workers and for the protection of the raw material, source of their income.

Despite being broadly representative of the local Mayan culture, the lack of recognition by local and national institutions limits the production capacity of *tuleros* and feeds social unrest.

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5 In the *Chilam Balam*, Mayan opera of Yucatan, throne and *petate* terms are interchangeable.

6 The word *pop* also means ‘to unite’ and it refers to both the technique of Mat creation and the role of the ruler to the people.

7 Maximón is a popular saint venerated in various forms by the Maya of the western Guatemala highlands, but the Roman Catholic Church does not approve it. Maximón could be the creolization of a pre-Columbian Mayan god with influences from Spanish Catholicism (Morales 2008).

8 Recognized by the government since 1968.

The same Tuleros Association serves as a tool for the enhancement of the Mayan culture and its intergenerational transmission; therefore, it can be considered an *Heritage Community*, as the Faro Convention defines it. In fact, the Association gathers people with common values, beliefs, knowledge inherited from the past in which they identify and they wish to support them in the framework of public action and to transmit them on to future generations.

#### 4 Educational Valorisation of Productive Know-how of *Tuleros* for Sustainable Management of Lacustrine Biodiversity

Participatory analysis of the production process of *tuleros* considered the following aspects: the main characteristics of production process, the flow of production, skills and knowledge used in production process (Galeotti 2015).

In order to identify main features of this craft production, descriptors have been borrowed from the definition of Cirese of the production process, as a vital human activity for survival (1984). The anthropologist declines it in elements and conditions that contribute to its realization: purpose, means, activities, object, control and the product. To these he adds energy used in creating the product and information, as a set of knowledge used at all levels of the process, pre-existing the individual, who elaborates it interacting with other members of the group. The analysis continued with the reconstruction of the various stages of the production flow in order to identify the key activities related to processing *tul*, as shown in fig. 1.

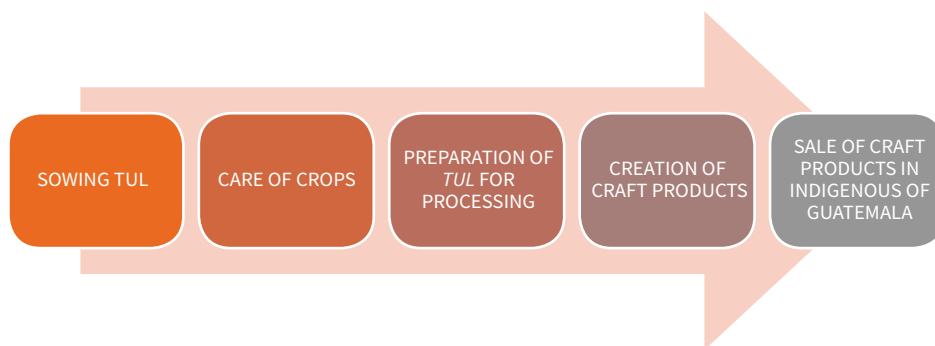


Figure 1. The production flow of *tuleros*

The description of each key activities is divided into phases of the organisational arrangements with technologies and tools used, resulting in outputs.

The skills used in production process have been identified through the operationalization of the concept of competence proposed by Guy Le Boterf as “combinatorial knowledge” always tied to a concrete act, which brings together resources of different kinds – internal and external to an individual or a group – to produce an expected performance (Le Boterf 1995; 1997; 2000).

For key activities outlined above, we have identified the skills employed (to be able to... action verb and object) articulating these in related knowledge and abilities, as shown in fig. 2.

The analysis of the *tuleros*’ production process highlighted the environmental sustainability of this craft activity.

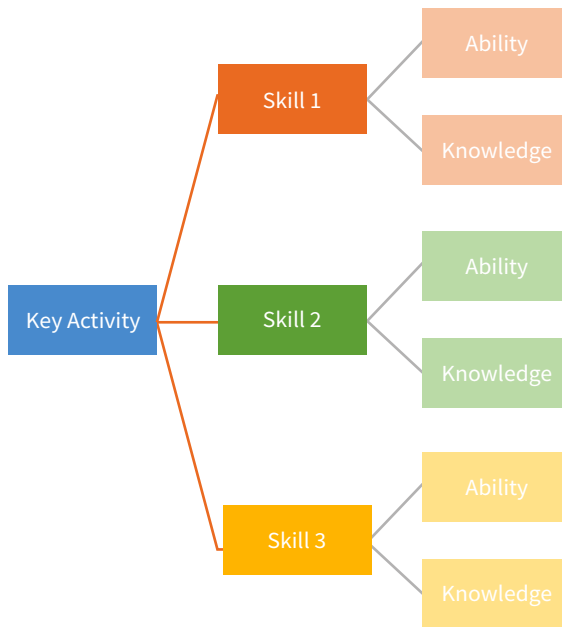


Figure 2. Framework for analysis of competencies in terms of knowledge and skills needed to carry out a specific key activity

Sowing and care of *tul* also generate positive effects on the lake ecosystem safeguard and the protection of animal and plant species that here live and reproduce. In addition, the daily use of products made of *tul* has a zero environmental impact, since they are fully biodegradable.

Thus, the significance of the system of knowledge and skills expressed by this production has a strong sustainability gradient. It is to be able to interrelate natural, social and economic systems, to connect the past, the present and the future generations, to promote the transformation of

unsustainable practices inspiring creativity and innovation through alternative views and positive relationships with the nature (UNECE 2012).

The values embodied by this TK can be shared and socialized through educational activities. In these terms, we can talk about measures for sustainable development, understood as a continuous learning process, through which humanity finds new ways to live with the planet and among different cultures and social classes (Mayer, Tamburini 2014).

The elements briefly described here show how these traditional indigenous workers are guardians of the local biodiversity and the CH, *carriers of highly relevant knowledge* on lacustrine habitat of the Atitlán Lake and of instruments that are indicated to defend such ecology.

Starting from these considerations, an educational activity to valorise this TK took place, aiming to create favourable conditions for sustainable management of local natural resources.

The training course was a start-up activity realized by the Environment Committee of the Municipality of Santiago Atitlán and involved 15 people.<sup>9</sup>

The educational objective of the course was to provide the cognitive tools to re-organize environmental practices, in terms of mental backgrounds, attitudes, ability to problem solving. It can be defined as a second-level learning that according to the definition by Gregory Bateson introduces a reflexive aspect about the context in which activity takes place (1973, 220, 271). In this case, some productive know-how of *tuleros* has been transferred to environmental management.

The educational strategy adopted is the *reflection on experience*: the environmental practices become material to systematize by verbal instruction. The intent was to create a space for reflection on the correlation between human actions and environmental consequences in order to achieve what John Dewey defines a way of thinking that is orderly and consequentially embedded in the action, controlled and guided by a purpose, targeted toward a conclusion and that goes in the direction of the investigation, accompanying it in its making (1961).

Following these indications, the training activity was divided into the steps shown in the table below (Bonaiuti, Calvani, Ranieri 2016).

<sup>9</sup> Some municipal councillors in charge, members of different indigenous associations like *tuleros*, fishermen, *campesinos*, citizens of Panabaj, woodcutters, citizen in defence the municipal beaches and other civil society organizations that deal with environmental issues.

Table 2. Steps of training activity with member of local associations and municipal councillors.

<b>Phases of the training process</b>	<b>Teaching activity</b>	<b>Teaching methods</b>	<b>Human resources employed</b>
Identification and analysis of the problem	Participatory analysis of the municipal system of environmental management and of problems that affect their traditional productive activities.	Discussion Group Brainstorming Lectures by experts	Learning facilitator Experts in environmental management of the Ministry and other Institutions and Organizations that deal with environment
Formulation of an applicative or interpretive hypothesis	Defining a strategy for the sustainable management of natural resources starting from the ecological knowledge of traditional producers	Problem solving Working group	Learning facilitator
Verification of the hypothesis	Analysis of the consistency of the hypothesis identified with respect to the regulatory and organizational system of municipal environmental management	Lectures by experts	Experts in law from the Municipality Learning facilitator
Evaluation of the process	Systematization and participatory validation of the work performed for submission to "Consejo Municipal de Desarrollo". To evaluate formative outcomes of participants	Working group Discussion Group	Learning facilitator

In parallel to the unfolding of the training activity, we have held meetings with all members of the participating organizations in order to share the process under way and the results achieved.

The "Municipal Regulation of Environmental Management of Atitlán Lake's Banks" is one of the major achievements of this intervention-research. Product of the training, its purpose is to issue a set of rules and norms that contribute to safeguard natural resources as well as respect the traditional Mayan productive activities, also with positive effects on life conditions of producers and the whole community. Its core principle is the

reaffirmation of ecological and sustainable relationship between humans and nature through the non-separability of protection activities of natural resources from traditional production.

As evidenced by the analysis of the *tul* production process, some traditional activities are characterized by being closely related to the natural cycles, making the Mayan artisans experts on environmental issues and profound connoisseurs of their ecosystem. Their actions are aimed at the protection of resources, since they are the subject of their economic activities.

Sustainable governance of natural resources (Worldwatch Institute 2014) thus comes from combining environmental protection and the safeguarding of TK (and CH), through the recognition of the organisational forms linked to these productions. This makes it possible to legitimize the knowledge of the producers for the protection of the subject of their economic activity resources (*tul*, fauna of the lake, beaches, lake water, forest, arable land, etc.). The public authorities should therefore defend and promote these traditional works, since they retain natural and cultural diversity and at the same time represent economic income and, therefore, an opportunity for a more dignified life for those who dedicate to these activities.

## 5 Conclusions

*Tul* production can be rightfully considered as an ICH of the Guatemalan Mayan communities (2003 UNESCO Convention). Contributing to the maintenance of the lake's ecosystem through taking care of these plantations, *tul* production cycle represents, in fact, the indissolubility of the human/nature relationship, as described in the *Mayan cosmosvision*. According to the latter, human beings are integral part of natural environment and own responsibility to care for it, based on the idea of coevolution and co-determination. In this framework of sense, the importance of the nature goes beyond the specific objective of having properties, taking on a deep value that is inherent in the elements and events related to it.

The analysis of the skills involved in the *tul* production highlighted the sustainable character of knowledge of these Mayan artisans, following used: to define sustainable strategies for environmental management; to improve in a sustainable way the environmental practices of other local players thanks to an activity of Adult Education.

The research shows how the educational valorisation of ICH can promote the enforceability of the traditional know-how outside the specific production contests for:

- Sustainable management of natural resources trough participation approach;
- Transmission of sustainable knowledge, also in an intergenerational manner;

- Recognition of the role of Mayan producers in defence of the lacustrine ecosystems and safeguarding of TK.

In other words, the educational action renews the function of Tuleros Association as a HC, representing a mean of *participation in cultural and political life*, underlying the individual and collective responsibility towards CH, and a path toward conservation and sustainable use of cultural and natural assets to promote human development and quality of life.<sup>10</sup> From the action-research, it emerges that education is capable to reassert and improve the role of CH in building a peaceful and democratic society, in the processes of sustainable development and in the promotion of cultural diversity. For this, also a greater synergy between public, institutional and civil society players is urgently needed.

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<sup>10</sup> This sounds as a concrete example of the principles and developments promoted by the Faro Convention.



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# **The Craft of Things**

## **Object-Subject Relationship in Nowadays Working Tools**

Ferdinando Amato

(Gruppo di Ricerca Emidio di Treviri, Cocoscia, Italia)

**Abstract** The research examines the relationship between subject and object through the instruments and work tools currently in use. The objects that we use and that surround us, with which we live and work, act on us and on the collectivity, they shape our habits, they convey our relationships, they structure our personality and the way we recognize and we are recognized within our community. The different usages of working tools and the way we keep, store and share them are useful sources and containers of information and means of representation and classification of the societies where they are in use.

**Summary** 1 Introduction. – 2 About why and how. – 3 Body Tools. – 4 Resistance strategies. – 5 The List. – 6 Photography as a tool.

**Keywords** Working tools. Subject-object. Representation.

## **1 Introduction**

This research examines the relationship between subject and object through the instruments and work tools currently in use. What we want to bring out in this research is the subject-object relationship, imagining them in an equal position of complete balance, where the object created by the subject is for once also the creator of the subject.

I try to consider the working tools according to Mario Turci's definition of "mapping of the objects". It means analyse the tools from different points of view: material, sensorial and contextual. The material region analyses the matter, the form and production; the sensory region poses the attention on the sensation, the perception, the use and the function; the contextual region analyses the context, the localization, the creator, the process and the system. Together these three regions give us a comprehensive and satisfactory view of the object and the working tools (Turci 2009).

To do so, however, a particular type of analysis and a specific way of research and writing have been privileged: lists and photography. This means

that the final report of the research converges in lists of work tools which are neat and organized and are, then, enclosed and represented in photos.

Since these objects are still in use and because of this they are inseparable and inalienable, both from their original context and from their owner, photography is useful to ensure the reproducibility of the specific objects outside of the workplace.

The choice to organize lists has come out during the research, because the numerical constraint that is posed by a practical list (Eco 2012) allows the specific professional to be able to tell about and describe himself in a limited and finite way, since every single profession is punctuated by a plurality of objects that are unlikely to set up finite sets. The selection of the objects has taken place by the hands of the worker, so it was him to recognize and list the objects with which he wanted to tell about himself and his particular professional activity. The disposition of the objects within the photo frame is my choice and therefore it follows my own interpretative and representative model.

## 2 About Why and How

Material objects have tendentially always been studied as historical evidence. Generally the focus of interest is slightly shifted towards history, more weight is given to the past rather than to the present. We owe the current state of things to this aspect of material culture studies, and so our knowledge of cultural systems that have currently vanished or are in extinction, this has often been called rescue anthropology and it assumes that the anthropologist and the other do not share the same age, it assumes that the age of the other is over, that it has run out, that it is disappearing. It is thanks to the rescue spirit that we have moved with the haste of finding, collecting and preserving objects of an almost or entirely passed way of acting, with the anxiety and fear that much would be lost and forgotten soon.

To understand the intentions that have characterized early studies of material culture in Italy we can mention Loria and Mochi when in the book *About the collection of materials for Italian Ethnography* they claim that “we should hurry to collect all over what remains of the characteristic documents of local folk life, if we do not want to find only scarce and altered scrap in a very near future; we have to do so because our modern civilization will soon invade the most hidden nooks of the campaigns, the most isolated mountain villages” (1906, 15).

On the contrary, but also in relation to what pushes Loria and Mochi to the action of gathering and collecting, this research poses its focus exactly on our modern civilization.

I asked myself: why should we wait? Why should we take the risk that what is now the result of that very industrious ingeniousness could slip

away? Today we could free ourselves from future anxiety of losing everything, that fear of forgetting, of not being able to display, we could free ourselves from that urge to search, why should we wait for the coming of that which Turci defines obsolescence phase (2015)?

A research on the current working tools proceeds in this direction.

At first it is necessary to look at the tools as they were object of an exposition in a museum. To see things in a museum means to see them from another point of view, it means to believe that they are notable, to believe them credible. Everyday objects often suffer of some kind of ambiguity that does not allow to recognize their cultural value. The objects that surround us build our daily life. The objects that live with us create the reality around us, in our homes, in our offices, in public places we attend, in the rooms where we live, in workplaces where we go to fulfil some of our needs. These objects that fill and are disposed in our environments, sediment and almost fossilize to the point that they become part of the place. The working tools that are spread across the laboratories, on the walls of garages, stacked on tables and desks, stuffed into suitcases and tool boxes claim and shout their history, but they are silent and mute to the ears of whom does not stop to listen, because he is accustomed and immersed in everyday life.

Work tools taken as a whole, but confined to their specific work activity tell their history, the one of the individual worker and the one of the related profession. And if we put these together, different activities can be evidence of a precise historical, economic and working moment.

Therefore starting to consider these tools with a museum-like look means seeing them as if we do not see them every day, trying to be amazed by the obvious things that are not that obvious at the end. This is ultimately the third principle of museography, developed by Pietro Clemente which leaves room to the wonder that reorganizes the willingness to understand the subject (1999).

Laboratories, garages, practices, construction sites, factories and ateliers are places where work tools are collected and displayed in a completely spontaneous and unconscious way. What is missing in these places is the amazement of those who live in these environments and of those who enter them for a variety of reasons; we tend to neglect what is peculiar in these places: the knowledge to act and the knowledge to do, which are substance of real and concrete acting, this because of the speed of technological progress and of the oversupply of information that makes us a bit blind and less sensitive to the ways of learning, of reasoning and of memorization, as well as of the traditional, pre-technological and technical knowledge ways of teaching.



technical or artistic skills, but only because he possess specific tools that allow him to perform his tasks.

Material culture could borrow this saying just to explain how tools are at the heart of a cultural system that tends to represent and describe the society or the communities where it is interested in from time to time.

The objects that we use, that surround us, with which we live and work, act on us, on the collectivity, they shape our habits, they convey our relationships, they structure our personality and the way we recognize and are recognized within our community. In relation to these aspects the object-subject connectivity expands.

This is how those who work in a factory to build cars become labourers, mechanics, technicians, who builds wooden furniture on his own becomes a carpenter, allowing the object to create our personality and to label us in the eyes of society and even in ours.

The availability of the tools ensures that a worker is not just a worker but a specialist, a specific worker, a specific professional figure. Consequently that specific professionalism conveys its social and cultural representation, transitively the tool is linked to different work activities and it interferes in the social and cultural, individual and collective representation.

Thinking in this way we fully enter into that hypothesis to create subjects which we have defined, it means that the objects participates to the creation of the subject, it means that the perception of individuals and communities does not exist by nature, it means to redefine the subjects within a cultural system.

By contrast the definition of creating objects appears very obvious and predictable. To meet their necessities the men strive to build what they need.

According to Cirese, the object exists as a meaning, not only as a physical object; for example it is so that the sickle as an object, is different from the sickle as a tool (1984). What Cirese calls "fabrilità" and "segnicità" are inextricably linked, because the two different dimensions set themselves mutually in motion. A tool finds its fulfilment and its reason of existence only in a local and peculiar use (La Cecla 2013). The relationship with its subject-worker is redefined and is finally recognized in this relationship. Technique and speech are both crucial to the creation of the work tool, in the same way they contribute to the final placement of the thing.

So creating objects does not only mean fabricate them, assemble them and compose them in a physical and material way, but it also means to give them value, to create their meaning and significance.

To explain this assumption the analysis of Kopytoff can help us when it faces the issue of cultural and individual singularization (1986, 88).

When analysing objects as goods Igor Kopytoff points out that the biography of an object is culturally adjusted and its interpretation is open to individual manipulation until a certain level. In fact the object can be moved in and out of the status of good.

In our case the displacement from the state of goods occurs in the moment in which an object becomes a working tool. Workers abstract the object from being simply an object and turn it into a tool. So this is not only a matter of not seeing an object as goods but it also means to recreate it as a tool. The work activity and thus the worker use the object giving a role and a job to it. From that perspective there is no doubt about the creation: it is the subject that creates its own object.

### 3 Body Tools

What distinguish a professional worker from an ordinary person are ownership and practice of specific knowledge that often occur and make themselves clear through the use of a certain tool. But not all professions use specific technical equipment. The system of tools in fact touches mainly only those work activities that require specific and developed manual skills, while many other professions exist without the use of any equipment and without the use of any working tool.

A lawyer, a judge and a notary, a journalist, a writer, a professor and a teacher, a professional educator, a shop assistant, a grocer, an accountant, an employee, a politician, a banker, a representative, an anthropologist, the director of a museum and so on are all jobs that do not require the use and presence of certain tools for which it is necessary to know manual techniques, there is no need to excel in the use of specific tools. The absence of tools, however, does not mean that there is a lack of specialization and expertise. In these cases professionalization must be sought in other aspects that do not match with what Giulio Angioni defines the knowledge of the hand (1986). These are in fact intellectual abilities that show a knowledge that results from study and talent, without the use of special tools.

All those jobs which do not imply specific skills and dexterity have been excluded from this research, even though they make use of concrete objects. Those jobs are the result of progress and industrial revolutions, where machines have taken from the worker the need to excel in the use of special techniques and knowledge, and where the knowledge of the hand has often been replaced by the simple knowledge of a technical artefact.

In such cases the knowledge of the objects does not meet a specific manual ability and strong technical and artistic skills that transfer that specific knowledge from the mind to the hand. Many machines are in fact equipped with automatic and high technical engineering that reduces, and in some cases nullifies, the physical action of man. Technological inventions have actually born with the aim of reducing the work of workers, replacing their skills with those of the machines.

We want to emphasize those activities where the action of man is still



the result of technical and practical knowledge that gives life to the creative act through the relationship between body and things. This distinction follows the path already walked by Pier Giorgio Solinas that distinguishes in work and in technical-constructive processes, between the animated practice and the mechanical execution, between the soma and the automa. The level of skills, of competence, of technical standards of the job require distinction in different orders, both by specific area and operating plan, and both for resistance degree and autonomy (1989).

The work tools that still need the use of human hand are probably situated in an intermediate position between nature and culture since they are contaminated by both factors. They are obviously cultural because they derive from the human mind and from various changes, they derive from human progress and action on nature, but in their own way they remain natural because they are very close to humans and to their bodies. By forcing a bit the definitions, it is as if on the work place many tools act as human appendixes or even as parts of the body, because they still use the body of individuals and their physical and mental abilities, unlike machines.

To remain in the anthropological field and to try to understand on which level the difference between certain types of professions that were examined in this research rests, we can make use of two concepts that are important to our discipline, these concepts are that of 'body techniques' and of 'incorporation'.

With body techniques Marcel Mauss means the ways in which men use their body, conforming to the tradition in different societies (1965). For Mauss technique is the focus of a training or apprenticeship, because he thinks that man's main tool in his own body. Body technique refers to the body's ability to mechanically absorb specific social and cultural practices, to naturalize processes to the point where it does not recognize them because they are so much imprinted in the ways of doing and acting. This follows a kind of independent and instinctive ability in making and acting which brings different ways of working and the different forms of gesture up as natural and spontaneous, while in fact they are naturalized behaviours that result from practice and from a gradual learning process that has taken place through the exposure of our body to external social environment (Pizza 2008).

In our case, to give a central role to the body means to know how to use it and to know how to use the object that needs our body to take life, however by limiting it to the social and cultural environment of professional activity. The body, or more specifically the hand of a certain worker stores the knowledge that belongs to the profession and it is precisely the body that expresses the technical ability in the use of work tools.

All of this is inevitably linked to the concept of *habitus* that Pierre Bourdieu inextricably links to practical gesture. The *habitus* is the set of interiorized and externalized arrangements through which the individual

interacts with the external world, it is the set of all the practices that the subject has stored and that result from the action of the external social and cultural context, and vice versa it is consequence of the individual's acting and ways of doing on the world (Bourdieu 2001).

In the working field it could be synthesized as the ability to use a tool which is primarily acquired by employing that specific instrument.

The other key concept is the process of incorporation of Csordas 2003. The body becomes a product of history, and history can in turn be observed as a body process. So to consider the historical and cultural reality as a product of the acting of the body leads us to say that all of our actions, including daily manual skills and craftsmanship with which each worker sets in motion his own work tools, are based on the incorporated experience of social actors, including dominion and power relations that are expressed through and on the bodies (Pizza 2008, 42).

The concepts of body techniques and incorporation are thus crucially important with regard to the world of work because every worker shapes his own bodily actions according to the use of his work tools. This does not mean that any work activity, that is artisanal or not, carries a variable number of actions that regulate and stabilize our historical and cultural position in the world, but about what concerns the objects some professions require more practice, or at least a more specific ability that is manifested and externalized precisely when using certain tools.

Another interesting matter is the analysis by Csordas about the dominion and power relations that individuals put in place through the incorporated experience (2003). Each subject establishes his own position as a result of his actions and of his own bodily experience of the world, so does the worker, whose actions are a direct result of the use of tools and work objects; he determines his relations thanks to specific tools which activate and regulate the body techniques and the specific way of acting and moving through the world.

This means that if we assume the world of things as made up by the set of artefacts/implants that influence the perception of the world and of our "being in the world", we can look at objects as if they were witnesses/gatherers of existences and therefore of thought, not only as an expression of skills and technical knowledge (Turci 2015).

The body is thus a warehouse of techniques and actions that work shapes by changing and configuring our image in the eyes of ourselves and those of others. This is both a symbolic and a real image since it acts both on the collective imagination and on the physical body.

During the research I met several workers and it often seemed to me to find temper and physical traits that are related to specific professions. Other times, once I had learned about the profession of a person I met, I unconsciously outlined their profile and found in the body and in the image of the individual traits and actions that were in my opinion shaped by

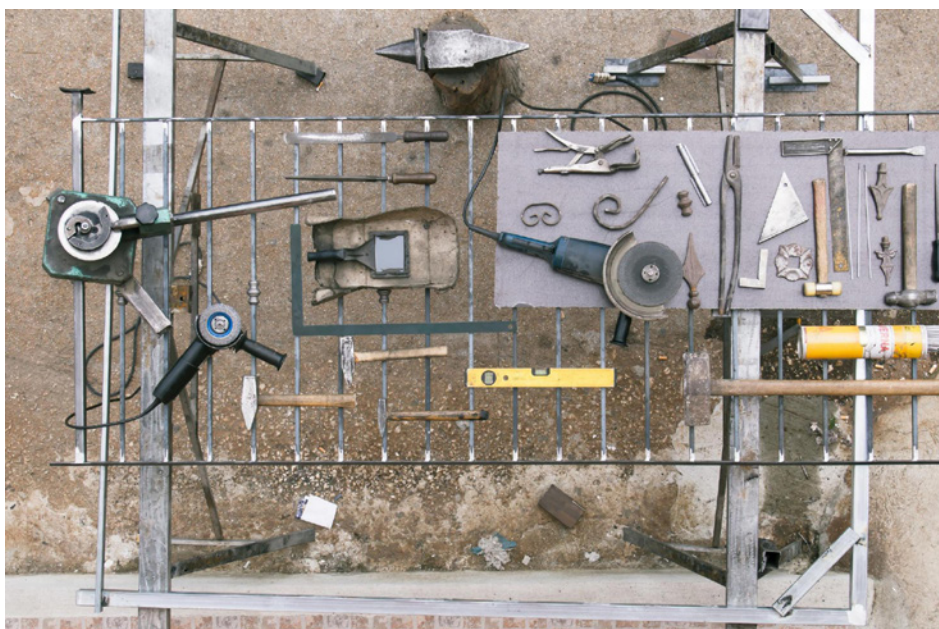


Figure 2. Ferdinando Amato, *Fabbro*. 2015. Digital photography. © Ferdinando Amato

their work activity. Examples can be the corpulence of the butcher or the big and strong hands of the bricklayer. There are two specific events that took place during my observations that may serve to understand what has been said. While I was observing and talking to the shoemaker, I saw him hammer on his thumb by accident while he was pounding with the hammer on the sole of a shoe, but he continued to work as if nothing had happened. On another occasion I noticed that the baker moved a still hot baking tray full of bread with bare hands from one place to another. These adaptations of the body are, in my opinion, not only determined by the rituality and repetitiveness with which every man acts, but they are also determined by the action that objects make on men, especially if these objects require high technique and ability to the point that it is necessary to employ body and hands with high endurance and ability.

According to Jean Pierre Warnier it is even the object itself that is incorporated and not only the dynamics and the action qualities of things “the incorporation of the object is carried out by developing the information that the body has memorized, these manifest themselves through physical algorithms. They are gestures or series of actions which can be accomplished efficiently without a specific effort and attention, through the repetition of actions and make able to economize the means” (2005, 16).

Still according to Warnier, in this way the object is presented as pros-

theses of actions and behaviours that move the individual, so the object shapes the body together with the subject.

If we consider the working tool as a part of the body, the observation of one or more objects that a specific professional uses presents itself as an analysis of the same individual as a worker and an operator. The subject-object relationship, or tool-worker relation, is at this point so strong, physical and bodily that the understanding of the one and of the other necessarily involves both sides. In this regard an individual's final judgment that excludes a part of the body-object would be even insufficient and incomplete, since of course every single component enhances and amplifies the ultimate knowledge. It becomes of great interest to consider any work tool both in its singularity and as part of a set of objects which, individually and together, replace or are added to the corporal vision and to the physical and intellectual representation of the individual.

#### **4 Resistance Strategies**

We could define a certain type of ethnographic museum praxis and material culture as cemeterial. The museums of past things, of the life and work of ordinary people, have the credit of having documented and rescued regional cultures, lower classes, local and material cultures. The cemeterial approach was and still is the humus of new collectors, it is the social and cultural substratum that gave breath and promoted better conditions for the material culture research.

Next to the cemeterial praxis there is what I call the hospital praxis that cares about keeping things alive and not only about their memory.

To observe objects now, in this historical phase, corresponds to make a point of the situation, to understand the state of affairs in which they are now, the historical moment that they are living.

This research has also the aim to understand how and how fast the art of working is changing. Any work activity would deserve specific and sectorial studies, while some jobs resist to social transformations others are dragged away by the power of progress. They become a point of interest and attention regarding which are the logics that determine their resistance condition or their tendency to perish.

The ability to survive or not to progress, to remain connected to its own working function, to persist in its use is determined both by the tool itself and from a particular predisposition of the worker's competence. Some tools can represent an objective and subjective power and position instance, many of them belong for example to work activities that literally remain alive and resist to social and economic changes that push them faster and faster towards total dissolution. In other words, some jobs that maintain a high level of craftsmanship and manuality are part of what



## 5 The List

In the list the objects, taken as a set, show up and express themselves in a new and different way, it is as if the meaning of the objects in a set came out of context.

Take for example the hammer. It is a tool that is used in more than one profession, a naive and untrained eye like mine when in front of any hammer can not attribute it in particular to a specific profession at first look. But if I look at that hammer again and this time I see it next to a file, a welding mask and an anvil, I can understand that this is the hammer of a blacksmith. Seen next to other work tools a single tool is able to explain and to tell us about itself and its field of work.

With list we must intend a set of items. In the list every single object is recognizable and distinguishable from another. The list is conceived as a form of schematic organization in which each object is individually inserted.

Umberto Eco distinguished the poetic list from the practical list in *La vertigine della lista* (2012). The first one is determined by any artistic purpose with which the list is given and from any art form that expresses it. The practical list instead is in its own way a form, because it confers unity to a set of objects that obey to a contextual pressure or to the constitution of the purpose of a certain project. The tools I have taken into consideration are part of a practical lists, but only if related to the worker-owner which they impersonate. After all, if objects have a value, this value should be inserted within the subject-object relationship. Each list of tools tells a history that is intimate and personal but also generalized to the profession to which it belongs to.

Each set of work objects that I have analysed does not contain the complete range that normally spoken a worker should possess, but it only contains those that the worker considers necessary and representative of his activity, the tools that are included are a result of the free choice of the professional.

These personal lists tell a profession with the voice of the specific worker, they are the history of an intimate and subjective profession.

The order and the disposition that the list creates interfere with the way in which we observe and perceive objects. The disposition of the list acts on one hand individualizing the single objects and on the other hand putting them in relation with each other, as if the objects formed a musical choir in which all elements sing simultaneously and in turns each one performs a solo.

The interpretative manipulation of who prepares and sorts the list and the photography is clear, first of all because he selects and places the objects in it. The objects and their distribution inside the photographic frame respond to natural, involuntary and spontaneous processes of classification, although they do not follow logics and prearranged hierarchization paths.



Figure 4. Ferdinando Amato, *Fotografo*. 2015. Digital photography. © Ferdinando Amato

But when the purpose of the listing process is not just about work in general but is instead referred to the person who carries out that activity, the purpose of the list becomes to turn a specific individual into objects. And if the action of transformation is mediated by the subject of the study himself, the quantity and quality of the list are crucial to the subject's story.

To tell something by using objects tells us more than how the things themselves do. Therefore narrative codes are important: the amount of objects, the inclusion of worn or broken items, of new and latest items, of high or low economic value, recycled or repurposed, extraneous to the profession, dirty or clean, cured or ruined, and so on.

All of this brings us back to the fact that the list of objects is already a finished object by itself, to the point that we could look at a set of lists in the same way in which we look at a collection of objects.

This happens when one considers the list as a narration, a story of life, or a work story.

Each list of working tools must be framed and limited to the biography of the working life of the person who it refers to and to which it belongs to; this is as much as one can hope to get from a set of objects that are only and exclusively related to the working world: one can get short ethnographic stories of a specific and precise biography of a person through the voice of its working tools.

## 6 Photography as a Tool

The aim of this research is also to be able to tell the things that are analysed also in a visual way, not only in words. In fact, although they are carriers of stories and physical accumulators of human action, objects do not have a loud voice, they do not physically articulate and emit words, therefore they need to be told or seen. The signs of wear, modifications, repairs, the state of preservation, the placement and so on are what tells us more about each specific object, but these characteristics need to be spoken or seen to have the capability to express themselves.

In this perspective photography presents itself as a privileged means of narration, because a research that has current and still in use work tools as subjects of the study presents several technical and scientific difficulties.

Take a picture of an object or a work tool means recognize them as sources. In fact, the process of selection and choice of the objects gives to each of them an added value. The picture, as an object exposed in a museum, makes the image to become operational (Freedberg 2009).

The problem becomes now epistemological and the question is if we should consider photography as an efficient means in the material culture research. However, there is the need to think about the centrality of a glance as a knowledge and inquiry means in anthropological research.

Cultural anthropology, and in general the whole ethnographic research, surely puts the eye at the centre of the cognitive practice. The eye plays a title role also within a multisensory context.

What we are interested in is exactly the temporal understanding of photographic reproduction. Between the present in which we are observing and the immediate past where photography relegates the present that it captured, there is a time lag that constitutes the basis of all the production that the material culture investigates.

The photography produces a temporal space between who observe the pictures and the subject on it, as it impress what is photographed in a precise and static moment. This is what Johannes Fabian defines as “allochronic”, in other word it is the negation of contemporary (2000).

The photographic means splits the life of things in two parts: photographed object and photography of the object. The photographed working tool, which is the photographed object, remains a work tool in its work context. Its cultural biography has remained unchanged.

The photography of the object represents instead the other identity of the photographed object, but it is an identity that is frozen in the time in which the object was photographed.

So it becomes interesting to note that the photographed object and the photography of the object play almost opposed, but perfectly complementary roles. We have so far argued that personal and intimate objects, including work tools, are objects which are full of meaning. These objects



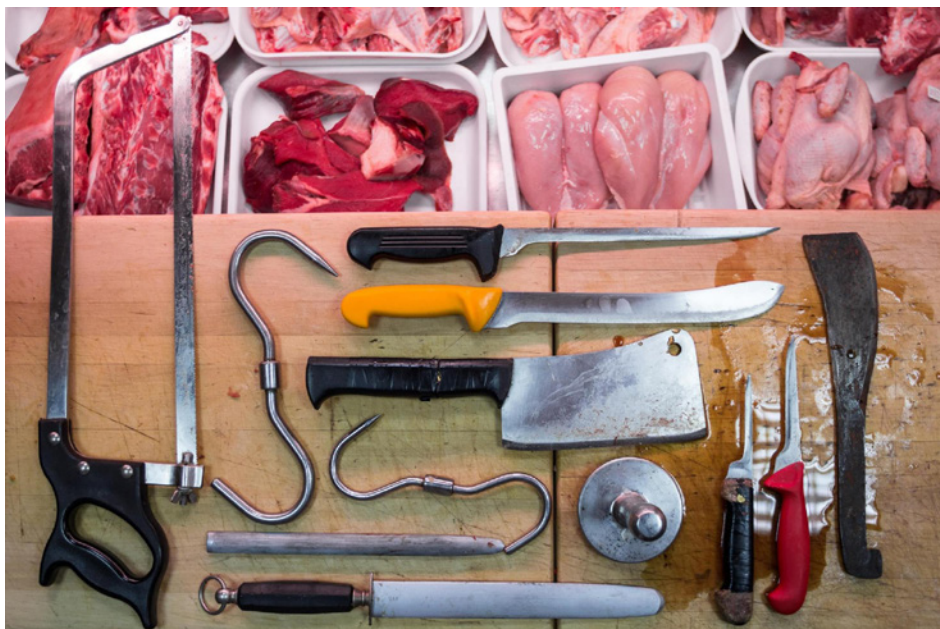


Figure 5. Ferdinando Amato, *Macellaio*. 2015. Digital photography. © Ferdinando Amato

are so close and united to their owner that they can almost be considered in a symbiotic relationship with him, able to resist to the time cycle, outside of the logic of exchange and economics.

On the other side there is the photography of the object which, as just said, is necessarily part of the relationship processes of exchange and circulation, both because of the typical ambition of photography to become evidence and trace of something that exists in physical reality, and on the other hand because its main cultural function is precisely its uncontrollable passion for exposition.

In this research it was the worker that defined his own image. What must be displayed is the intimacy of the subject-object relationship; this intimacy is expressed in the process of representation that each one performs on the other: the object interferes on the representation of the person; instead the subject acts on the object by using it and making it a part of himself. The final product is thus the mingling of the mutual and reciprocal actions and representations.

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**Fuori Coro**



## **MiBACT: A Practical Guide to Rediscovering Common Sense!**

Beatrice Zagato, Pierpaolo Carbone  
(Studio Lemme Avvocati Associati, Roma, Italia)

**Abstract** Art. 12(2) of the 2004 *Code of Cultural Heritage* stipulates that the Ministry shall dictate the general guidelines which the public offices responsible for assessing the cultural nature of a private good must adhere to. The same reference is made in art. 68(4); 4(1); 29(5); 71(4); 72(4) of the Code. Yet neither MIBAC (first) nor MIBACT (subsequently) have ever set the parameters required by the regulation. How, then, can the efficiency, equity and transparency of administrative action be ensured if it lacks that essential ‘uniformity of assessment’ placed, by the legislator, at the basis of the most significant measures related to the circulation and preservation of the cultural good?

**Summary** 1 Current Inefficiency of MIBACT. Multiple Administrative Practices. – 2 Pursue Efficiency through Reasonableness. Preliminary Identification of Good Administrative Practices. – 3 Uniformity of Evaluations (Procedural Plan). – 4 Weak Supervision of the Administrative Court and the Court-appointed Expert (at the Trial Level). – 5 Set Priorities and Acquire Concrete Information. Practical Examples.

**Keywords** Cultural goods. Certificate of free circulation. Cultural interest.

### **1 Current Inefficiency of MIBACT. Multiple Administrative Practices**

I understand, – muttered the doctor, who in truth had not understood - I understand. – [...] So saying, he rose from his seat and hunted through the chaos of papers, shovelling the lower ones uppermost with his hands, as if he were throwing corn into a measure. (Manzoni 1844)

It is 1628, as narrated by Manzoni for the purpose of describing his century, yet Agnese’s words to Renzo “Signor Doctor [...] Azzecca-Garbugli (take good care you do not to call him so!)” who thrusts his hands in the midst of proclamations, to extract his latest trick from a hat; this is the first image that comes to mind when we attempt to reach some clarity as we delve into the sea of legislative provisions that have been enacted

(especially)<sup>1</sup> from '75 onwards to regulate the delicate matter of managing Italy's cultural heritage. Considering that we do not wish to be unfair or inaccurate with the past, we must reluctantly point out that those calm intervals seem to thin out as we get closer to the present time. Indeed, it is enough to open any updated legal manual on the laws governing cultural heritage or, for the more daring, to browse the MIBACT website, to realise the flood of legislation that continues to affect all individuals working in the field of cultural heritage. The inevitable consequence is the creation of an increasingly slow and cumbersome bureaucratic organisation that, as with Renzo and Lucia, becomes progressively incapable of guaranteeing citizens the protection of their interests and rights, as recognised at a constitutional level today. It is not wrong, therefore, that in one of these manuals dating back to 2013, and in reference evidently to the latest legislative amendments at that time, to read that, "the passage of time, short but inexorable, marks, for the Ministry, the intensification of a sort of interventionist schizophrenia by the lawmaker that, at the rate of two years at a time, tries to solve the cultural issue of our country with yet another ministerial structure reform" (Ferretti 2013, 92; see also Barbati, Cammelli, Sciuolo 2011; Crosetti, Vaiano 2011; Volpe 2013), more than ever an exact prognosis as confirmed by recent "Ministerial Decree No. 44/2016" aimed at "reorganising the Ministry, without new or increased charges for public finance, at reorganising, also by eliminating, merging or grouping, the Ministry's executive offices, even at a general level", so replacing the previous reorganisation under the Prime Minister Ministerial Decree No. 171/2014.

Analysing the new arrangement, responsibilities and functions of each body attributed to MIBACT's organisational structure is not the purpose of this paper, not just for the obvious reason that it is intended as an article and not as the *magnum opus* of the author, but also in consideration of the fact that its author doesn't fully grasp the relevant usefulness: the regulatory texts of the numerous reforms of said Ministry seem to be linked by the common denominator whereby their respective lawmakers establish/eliminate/restore bodies; transfer and (re)define roles and responsibilities for each of them; zealously establishing the 'who' and 'what' of the administrative action on cultural heritage, without, however, necessarily assessing the 'how'. Often, in fact, during the application stage, how to

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1 The MIBAC was established by Law 5 of 29 January 1975, which signed into law and amended L.D. 657 of 14 December 1974. It is worth noting that the CH law was conceived far before the establishment of the above mentioned Ministry, considering that either the *Codice Urbani*, being the Code of cultural heritage and landscape currently in force and adopted with the L.D. 42/2004, as well as the 'Melandri' Consolidated Law 490/90 previously in force, transpose the main lines of the 'Bottai' Law 1089/39, which in turn was guided by the 'Rosadi' Law 364/1909 and by the 'Pacca Edict' of 1820.



perform certain tasks is unclear, given that the system assigned *ex lege* to a certain function is actually unable to attain it (because its structure is unfit; or because the competencies between administrative bodies are duplicated, and the extent of the action of one and the start of another's are not specified; or because technical-scientific skills are required that, due to the composition of its staff, are not met; or because the timing required by law to perform a certain function is incompatible with the number of bureaucratic procedures that such type of structure requires; or because the 'declared' reform is not promptly followed by an organisational regulation; etc.).

What good is it, then, to describe the structure of the Ministry – by comparing the statutory provisions that have been passed over time and trying to figure out what, on paper, intends to survive to what is new – if this is not sufficient to remove the uncertainty that, in their practical application, they generate with respect to the certain fields of action of the PA? A complete organisational chart of MIBACT is easily found on its website. What are lacking are concrete and clear answers on how it works. And without them, any reform, even when driven by the lawmaker's best intentions, will always be just a remix and not a real, efficient reorganisation!<sup>2</sup> This is because the PA must indeed reach set objectives, but the lawmaker must previously (during the early stages) ensure that the procedure and

2 *Ad probationem*, the facts only (the legal references referred to herein, far from being the only ones adopted, are considered the most significant for the purposes hereof): D.L. 657/1974, signed into Law 5/1975, establishes the Ministry for Cultural and Environmental Heritage. L.D. 368/1998 reforms it, by establishing the MIBACT. The most relevant, among others, are L.D. 300/1999 and D.P.R. 307/2001, which regulate the organisation of the offices directly collaborating with the MIBACT and the ancillary functions bodies. L.D. 3/2004 (organisation regulation: D.P.R. 173/2004) reorganises the MIBACT by eliminating the role of General Secretary (which was established within the previous reform) and replacing it with the Departments model. L.D. 42/2004 issues the 2004 Code currently in force. D.L. 181 of 18 May 2006, signed into the Law 233/2006, implements a new reorganisation of the Ministry, withdrawing all Ministry's functions, structures and resources in the field of sport, in exchange for (!) the structures and resources in the field of tourism: "what is staggering (as highlighted by G. Sciullo) is the failure by the lawmaker to provide for an exact match between the role carried out by the Ministry in the field of tourism and the system to which the Ministry belongs; indeed, the functions exercised in the field of tourism do not fall within those allocated to the Ministry, while it is actually for the Presidency of the Council of Ministers to hold the relevant responsibility pursuant to art. 95 of the Constitution". D.L. 262/2006, signed into the Law 286/2006, reinstates the General Secretary and abolishes Departments (!), for the purpose of decreasing public spending (!!!). To be noted: however, the provisions of the organisational regulation Presidential Decree 173/2004 remain in force, to the extent applicable and consistently with the Ministry's structure, until and through when the new organisation regulation was issued with Presidential Decree 233/2007, one year after.

D.P.R. N. 91/2009 reorganises MIBAC. By Law 71/2013 MIBAC becomes MIBACT: the *bureau* on Tourism policies is transferred from the Presidency of the Council of Ministers to the Ministry of Cultural Heritage and Tourism. Decree of the Presidency of the Council of Ministers 171/2014 reorganises the MIBACT.

structure with which it is provided are able to do so. What else, otherwise, is meant by *effectiveness* to be pursued under art. 97 of the Constitution and art. 1(1) of Law 241/1990?

Otherwise, failing the above assessment by the lawmaker, the consequence is quite obvious: since the PA *must* provide answers (by adopting an administrative measure), with respect to each steps of a procedure, it is for the PA only to take the required decisions upon each failure by the lawmaker to provide the necessary clarifications on how to implement any such steps. This is why, contrary to any common-sense logic or efficiency, it may essentially happen that in the single branching structures under the entire bureaucratic apparatus, different *practices* are created to arrive at issuing an identical (as indeed prescribed, uniformly by law) administrative measure. And that is why, in practice, we cannot assume that the same question, addressed to territorially different administration offices, albeit equivalent, will get the same answer!

Given the above, on the other hand, could the PA act otherwise? And the single private subject, what else should he/she do except hope for the Administration's common sense?

Another common element to the lawmaker's various interventions is the purpose that moves it, namely to *streamline* the organisational structure, in order to make its work more efficient, especially in terms of containing public expenditure. Translated in concrete terms, this means creating a bureaucratic structure that costs less to the State, in relation to the durability of its action over time, without causing - at the same time - that "new or increased charges for public finance" (for example art. 1 of the Stability Law 208/2016, as rightly cited in the last M.D. 44/2016) arise from the implementation of its reorganisation (today, and in 2014, 2013, 2009, etc.: specific term): otherwise, indeed, fulfilling the first condition without the second (or *vice versa*), would deny its very reason for existing; and without wanting to disturb Aristotelian metaphysics, one wonders how such reforms could otherwise be in line with spending review principles so much invoked to the point of their adoption.

Now, although not being economists or lawyers, comparing numbers and dates from the list of measures (not even exhaustive) referred to (in footnote 2), the question spontaneously arises: is it humanly possible to salvage financial resources by implementing, for the umpteenth time, a ministerial restructuring, when the former one is still in progress? To attain, in this way, a genuine simplification and promptness of administrative action? To make it *economical* and *effective*? If the same actions in the past have had no beneficial consequences, we can't only consider the fact

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Law 125/2015 transfers the functions for the protection of bibliographical heritage from the Regions (as formerly provided with D.P.R. 3/1972) to the State. M.D. 44 of 23 January 2016 reorganises MiBACT.

that this does not depend on the inability of its predecessors, but rather from the regulatory and structural saturation that (by now) any reform of MIBACT will magnify?

Perhaps we need to change the starting point and, perhaps, we should take a step back.

## 2 Pursue Efficiency through Reasonableness Preliminary Identification of Good Administrative Practices

Aside from the fundamental criteria mentioned in Law 241/1990, which drives the administrative action and on which, therefore, any relevant legislative provision must be shaped, there is one, probably highly regarded by anyone who loves the law, while not explicitly codified in any constitutional rule, that permeates the entire legal system and supervises its consistency: it is the *principle of reasonableness*.<sup>3</sup> On the basis of such principle, the CC reminds us that the strength of the law does not derive only from the authority of the person who promulgates it, but from the ‘adequacy’ of what it provides.

Verifying the reasonableness of a law (in fact) requires investigating its factual assumptions, evaluating the congruence between means and ends, detecting the same ends; to such purpose, the preparatory works of the law, the ministerial explanatory circulars, and the historical precedents of the relevant legal scheme are often looked to (Paladin 1997).

And what places the reasonableness at the apex of the system is its eminently *practical* character, which sets it apart from the *abstract* rationality around which, on the contrary, the analogic and systematic guiding principle orbits, and which requires a factual assessment in terms of results and consequences produced by the law.<sup>4</sup>

Therefore, if a practical control over the provision will ultimately sanction its lawfulness, why does the lawmaker not take such a similar practical approach *ex ante* when drafting any legislative proposal?

Why isn’t a *preliminary*, comprehensive and general survey carried out,

3 Bin, Pitruzzella 2003, 468: “The consistency rule, implicit in the principle of equality, may be expressed as follows: when issuing rules, the lawmaker remains free to choose the purposes, program, principle to be developed (to the extent that they do not conflict with any ‘substantial’ constitutional provisions, such as those sanctioning rights, freedoms etc.); but once the ‘principle’ has been chosen, it must be developed accordingly”.

4 See Cartabia 2013 with reference to the ruling of the CC 130/1988: “The assessment of reasonableness, while it does not require the application of absolute and pre-definite evaluation criteria, proceeds through proportionality weighting of the measures taken by the lawmaker, in its absolute discretion with regard to the objective purposes to be achieved, taking into account any existing circumstances and limitations”.

for example, on all national territory concerning *good practices* (as referred to above) already implemented in regional and central administrations, in order to identify which of them actually ‘work’, by evaluating on the basis of reliable data? Failing their acquisition, how can the lawmaker, from the top of the pyramid, decide what is best to lay at the foundation of those implementation rules that the relevant doctrine and operators, both required to comply with them, currently report as being full of gaps or absent?

The PA is essentially a ‘local’ administration (Bin, Pitruzzella 2003) in that it assumes that the bureaucratic structure immediately closest to its citizens is the one that best and more promptly fits their needs. This is the axiom enshrined in the Constitutional Reform under Title V pursuant to Law N. 3/2001 and from the principle of subsidiarity and decentralisation, through which the competencies of administrative functions among the various local and state agencies – having inspired many legislative interventions (even) on the matter of cultural heritage – are shared. Therefore, if, to close the loop and achieve the system’s efficiency, I must influence and intervene at a local level, it will mean that any change taken from above should be evaluated, in the first place, fully knowing the concrete *modus operandi* adopted locally and, based on such, to then rationalise ‘in reverse’ up to the central system, to understand what changes are needed. Conversely, reverse reasoning, from the central to the local, will likely continue to cause new reshuffling of structures, but without achieving any actual streamlining of the steps and letting practical answers to problems coming from implementing regulations, if and when enacted, and from individual local PAs, if and how best they will consider to proceed.

So would have been so irrelevant to consider, for the purposes of enacting Law 125/2015, that in 2015 only the Veneto Region’s Office for Bibliographical Heritage (Ufficio Sovrintendenza Beni Librari Regione Veneto) had actually succeeded in concluding (and timely) 3,689<sup>5</sup> final exportations? Wouldn’t it have been more useful to request this information before, and not after, the promulgation of such law and to understand why the corresponding offices of other Regions recorded vastly inferior numbers? Failing such general and preventive framework, how could it be determined whether the regain by the State, as early as 1972, of the competence for the protection of bibliographical heritage was actually the most suitable choice, as compared, for instance, to tampering with and redefining (instead!) policies, guidelines and procedural protocols that have not been systematically addressed for almost half a century?<sup>6</sup>

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5 Conference *Tutela, conservazione e restauro. Quale futuro per il patrimonio librario e archivistico*, Auditorium Santa Margherita, Ca’ Foscari University, Venice, 6 May 2016 (in particular Dal Poz, “La costruzione delle competenze regionali nella tutela del patrimonio librario”).

6 More precisely, with regard to bibliographical heritage, reference should be made to the Implementation Regulation of the ‘Rosadi’ Law 364/1909, approved with R.D. No. 363/1913.

### 3 Uniformity of Evaluations (Procedural Plan)

Along with bibliographical heritage, in fact, the entire system to preserve cultural heritage under the 2004 Code generally stands on the notion of *cultural interest*: simple (pursuant to art. 10(1)), as for property owned by the State or any other public entity; particularly/exceptionally important (pursuant to art. 10(3)) for privately-owned property. The Code provides that where the competent public offices assess/verify the presence of such interest in the property, the relevant provisions of the Code shall apply and in order to prevent any differences in treatment within the national territory (i.e. “to remove at the mere arbitrariness of the authorities”<sup>7</sup> a decision involving, as it is well known, extreme restraints to the full and absolute exercise over private property, when it concerns a *res privata*), the Ministry is responsible for dictating the *general guidelines*, with which said offices must comply in order to ensure “uniformity of assessment” (pursuant to art. 12(2)). Also art. 68(4) (a source of innumerable legal disputes and attacks on export offices) when regulating the procedure for granting or refusing to issue the “certificate of free circulation”, envisages that “export offices shall comply with the general guidelines established by the Ministry, after consulting the competent advisory body”. The same reference is included in arts. 4(1); 29(5); 71(4); 72(4) of the 2004 Code.

Therefore, within the lawmaker’s intent the desire for a uniform administrative action constitutes a guarantee for efficiency, equity and transparency; consequently, such uniformity is placed at the basis of the most significant measures related to the circulation and preservation of the cultural good. Yet, in the whole deluge of reforms adopted since its inception, neither MIBAC nor MIBACT have ever set the parameters required by the above-mentioned provision. The only positive fact to which case law,<sup>8</sup> doctrine and various operators refer is an out-dated ministerial circular of 13 May 1974 issued by the Ministry of public education.

Compared with Duchamp’s *Fontaine*, with Beuys’ *Felt Suit*, with Klein’s immaterial work, with the serial nature of the work produced by Warhol’s Factory and, remaining in Italy, with Manzoni’s *Merda d’Artista*, with Merz’s neon, with Fontana’s *Concetti Spaziali* (etcetera, etcetera, etcetera!), we will acknowledge, however, that reference to their “unique superior artistic ‘quality’, ‘rarity’, singular technical quality” mentioned

7 Lemme 2006, with specific reference to the Export offices as to the free circulation certificate, but applicable to all “competent Minister’s bodies” entrusted with the cultural interest assessment for the purposes of art. 12(2) of the 2004 Code.

8 RAC (TAR) Lazio, Rome, II *quater*, 24 March 2011, 2659; RAC (TAR) Liguria, 14 June 2005, 906.

in the 1974 circular is quite generic and vague;<sup>9</sup> *id est*, useless for the officer called to make a decision, as well as misleading for the purposes of the “uniformity of evaluations” on the national territory.

Considering, therefore, that art has had time to become immaterial, Italy to join the European Union, Great Britain to exit it, shouldn't it be a priority to update the 1974 circular?

#### 4 Weak Supervision of the Administrative Court and the Court-Appointed Expert (at the Trial Level)

Secondly, we realise how the lack of uniformity of assessment contributed to creating a sort of ‘free zone’ at a trial level<sup>10</sup> where, under the auspices of “technical discretion” (and thus protected from the inherent supervision of the administrative judge (Marzuoli 1985; Ferri 1987; Cavallo 1993; Marini 2002), it is considered, in terms of protection, the sole cultural interest contemplated under art. 9 of the Constitution, without any form of *heterogeneous* comparison. Accordingly, the inevitable consequence is that the position of the individual owner of the work of art is reduced from full entitlement to a mere vested interest to the legitimacy of the administrative action (Catelani, Cattaneo 2002).

With specific consideration to the adoption of measures for the identification of cultural goods, the *pro tempore* MIBAC, with memorandum registered under nr. 24516 of 28 September 2005 (recalled even in the more recent MIBACT circular 19 of 30 July 2015), expressly excluded that the offices, entrusted with the rendering of the *technical* assessment in

9 The absolute indefiniteness of the notion of *rarity* can be fully understood in the interpretation of the administrative courts case law, maintaining that the rarity of a work of art cannot be assessed only on the basis of numerical criteria or on the grounds of the uniqueness of the work (RAC (TAR) Lazio, Rome, II *quater*, N. 1786 of 2015; and 5318 of 2011, the assessment as to the rarity of a work of art shall be based on the concept of “marginal usefulness”, i.e. such additional value of a work of art – as compared to any values already possessed – and adjustable from time to time to the needs of the relevant cultural education and policies of which such value constitutes the relevant expression and which may justify the inclusion of such work of art into the national cultural heritage even to yet another picture of a Master already included in public collections, once the relevant advisory authority will have assessed its particular uniqueness).

10 It is also worth noting that the sole instrument available to a private party to obtain a review of the judgment is to appeal against it before a higher authority (*ricorso gerarchico*). However, it can prove being a difficult path, given the usual procedure of the head authorities (to note: belonging to the same governmental entity that issued the concerned ruling), to fail to answer to such party claim within the ninety-day period provided by art. 6 of D.P.R. 1199/1971, **silently rejecting** the claim (decision which may be also challenged before the RAC (TAR) or by submitting an extraordinary appeal to the President of the Republic).

respect of the existence of a cultural interest in the *res* being appraised, may linger in applying administrative discretion, involving the weighting among public interests or between public and private interests, in order to decide which of them should prevail in the actual case. This is because – as made out in the cited circular – “the choice of priority of the cultural interest has already been made once and for all *in apicibus* by art. 9, para. 2, of the Constitution and by the relevant implementing provisions of law (from the Consolidated Act of 1999 to the 2004 Code, both fundamentally confirmatory, under such profiles, of the approach taken by the historical ‘Bottai’ Law 1089 of 1939)”.<sup>11</sup>

This approach meant that, as a consequence of the substantial un-censurability of the administrative actions on cultural constraints,<sup>12</sup> authentic masterpieces of Italian art obtain the certificate of free circulation, possibly ending up in important foreign museums; works of dubious quality, of acknowledged repetitiveness, made modestly and amateurishly, are vice versa constrained, possibly with the indivisibility constraint (the most stringent existing in Italy), thus totally inconsistently with the unusual liberalism that inspired the Office in the assessment of real cornerstones of Italian art (Lemme 2015).

In hindsight, however, the legislative evolution over the last 40 years would require us to rethink the nature and scope of the MIBACT’s powers of protection. The distant 1974 circular was followed by, in chronological order, Law 241/1990 as subsequently reinstated and amended, which depicts the administrative procedure as the privileged moment to assess, weight and evaluate all facts and points of law as well as the various (public and private) interests involved in the administrative action; the Consolidated Act 490/99 and the 2004 Code. In particular, arts. 14, 19, 22, 28, 33, 46, 68, 70 and 71 of L.D. 42/2004 follow the general discipline on administrative procedure, providing for the duty to notify to those concerned the commencement of the procedure aimed at assessing the existence of the cultural character of a property, as well as any grounds

<sup>11</sup> In 2004, the lawmaker does not actually diverge from the original framework of the s.c. Bottai Law, thereby delaying the harmonisation with EU law and rendering the declaration of cultural interest subject to a high degree of discretion. Thus, the operators of the art market complain about an assessment being substantially conditioned by the arbitrariness of the competent office. This would be the reason why – according to certain authoritative literature – foreign collectors adversely look at our shows and exhibitions, while Italian collectors are worried about the disgrace of the “embargo on exports” (cf. Morabito 2012): upon a good has been declared as a cultural good, the privately-owned property enters into the black hole of administrative proceedings and may, in accordance with applicable laws, be subtracted from the freedom of contract for an indefinite period of time.

<sup>12</sup> See, *among others*, ST, Section VI, 22 April 2014, 2019; Section VI, 3 July 2014, 3360; RAC Lazio - Rome, Section II quater, 5 October 2015, 11477; accordingly, RAC- Piedmont, Section II, 9 May 2014, 821; RAC Abruzzo- Pescara, Section I, 8 March 2012, 121.

for refusing the motion (to issue the certificate of free circulation), for the obvious convenience, also in terms of budgeting, to anticipate in the procedural phase the comparison, usually commonplace at the time of the trial, between the Administration's evaluations and the considerations of the concerned persons as for the property's characteristics.<sup>13</sup>

Unlike the existing regime under the Bottai Law, today the private owner of the cultural work of art has the opportunity to speak *as equals* with the PA, by submitting briefs and/or documents within the proceedings.

How can we, then, in this renewed legislative framework, postulate on the absolute irrelevance, *a priori*, of any interest other than the primary one? Would it not, on the contrary, be more correct (and consistently with applicable law) to acknowledge that, in the matter in question, to the traditional *technical appraisal* criteria were added, as a result of the known participatory principles provided by Law 241/90, also the unavoidable – and no less meaningful – moments of *administrative discretion*, aimed at balancing public and private interests involved in the proceedings for a declaration, provided by the *lex specialis*?<sup>14</sup>

From such changed perspective, the circulation of a cultural good, as well as the declared submission of such good to the cultural goods statutory scheme, are revealed to be the result of a complex process in which the technical discretion (applied on the good in order to detect the relevant artistic, historical, archaeological, ethnographic, bibliographic, etc. interest) is inextricably linked to the *administrative discretion* (concurrent with the weighing of interests), since it involves, necessarily, a decision on the work of art's worthiness for protection, and therefore a substantial "cultural policy choice" (Ainis 1991).

If it is true, indeed, that the second paragraph of art. 9 of the *Constitution* ("The Republic protects the landscape and the historical and artistic heritage of the Nation") should not be interpreted separately from the first (for which, the purpose of protection and a fundamental task of the Republic is "the development of culture"), but naturally and necessarily in relation to it, it is equally true that the administration for cultural heritage, when exercising its power to constraint, should take into account not only the cultural interest identified in the good, but also the interest of the private owner of such good and those remaining public interests, in potential contrast with the primary interest held by MIBACT (all adequately represented in the proceedings). From this perspective, the principle of

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13 SC, Section VI, 3 January 2000, 29, *Giornale di Diritto Amministrativo*, 6582 ff., with note by Sandulli.

14 Reference is to art. 42 of the *Italian Constitution*, art. 17 of the Nice Charter, art. 1 of CEDU AP n. 1 and to the heavy limitations that the status of CH entails on the property right; thus identifying a 'conformed' ownership title, adjusted to the existence of the public interested protected in compliance with art. 9 of the Italian Constitution, cf. Salvia 2002, 603 ff.



proportionality, enlightened and enriched by the specialized disciplines applicable to the individual case, would represent the fundamental *limit* to the discretion to which the PA is entitled to when decreeing the cultural merit of the *res*, thereby allowing to adapt the administrative measure to the peculiarities of the case, with the least possible sacrifice of any other conflicting interests, whether public or private.<sup>15</sup>

After all, to consider the technical rule able to provide unequivocal results (and therefore fully binding an activity) does not constitute an assumption that is acceptable in principle, given that any decision on the *cultural nature* of the good still lacks that dose of certainty that should characterise technical and scientific disciplines, by implying, in fact, an unavoidable rate of subjectivity (cf. Giaccardi 1996).<sup>16</sup> Indeed, technical and scientific investigations relating to cultural heritage, by reason of the continuous evolution of the relevant disciplines and in the light of the physiological relativity that characterises them, can provide solutions that are not ‘certain’, but that are, at the most, ‘reliable’. Consequently, to protect the private owner affected by the *naturaliter* uncertain cultural circumstance, they should not be considered exempted from the inherent ‘weak’ control of the administrative court (Rota 2002).

With this, we don’t want to argue that the court, by bypassing the basic principle of segregation of duties, may duplicate the value judgment made by the Administration (with substitute powers being inadmissible in the light of the exclusive jurisdiction of legitimacy). More simply, it may confirm the actual existence of the cultural legacy, being the requirement for the contested measure, and together with it, the diligence employed, by using the techniques applicable to the investigation activity. It may, in other words, ensure compliance with the technical rule used, by going as far as to the annulment of its evaluative outcome, if it appears that the result reached by the Administration, regardless of its physiological questionability, departs from the limits of natural flexibility underlying the indeterminate legal concept, which the Administration is required to apply, and is unreliable – in whole or in part – owing to the misapplication of the objective appraisal and evaluation criteria, or because of the application

15 See Parisio 2008, for whom “the preservation of cultural heritage always assumes the simultaneous settlement between the public interest in the protection with the private interest in the full enjoyment of the good” (177); on such assumption, the principle of proportionality is “the means which most allows the evaluation of the exercise by the Administration of its discretionary power, with the perspective of considering the interests involved” (187).

16 Needless to say (in terms of procedure), MIBACT should be equipped with uniform evaluation parameters, certain and determined to the highest possible extent, as well as stringent and objective assessment techniques aimed at ascertaining the existence of a cultural interest, to minimise the disputability of evaluations.

of erroneous criteria.<sup>17</sup>

On the other hand, the adhesion to the administrative court's weak forms of supervision is supported *a fortiori* by the admittance, in the administrative trial, of the technical appraisal as part of the investigative instruments aimed at acquiring elements that are useful to forming the decision (art. 67 of the *Administrative Procedure Code*).

It would be desirable, therefore, that the administrative courts, instead of following the easier path of recalling (incorrectly) the technical discretion (that cannot be challenged other than within the narrow spaces of some symptomatic figure of "abuse of power"), should resort more frequently to the appointment of a court-designated expert, so exercising a direct control (based on internal and technical parameters, and not only external ones) of the debatable fact, at the foundation of the challenged restricting resolutions. Furthermore, given the subjectivity inherent also in the opinion of the most leading expert, it would probably be good practice to consult more than one and, based on what (once again!) takes place in practice, try to single out criteria that the expert must apply in the implementation of the appraisal, in order to facilitate, within the trial, the discussion relating to the merits of the different opinions expressed.<sup>18</sup>

## 5 Set Priorities and Acquire Concrete Information Practical Examples

'Art', 'historic and artistic heritage', CH are elastic concepts, as well as all others that are the subject matter of provisions of law. This is physiological in order for such concepts to not become immediately obsolete. More than others, they likely have a large percentage of semantic flexibility with respect to their firm core meaning: defining them as a "one off" term would be impossible and even more counter productive for legal certainty. But, what we require from the lawmaker and the Administration concerned is

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<sup>17</sup> In such terms SC, Section VI, 11 March 2015, 1257; accordingly, SC, Section VI, 23 April 2002, 2199, with note by Scarselli and Fracchia; SC, Section IV, 6 October 2001, 5827, in *Foro italiano*, 2002, III, 414, with note by E. Giardino; SC, Section VI, 14 March 2000, 1348, *Giustizia civile*, 2000, I, 2169.

<sup>18</sup> Zagato 2015: "[by identifying such criteria], in case of dispute it will always be the judge or the arbitrator who will decide on the actual case, but in this way they will not have to grope around in the dark in order to reach a decision, nor will they have to be experts on art, as they will be able make an assessment on the basis of constant elements; they will be able to compare them with consideration of other expertise provided on the same piece of art, by requiring, if necessary, the rendering of an appraisal aimed at clarifying the same points. Finally, on the basis of such criteria, (now yes!) they will be able to establish what should be deemed most relevant, and base their decision on it".

not to provide definitions, but to give concrete answers, practical criteria, guidelines on conduct; and this implies first of all “making a choice”. Not with respect to those who must carry out a specific competence and not on how to call the body, but on what we decide to priorities today. Do we wish our beautiful artistic treasures to basically remain within our national boundaries, although this may mean storing them in depositaries or vaults?<sup>19</sup> Or do we want to become more participative in the art market - a market necessarily international - thereby ‘re-appraising’ certain works that we possess, although accepting, for some of them, “their exit from national territory with the consequent inability to control their movements and relocations”?<sup>20</sup> Personal opinion aside, we may also act cautiously in the face of a global market where exorbitant billing indexes are growing (strangely enough!) in inverse proportion to economic crisis indicators. But in that case, the more we tighten up the mesh of our national borders, the more we need to *enhance* what is kept inside, attempting to “revalue” it otherwise. If we hold back and do not enhance, the Italian art market will cease to exist!<sup>21</sup>

Once the choice is made, and the guidelines are set, then yes, the lawmaker may consider a structural reform, but (again!) on the basis of concrete information acquired before intervening.

If, for example, export Office officials are asked how to make decisions/ what in fact could be useful to them/ what is useless, by comparing proposals from various local offices, maybe we would understand how to enable them to work well (moreover by removing them from the resentment of private parties!); and the citizens (and the judicial authorities) to improve control.

We might, still for instance, ask ourselves:

- Wouldn't it be useful to grant the export Office officials access to the *artprice* website (considering that: (i) art. 68/3 requires them to “ensure the fairness of the market value” of the good as indicated in the report; (ii) that the aforementioned website contains real time evaluations for individual artists in the international market; (iii) for this

19 We must remember that the decision to keep a cultural property within the country's boundaries could be based not on the need to preserve the property itself, while the possibility to ensure the availability of such property on the territory in the event the State may wish to acquire such property in the future. Which could also never happen; in addition, by following such reasoning, nothing could ever be allowed to be taken out!

20 Judgment of RAC Lombardy, 29 January 2002, 345 on the contents of the prohibition to export.

21 In addition, to encourage the appraisal as a sort of counterbalance to keeping a property on national territory would represent a ‘proportionate’ measure towards any private interests that possibly came into play.

- reason, in practice it is an essential instrument for anyone working in the art world; (iv) the annual membership cost is small)?
- Wouldn't it be useful to equip them with black lights lamps (Wood's lamp)?
  - Wouldn't it be useful to require that at least one out of the three experts sitting in the export Office's Commission, entrusted with the assessment of the property for the purpose of issuing the certificate of free circulation, actually holds the necessary expertise in relation to the specific type of art being the subject matter of such assessment? And where such a requirement is not met, mandatorily resort to the leading outside opinion of an expert on the subject?
  - Wouldn't it be useful to require that the abovementioned Commission's individual experts - who will be required to appraise during their work hours - receive suitable documentation on the property (obviously well!) in advance before the date scheduled for their personal inspection?
  - Instead of pointing a finger at the export Offices (as we have seen to be frequently useless and very expensive in practice!), wouldn't it be more constructive, and fair, to bridge the regulatory vacuum by starting with requiring what has been said above? How can we not notice that the frustration of private interest (with verifying the quality of the Offices' assessment) goes hand in hand with the development of the administrative practices that are necessary (to supplement that regulatory shortfall), although not necessarily 'good'?! Arts. 24 and 97 of the Constitution must be jointly fulfilled, and be jointly implemented as the link connecting the management system with the cultural heritage. This, however, cannot be done by the Export Office or any other individual 'parts' comprising such system. That is why leveraging their erroneous judgments in the individual concrete case cannot be the answer to the problem (but, rather, a return to its starting point!).

The author, furthermore, can only jump to the defence for qualifying *some* civil servants, considering the diligence that they show when carrying out their duties despite the many changes, resources and sometimes-meagre answers.

Along with them, who writes shares the determination and confidence that things might get better.

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## **Concluding Remarks The Interview**





## **Venice Dies Whether It is not Seen Any More from Water**

Alessandro Ervas, Saverio Pastor  
(El Felze, Archeoclub Venezia, Italia)

**Summary** 1 Introduction. – 2 Artisan and Non-artisan Work: which Relation with Traditional Knowledge?. – 3 Venice, Lagoon, Artisans: why Crafts in Venice is Different?. – 4 El Felze, Community, Heritage Communities. – 5 The Participation of Communities, Heritage Community in the Public Action for the Safeguarding of Traditional Knowledge. – 6 Arsenal as a Symbol of a Shameful Will towards a Cultural and Productive Sterilization?.

### **1 Introduction**

The closing speeches of the last session of the Conference dedicated to El Felze Association are now presented in the form of an interview to the President of the Association – Saverio Pastor – and to the artisan Alessandro Ervas. At the Conference Saverio presented the origin and activities of the Association and Alessandro reasoned on crafts and traditional knowledge from the perspective of the situation of the Arsenal in Venice.

This is not a formal arrangement: the interview took place shortly before the summer break, in July 2016, and has quickly developed into a comprehensive dialogue that has gone beyond the limits set out initially. Interested in not watering down the significance of a two-voices interview that has the care to conclude the volume, we did not focus on some further ideas: for example, in the interview there was a reference to the ‘historic’ debate on the ’70s and on the relationship (or lack of relationship) between the Venice of the artisans and the Porto Marghera of the metal and chemical workers, a theme that, during the interview, has involved Saverio and Lauso Zagato in an engaging discussion.

Obviously, the interview, even if innovative, complies with its ‘philological foundation’, which is constituted by the brief summary of Alessandro Ervas’ talk readable in the Papers Preview document.<sup>1</sup> This is one of the reasons why there is a certain disproportion in the length of the replies of

1 [www.unive.it/pag/fileadmin/user\\_upload/centri/cestudir/documenti/pubblicazioni/CulturalHeritage-April2016.pdf](http://www.unive.it/pag/fileadmin/user_upload/centri/cestudir/documenti/pubblicazioni/CulturalHeritage-April2016.pdf) (2017-12-15).

the two respondents; the other reason is due to Saverio's choice to leave ample space to Alessandro, simply jumping into the discussion from time to time with sharp references to (harsh) aspects of the ongoing reality. This spontaneously arisen game of roles has witnessed the complicity of the coeditors, in the hope to have contributed to the better understanding of the topics on CH under current investigation.

## 2 Artisan and Non-artisan Work: which Relation with Traditional Knowledge?

**Saverio:** The character of the artisan – a figure mystified and used in very different ways and fields – is a 'amoebic' figure, that is differently described in time, depending on how much and how it is used in a speech.

The rules on craftsmanship that qualify the figure of the artisan-entrepreneur put quantitative limits to the traditional artisan company. But are we dealing with real artisans? Just think to an industrial product made by 'a battalion of contractors'.

**Alessandro:** The craftsman has a conscience and knowledge of his craft, he holds a story, he comes from a millennial history, and has historical skills and competencies. The expertise comes from either the empirical experience or the very structure of the work, the craftsman starts from an idea, elaborates how to concretize it and then realizes it, working as a part of a chain. The artisan works with style, he has knowledge and understanding over the material, knows how a material behaves in a certain environment and in certain conditions...

The artisan is like a tree, if he does not 'move-act' this is not out of laziness or ignorance (accusations that are often pronounced by the so-called 'ruling class') but he doesn't move 'simply' because he is rooted in a territory, it is part of his constitutive nature to live and operate in a particular place, respecting also the time of that place. The real craftsmanship is the expression of the culture and technologies of a territory, and similarly to trees, the artisan lives if the soil is not contaminated, and if environmental conditions allow his life to express and grow. The craftsmanship must therefore be distinguished from the 'productive activities' that stem from concepts and structural characteristics that are completely different and distant.

If we take away from an artisan the story, traditional techniques cultivated for centuries, the contact with the land, the relationship with the client, the creativity and, not least, the 'business risk' inherent in his work, he becomes a simple 'labourer'. He becomes a 'professional figure' with no geographical significance, and without historical ties with the territory, a figure who can be moved anywhere in the world. This process could

legitimize the relocation and trigger mechanisms of impoverishment and destruction of competencies and skills, that is to *sterilize his being and his work*. Today, perhaps as never in history, to survive, the craftsman/artisan needs to preserve his cultural identity, and must look around with the awareness of how the craftsmanship is a 'fact of culture', turning to those 'cultural heritage's scenarios' that surround him.

**Saverio** (intervening): [...] in addition to the fact that the artisan has also to gain a minimum salary, he must 'bring home the bacon' to survive.

The definition of who is an artisan provided by Alessandro is very high and also selective. However it clashes with the definition given by the Chamber of Commerce that distinguishes the artisan-artist and artisan-craftsman. It is commendable the effort to provide a high-definition of artisan, close to the notion of medieval crafts: in those days, the craftsman was effectively an artist. On the other hand, in the news and advertising on TV, often the 'artisan person' is considered a rudimentary, scratching being (i.e. a commonly used expression is the "hand-crafted bomb", to indicate a bomb that is created by a 'non-professional person'). The fatigue of an artisan's work, understood as both physical and mental fatigue, but also as a daily effort to acquire the practical experience and the necessary knowledge, as mentioned by Alessandro, is not adequately considered and valued.

In the definition of who an artisan is, the aspects of costs and prices of the product should also be taken into account: the final price is defined by the cost of materials often not easy to find due to their quality, by the heavy start-up costs and the added asset of the artisan's experience is not adequately calculated and included.

One question may rise: who is an artisan more than another artisan? Should we graduate the professional expertise?

An example concerns the use of plywood in the gondola's construction, it shows that even among the artisans themselves different perspectives exist. On the one hand, some craftsmen are linked to the traditions and traditional practices that recall the dangers brought by innovations and connected to the lost of ancient knowledge; on the other hand, there exist artisans who believe in innovation and consider the other artisans' choices as anachronistic and dangerous for the development of the traditional knowledge and practices.

**Alessandro:** To remain on the issue of traditional knowledge, looking at the history of the traditional practice and expertise, the process of innovation has always been done by addition/accumulation. If you look at the history of technology in the applied arts, a generation never decided to cancel anything that previous generations created (Sennett clearly catches this point well). Today the reverse is occurring: those looking to maintain

a learning 'logic' by addition rather than replacement are tipped as 'mad'. The question is that often the focus is only on the outcome so, for example, if the goal is to get the iron for the gondola, that iron can be realized also by a 'control-set machine'. We must recognize the worth value of manual skills in order to avoid the risk of losing the 'additional logic'. The *ratio* behind the struggle to preserve the traditional techniques is not a dull attachment to the past, but a philosophical logic as well as a tangible and economic approach.

**Saverio:** Technologies are helpful, but experience and manual skills make the artisan as much competitive as those who use serial machines: as a consequence, the latter often have to fix a higher price for their goods than those decided by craftsmen using the traditional manual techniques.

### 3 Venice, Lagoon, Artisans: why Crafts in Venice are Different?

**Alessandro:** The specificity of Venice is due to many factors. First, the necessity to move from truck-based transportation to the boat-based system has discouraged several companies to settle their offices in the island's territory. The unique architecture of Venice requires various types of *maestranze*. Those *maestranze* existed until when commissions required them. Now, workers for *maestranze* arrive from all around the world without such expertise, an expertise that have dramatically been lost in the last 5/6 years. Venice went through an industrial revolution in which production companies developed also with an industrial character. The second industrial revolution, instead, didn't occur in the island; all manufacturers have turned to land and therefore craft activities have maintained and resisted up to 30/40 years ago. The Venetian craftsmanship, for example, was a construction industry based on quality building, it was a fine construction industry.

**Saverio:** Looking ahead, in order to safeguard the traditional Venetian knowledge, it would be necessary to take action. The first call is for the MIBACT and local institutions which are requested to start to play a different role. The establishment of a State school in which to cultivate certain skills is not enough if there is no guarantee on the generational change in the practice of traditional knowledge. The transfer of competencies and skills must be ensured. Then, local institutions should favour the demand for traditional know-how and goods produced by means of these traditional practices. Without a reasoned demand, the traditional knowledge can't be kept alive.

In addition, efforts should be directed towards the development of an 'experiential tourism' and not towards a mass-based tourism. The devel-

opment of a more sensible and sustainable tourism can make a decisive contribution to encourage investments for the reconstruction of Venetian traditional goods, such as the rebuilding of historic boats inspired by the existing models. If intelligently conducted, the rebuilding process may become for tourists a reason to visit and enjoy the construction yard and its work, to favour the recovery of the areas historically used in the construction of vessels, to reactivate a local wood-based industry production be it non-industrial and environmentally friendly, to favour satellite activities not monopolized by large financial groups and to create a solid number of jobs. This would help to escape from a blackmail fed up by a touristic industrialized offer, even threatening the environment, whose purpose remains the increase in revenue regardless of any other value. Still, the target should also be the encouragement of awareness and education among people and, more generally, the building of cooperation and alliances with all other subjects making and nourishing the water's civilization, starting from gondoliers and sailors...

#### 4 El Felze, Community, Heritage Communities

**Alessandro:** El Felze is a 'mutual aid' community, created for mutual consolation with no political weight. For example, a law to protect Venice has been adopted to ban the use of coal and all open fires, including fires coming from the 'forge': if amounting to a certain size, the fires had to disappear. That law has thus *sterilized* a job; all the skills that old forgers could transmit have literally been 'burnt'. Who has acted *contra legem* has then preserved the knowledge, others have adapted their job to this new normative framework; in this way, in the iron-industry two generational rings have been lost. The job of a forger is gone, so the one has to turn to new craftsmanship competencies...towards the restoration or maintenance of metal, for example.

**Saverio:** The El Felze Association fails to be quite proactive and concrete. Many craftsmen don't think it is important to have apprentices; the model we propose is fascinating because it continues a story, but it doesn't seem to produce followers. El Felze came too late; many, too many masters have left the profession, often without followers since other working models seem to be more effective and more attractive: the refined handiness needs a lot of years of apprenticeship and this factor seems unacceptable to many young people. On the contrary, new technologies, and new materials, offer the mirage of a 'smart' good/product, and this can undoubtedly captivate more. The main problem is therefore: how to help the artisans in the preservation of traditional knowledge and how to involve institutions?

**Alessandro:** We need JUDICIOUS institutions. In addition there is an objective issue connected to the existing legislation. According to the legislation in force, some workspaces don't comply with environmental standards and this situation is not conducive to the training of new craftsmen and the transmission of knowledge. Moreover, the current legislation doesn't promise educational formulas that favour new learning and knowledge. A prime example of the interest (or even better of the lack of interest) of the politics towards these issues is the current status of the Opificio delle Pitture Dure in Florence where the historic laboratories survive with extreme difficulties and where there exists the lock of the personnel's recruitment in the public administration. So, the precious generational change and the exchange of experiences between elderly and young people – that is at the basis of any transmission of traditional knowledge and practices – don't occur, even *ope legis*. So a jewel of our culture is forced to languish, skills and competitiveness are lost, also due to the pure ignorance coming from the side of politicians and the legislative power. The legislation is extremely punitive: it imposes a series of obligations to the extent that, at the end, the game isn't worth the candle. Indeed, the law often requires that apprentices go through an impossible series of medical tests. And to adapt the places to the required environmental and health parameters requires great investments, investments that can't be managed.

**Saverio:** Therefore, education must also concern the legislator's duties. A legislation that hinders us exists; on the contrary, we should be helped to hire people without risking too much and being able to guarantee them a fair salary. But to get these conditions, we need to have work, and to have work we need to have the market's demands.

For example, the Regulatory framework on Procurement should enhance the positive features of craftsmen, providing these entrepreneurs a concrete chance to be part of the production cycle. The need to create a market therefore is strongly linked to the education of politicians and legislators, but this educational wave should also include the possible buyers who have to be sensitized and adequately informed.

The key aspect of this process is to guarantee the existence of a town community worthy of this name: the institutions must safeguard those workers who decide to stay in the island city and the persistence of the production's poles. The problem is that the market doesn't rule nor feeds itself spontaneously, contrary to what is generally believed...

## 5 The Participation of Communities, Heritage Community in the Public Action for the Safeguarding of Traditional Knowledge

**Alessandro:** The participation of heritage communities can be ensured even paying attention to public works, in the sense that they should be provided with room for the usage and practice of certain traditional knowledge. The techniques are languages, they are not fossils.

Public institutions can and must make specific choices. Artisans can't participate in tenders built at the downwards. There must be institutional interest and willingness to spend more for products made through certain types of knowledge and practices, because there is the political interest to an effective safeguarding of local cultural heritage.

**Saverio:** A concrete problem exists: how to actively involve the communities. Heritage communities are clearly identifiable as an entity, but they are 'ephemeral'. In addition, there is a consistency problem: at emotional level, we have always found supporters, coming from very different social sectors, but then when concrete actions are requested, the enthusiasm gives way to 'sloth/indolence'. The politicians go across roads at the horizon of which the craftsmanship is an insignificant detail; indeed also the citizen/buyer prefers to focus on the price's analysis than on savour and on the quality of the product to buy... Therefore artisans are now like whiteflies.

**Alessandro:** Communities are established at an ideal level but then, in the transition from the concept to concrete action, everything falls apart.

## 6 Arsenal As a Symbol of a Shameful Will towards a Cultural and Productive Sterilization?

**Alessandro:** The Arsenal has been a place where to work and where gather together. The Arsenal's destiny, as an issue, has been raised in a variety of ways. Over the years, also in a joined effort with other associations, a project that aimed to use its spaces to create a school of restoration was proposed. Italy lacks a centre of restoration of wet specimens, a benchmark for marine archeology as it is represented by the Opificio (Mill), like Venaria Reale. In Venice, specific centres on material of wetland archeology don't exist and it would be great to have one. There are places in the Arsenal that still maintain their constructive characteristic, which have a formal meaning: such as *la tesa alle nappe* and the *Fabbri*

workspace. These two places have held their own specific features and can be used without setting a huge project to support it.

Denying the evidence of the specificity of a place means to inhibit the potential contained in the same reason of its construction, to effectively subtract the place to a use consistent with its nature and to the values' preservation that the place itself embodies.

Therefore, it is not a fortuity if all projects aimed to reuse those areas and if the attention to the specificity of the place has been ignored or accused of being too complex to be realized or even boycotted: the truth is that a real scientific sterilization of places has been advanced. These places have been emptied of their machinery, floors and everything that characterized them from a point of view of industrial archeology, making them simple 'sale sites' defined by tables of costs so dear to the white cubes' lovers. A concrete proposal concerns the idea to make the Arsenal a tangible place for training, setting up real laboratories.

Just think to the value that could exist if a collaboration with the Biennale would be established.

Unfortunately, the institutions don't cooperate and don't take a stand, there is a mock concern from their side: the Arsenal Office of the Municipality of Venice, for example, has provided false information on the place. It asserted in writing that the Arsenal has been opened since the State property has been transferred to the Venice Municipality. On the contrary, it is the Military Navy that has managed the Arsenal, opening its doors to thousands of people and to the Venetian schools' students. This has been possible because of the collaboration with associations such as The Archeoclub, Venice office and the El Felze Association, as well as the Touring Club that in the Arsenal has organized events for thousands of visitors, starting from the celebrations for the 900th anniversary of Arsenal's foundation. There has been some edition of *Mare Maggio* and other initiatives organized by other Venetian associations... Therefore we have to say that the more readiness has come from the Military Navy.

Still, in the website of the company Arsenale spa (now in liquidation) and connected to the website of the Arsenale Office of the Venice Municipality, the only description of the Arsenal is nothing but a table with the indication of available surfaces (covered and uncovered areas) described by the respective volumes in cubic meters. This is nothing more than the formula used for selling industrial hangar anywhere in the world. Moreover, the Arsenale Office has drawn up a reuse plan of the places which further penalizes their specificity, to the point to eliminate the unique characteristics of these buildings.

**Saverio:** While the city government and Arsenal spa seem to plan questionable projects, several associations and citizens' movements came together forming a Forum (The Forum Future Arsenal) with the aim of bringing out



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the true interests of the citizens towards this crucial example of cultural and monumental heritage.

**Alessandro:** The ongoing sterilization process is based on the falsehood, hypocrisy, silence and indifference. At least ten years of initiatives to keep the Arsenal accessible, some of which even agreed and often implemented by the municipality offices (the 'Educational Itineraries' for example), have been deliberately ignored. All the positive examples and the experience gained by those who, often voluntarily, committed for the public use/re-use of the Arsenal have been wiped out by a *scientific desire to annihilate the memory*. The reuse and reopening of the *forge* that are located at the 'Stradal Campagna' - in which I have been personally involved with the Archeoclub and the Educational Office of the Municipality - were never mentioned nor considered as a prior example of a suitable reuse of places. On the contrary, new ostentatious initiatives have been put forward. This is the key-track towards sterilization. By erasing the connotation of the places, their soul is taken away such as Biennale hosting the wines' exhibition or the jeans fashion show. They make the memories disappear and eventually the same place disappears. There are fake projects in Venice and also mock care. For example, in the projects produced by the Iuav's students, in collaboration with professors and other experts, there was no mention of the old electric Argano of 1917 which exists also at the *tesa alle biciclette*: at first sight, it appears as a little metal box, very well preserved inside, but that has been totally forgotten. If subjects such as the University and the City's Council promote projects for the restoration-repair of the area without taking account of the characterization and specificity of those places, and without involving the associations that for years have been committed to their utmost to ensure their reuse, it means that the projects haven't been seriously conceived to effectively save and safeguarding the place.

**Saverio:** Regarding the Arsenal, too much space has been given to the Biennale. In some respect, this allowed us to save some artefacts, but the cry of alarm launched here is important because it puts the *historical memory* at the centre of any reasoning, elevating it above other thoughts on the role of culture and art.

Historical memory is the most important value that a heritage community holds: in a city like Venice, if we don't remember our roots, if we don't remember of being born out of water, with the water and for the water, we lose all our specificities and we might abandon Venice as well.



# Appendix



# **The Italian Draft Law on the ‘Provisions Concerning the Safeguarding of the Intangible Cultural Heritage’**

CHAMBER OF DEPUTIES

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**N. 4486**

**DRAFT LAW**

AT THE INITIATIVE OF DEPUTIES

**NARDUOLO, MANZI, RAMPI, MALISANI**

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Provisions Concerning the Safeguarding  
of the Intangible Cultural Heritage<sup>1</sup>

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*Presented on 12<sup>th</sup> May 2017*

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INTRODUCTORY REPORT<sup>2</sup>

Italy has for centuries represented - and in many ways still represents - an important point of reference, for both Europe and the rest of the world, in the protection of tangible cultural heritage.

Our country boasts an illustrious tradition in this area, which dates back

**1** The content of the draft law is the result of the work of an interdisciplinary research team composed of the following members: Prof. Bruno Barel (University of Padua), Dr. Elisa Bellato (University “Ca’ Foscari” of Venice), Prof. Alessandra Maria Paola Broccolini (University “La Sapienza” of Rome, SIMBDEA), Prof. Pietro Clemente (University of Florence, SIMBDEA), Prof. Giovanni Luigi Fontana (University of Padua), Prof. Marco Giampieretti (University of Padua), Dr. Valentina Lapicciarella Zingari (SIMBDEA), Prof. Maria Laura Picchio Forlati (University “Ca’ Foscari” of Venice), Dr. Simona Pinton (University “Ca’ Foscari” of Venice), Prof. Lauso Zagato (University “Ca’ Foscari” of Venice). The final text has been drafted by Prof. Marco Giampieretti, with the collaboration of Dr. Simona Pinton.

**2** The editors decided to include the English translation of the introductory part of the Draft Law while its text is in the original language, being the Draft Law still under discussion among the members of the Cultural Committees of the Italian Parliament.

to the times of communal rule, and which has been consolidated over time through a long series of normative and administrative acts dedicated to the protection and conservation of cultural and landscape heritage. Here is a tradition borne of Italy's awareness of just how invaluable these assets are, as essential leverage, both social and political, in the promotion of cultural development and in the reinforcement of each citizen's sense of civil responsibility. An effective synthesis can be found in the *Code of Cultural Heritage and Landscape* (Legislative Decree 22nd January 2004, no 42, and subsequent amendments and additions).

Not the same can be said for the abundance of practices, representations, expressions, knowledge and skills in existence throughout Italy or rooted in Italian traditions, and this not least as a result of human settlements and cultural exchanges, which form an integral part of our cultural heritage: a vital and living part, transferred from generation to generation, and constantly recreated by communities, groups and individuals in relation to their environment, their history and their interaction with nature, thereby providing them with a sense of identity and continuity, and promoting respect for cultural diversity and human creativity.

This too, represents a component of national cultural heritage, and is no less relevant, either in terms of quantity or quality, than that represented by the countless cultural assets, landscapes and places of cultural interest readily available in Italy, which have made our country famous throughout the world and which attract millions of visitors every year. From languages to historical memories, arts to crafts, naturalistic know-how to production expertise, social customs to religious beliefs, and expressions of popular culture to eno-gastronomic traditions, etc., the variety and wealth of Italy's heritage is the result of complex stratifications and a multi-century accumulation of civilizations, constituting a precious asset and a strategic resource for the country, whose recovery, safeguard and delivery to future generations is the task of the Italian Republic (Articles 9 and 117, paragraph 2, letter s), and 3, of the *Constitution*).

On the one hand, to acknowledge, preserve and enhance the various elements of intangible cultural heritage, with the involvement of all interested parties, both public and private, is to foster the cultural development of people, enriching their knowledge and sensibility and keeping their identity alive, it encourages dialogue between cultures in conditions of freedom and equality, stimulates inter-cultural attitudes to diversity and human rights, educates on solidarity and the sharing of responsibility in the interests of the common good, and helps to consolidate ties, not only between single individuals, but also among whole peoples, thus helping to build an open, plural, peaceful and democratic society.

On the other hand, to promote the recovery, application, innovation and transferal of those skills, knowledge, techniques and practices which constitute the very essence of 'made in Italy', especially in the areas of

agricultural farming, breeding and food production, cottage industry and mass production, trade and art, can help revitalize the Italian economy and strengthen its competitive edge in ways which remain sustainable and at the same time coherent with history, cultures and traditions, both national and local.

And not only.

The safeguarding of intangible (or immaterial) cultural heritage, in all its guises, is today a clearly defined international obligation, imposed by a number of 'hard law' instruments - notably the *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris, 17th October, 2003), ratified by Italy and enforced by Italian law no. 167 of 2007, the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Paris, 20th October, 2005), ratified by Italy and enforced by law no. 19 of 2007, and by the *COE Framework Convention on the Value of Cultural Heritage for Society* (Faro, 27th October 2005), signed by Italy but not yet ratified - which our country is obliged to respect and implement (Article 117, paragraph 1, of the *Constitution*) with appropriate legislative, administrative and financial measures, and which is subject to constant monitoring.

At the European level, similar indications arise from Article 22 of the *Charter of Fundamental Rights of the European Union* (Nice, 7th December 2000), Article 3.3 of the *Treaty on European Union* and Article 167 of the *Treaty on the Functioning of the European Union*, which commit the Union and the Member States to protecting cultural, religious and linguistic diversity, safeguarding European cultural heritage and contributing to the full development of their own cultures while both respecting national and regional diversity, and at the same time highlighting the common cultural legacy.

It is through the combination of these sources that a set of principles can be seen to emerge - the safeguarding cultural heritage in all its tangible and intangible components, the protection and the promotion of cultural diversity, the development of intercultural dialogue, and the involvement of civil society in the identification and management of their heritage, and the definition of related policies - all principles to which any legislative action in this area must necessarily aspire.

According to Article 117, subsections 2 and 3, of the *Constitution*, the State has sole responsibility for deciding what can be part of the country's heritage (by virtue of a consolidated tradition which tends to include it within the sphere of 'protection'), defining the criteria upon which it can be identified, and the rules pertaining to the organization and actions of those Governmental administrations which are involved both in their safeguarding and in the protection and conservation of the tangible assets associated with them (Article 7-bis, *Code of Cultural Heritage and Landscape*). It is, however, the joint responsibility of both the State and

Regions (excluding that provided by special statutes or by laws adopted pursuant to Article 116, paragraph 3, of the *Constitution*) to ensure the enforcement of those safeguarding actions, which can be considered much more as an 'enhancement' rather than a 'protection' (in addition to the promotion and organization of cultural activities, these actions include all forms of protection and conservation of intangible cultural assets as well as all forms by which their contents are transferred in the process of 're-creation' through communities, groups and individuals).

Unfortunately, unlike tangible cultural heritage, intangible cultural heritage in Italy is still in need of a unified approach, capable of providing reliable criteria for identifying its assets and for indicating timescales and means by which they should be safeguarded. In the continued absence of up-to-date, ad hoc state legislation (since the content of those laws which do implement international Conventions is too generic in nature to be sufficiently effective), the Regions have proceeded to act in a somewhat scattered manner, giving rise to an extremely fragmented and very disorderly regulatory framework.

The draft law presented below seeks to fill the serious void that exists in our legal system by aligning it to the principles of international and European law, by redirecting the relevant State and Regional legislation, and by satisfying the fundamental requirements of the national community.

The text consists of 18 articles, divided into two parts (Part I - General Provisions, Articles 1 to 7, and Part II - Safeguards, Articles 8 to 18), which are briefly outlined below.

Article 1 provides an indication as to the purpose of the law, which all the institutions of the Republic are called upon to pursue, upon the implementation of article 9 of the *Constitution* and in respect of the constraints deriving from European Union law and from international obligations governing the safeguarding of intangible cultural heritage.

Article 2 sets out the fundamental principles on the subject, as derived from the *Constitution*, from the UNESCO Convention 2003 and from other international tools for the safeguarding of intangible cultural heritage, the acknowledgement and safeguard of cultural rights, the protection and promotion of cultural diversity and the development of intercultural dialogue.

It also contains a clause directed at making sure that any actions taken in the interests of heritage protection are compatible with human rights and with other essential needs of the collective community.

Article 3 provides a definition of intangible cultural heritage, modelled on that of Article 2.1 of the UNESCO Convention 2003, and including a number of additional details for the purpose of adapting it to the Italian context. The general formula of paragraph 1, including all forms of cultural expression, either existing in Italian territory or related to Italian traditions, even as a result of settlements and exchanges, thus takes the form of ten subdivided categories which provide examples - by no means



exhaustive – of the main areas in which our country’s intangible cultural heritage is articulated.

It also contains two clauses aimed at coordinating the new legislation with the existing relevant State and Regional provisions of law.

Article 4 distinguishes the activities comprised within the function of safeguarding intangible cultural heritage and lists a series of measures that the State, the Regions and Local Authorities must adopt, within their respective areas of competence and in mutual collaboration, in order to achieve the objectives of the law. Also contained in this Article is a clause aimed at coordinating the new legislation with the provisions in force regarding the protection of intellectual property, as applicable to the safeguarding of intangible cultural heritage.

Article 5, as consistent with the provisions of Articles 8, 9 and 10 of the 2005 COE Convention, the Republic undertakes to ensure the sustainability of the intangible cultural patrimony, ensuring an active balance between tradition and innovation and a dialectic relationship between identity and cultural diversity (“internal sustainability”) and to promote its safeguard as a tool for sustainable development (“external sustainability”). It therefore lists a number of measures that the State, the Regions and Local Authorities must adopt in order to achieve these goals.

Article 6 refers to the fundamental right of every person to actively participate in the community’s cultural life (Article 27, *Universal Declaration of Human Rights*, New York, 10th December, 1948; Article 15, *International Covenant on Economic, Social and Cultural Rights*, New York, 16th December 1966) as implemented by the principle of subsidiarity referred to in Article 118, paragraph 4, of the *Constitution*, by the principle of participation in the management of cultural heritage referred to in Article 15 of the 2003 UNESCO Convention and by the principle of individual and collective responsibility for the protection of cultural heritage, as referred to in Article 1 of the 2005 COE Convention. Article 6 thereby commits the Republic to ensuring the widest participation of civil society in the safeguarding of Italy’s intangible cultural heritage, to ensuring the involvement of relevant communities, groups, non-governmental organizations and individuals in related activities, also encouraging them to take part in public reflection and debate on this topic.

It thus provides a definition of these matters, as outlined by the most authoritative scientific explanations, acknowledged also on an international level.

Art. 7, in accordance with the provisions of art. 118 (1)(2)(3) of the Constitution, assigns the administrative functions between the State (exercised by the Ministry of Cultural Heritage and Tourism), The Regions and Local Authorities on the protection of intangible cultural heritage. In the interests of ensuring a unified approach, the Article encourages the stipulation of agreements and understandings between the administra-

tions concerned and states that, in the absence of such arrangements, the Regions are required to guarantee the safeguard of the intangible cultural heritage present in their territory, in accordance with the forecast plans referred to in Art. 10, and this, in any case, without prejudice to the powers of the Italian National Commission for UNESCO.

Art. 8 provides for the establishment of a National Observatory for the Safeguard of Intangible Cultural Heritage, whose functions include study, research, analysis, monitoring, consultations and proposals, and all this within the context of the safeguard of intangible cultural heritage, protection and promotion of cultural diversity, and the development of intercultural dialogue. The Observatory also carries out its functions in collaboration with universities and competent research institutes, with the participation of qualified representatives of civil society and in coordination with the Regional Observatories for the Safeguard of Intangible Cultural Heritage, which will have to be established in each Region.

Art. 9 provides that a national inventory of intangible cultural heritage shall be established within the Ministry, in which to electronically compile and store inventories, lists, registers and atlas of the State, Regions and Local Authorities, and all such documentation pertaining to any aspects of intangible cultural heritage.

The inventory shall be devised and updated in a participatory form with the support of interactive digital resources, and made accessible to the public, providing the basis both for the development of the plan referred to in Art. 10 as well as for the preparation of the report referred to in Art. 17, and shall thereby contribute to raising awareness amongst communities, groups and individuals of the content, meaning and value of intangible cultural heritage, by directly involving them in the process of identifying, defining and describing their own country's cultural assets. In order that these ends might be fully achieved, and in compliance with the principles established by law, the Regions will be able to establish regional participatory inventories of intangible cultural heritage.

Art. 10 identifies the national plan for the safeguard of intangible cultural Heritage as the most important instrument in terms of ensuring a coordinated approach to the planning and management of the activities of the State, Regions, Local Authorities and of relevant non-governmental organizations in this field.

The plan shall be approved every ten years by the Government, upon the proposal of the Minister, on agreement with the "Joint Conference", and in consultation with the Observatory, and may be revised in the same manner after the initial five years.

The plan:

- a. will undertake a regular review of those elements of intangible cultural heritage included in the inventory and, taking into account

the peculiarities of each case, will identify the most appropriate measures for their safeguard;

- b. will define the methods by which the safeguard – as provided for by law and by the plan – should be implemented, and will impose the minimum standard quality levels for the appropriate actions, which are to be respected by all parties working in this sector, private and public alike.

Art. 11 provides for a representative list of Italy's intangible cultural heritage to be drawn up within the Ministry, on which to register those assets, or parts of assets, which are considered most representative of the communities and groups either present in the Italian territory or connected to Italian traditions, including those resulting from human settlements of cultural exchanges. Thanks to the use of interactive digital resources, the list can be compiled and updated by means of open participation and made accessible to the public, which will help ensure the visibility of the items registered, promote awareness of their significance and value, and encourage interaction and exchanges between people of different cultures. In order that these objectives might be achieved, and in compliance with the principles established by law, the Regions will be able to establish lists representing their own region's intangible cultural heritage.

Art. 12 provides for the establishment of a national list within the Ministry, on which to register elements of intangible cultural heritage in need of urgent safeguarding, comprising all those assets of intangible cultural heritage which require urgent measures to ensure their vitality, transferal and where necessary, revitalization. Thanks to the use of interactive digital resources, the list can be compiled and updated by means of open participation and made accessible to the public, and will ensure that those items registered on the list will get preferential treatment in terms of safeguarding interventions and priority allocation of those resources destined to the safeguard of intangible cultural heritage to be carried out by the State, Regions and of the local bodies. In order that these objectives might be achieved, and in compliance with the principles established by law, the Regions will be able to establish their own lists of intangible cultural heritage in need of urgent safeguarding.

Art. 13 provides for the establishment of a register of best practice in the safeguard of intangible cultural heritage which, at the proposal of the Observatory, shall include those practices, methods, plans and processes developed locally, nationally and internationally for the safeguard of intangible cultural heritage and which are considered most consistent with those objectives and principles established by law. The register will be kept constantly up-to-date and accessible to the public, and as such it will constitute a platform for the exchange of knowledge and experience on the safeguard of immaterial cultural heritage, providing a source of inspiration

for the adoption of appropriate measures by the State, the Regions, Local Authorities and others public and private entities concerned.

Art. 14 commits the State, Regions and Local Authorities, in collaboration with the appropriate universities and research institutes, and in cooperation with the Observatory, to support, promote, and carry out research, studies and other knowledge-gathering activities relating to the safeguard of intangible cultural heritage, to the protection and promotion of cultural diversity and to the development of intercultural dialogue. For this purpose, and through the participation of universities, research institutes and other interested public and private parties, the Ministry, the Regions and Local Authorities will be able to formalize agreements for the establishment of permanent study centers and the development of documentation concerning intangible cultural heritage.

Art. 15 commits the State, Regions and Local Authorities, in cooperation with the Observatory, with the participation of all public and private parties concerned, and with the use of appropriate measures, to promote the education and awareness in matters of intangible cultural heritage. To this end, the Ministry will be able to formalize agreements with the Ministry of Education, University and Research for the creation of educational, school and university courses, as well as training and refresher courses for teachers and professionals on the subject of intangible cultural heritage and the safeguard thereof.

Art. 16 commits the State, Regions and Local Authorities to:

a) ensure the safeguard of intangible cultural heritage also through support for eco-museums, demo-ethno-anthropological museums, local museums, territorial museum systems and the integrated management thereof;

b) promote, support and coordinate applications for the addition of intangible cultural heritage assets to the UNESCO Lists, on the one hand in collaboration with relevant universities and research institutes, and on the other through the participation of interested public and private parties.

In the interests of achieving these objectives, in respect of the principles as established by law, and in line with the contents of the plan, the Regions will be able to provide for other measures to safeguard intangible cultural heritage on a regional level.

Art. 17 commits the Ministry, on the basis of the data and information provided by the Observatory, to submit the report required by art. 29 of the 2003 UNESCO Convention, which outlines the measures adopted for the implementation of the Convention, and also to ensure that it be distributed extensively nationwide.

Art. 18 provides that measures taken for the safeguard of intangible cultural heritage may be funded through contributions from the State, Regions and Local Authorities, which should be determined annually, in accordance with the provisions of the plan referred to in art. 10. Other contributions may come through sponsorships, disbursements by bank-

ing foundations and – with reference to specific safeguarding activities – through other forms of contribution from both public and private entities.

This article also undertakes that the State, the Regions and the Local Authorities should promote, support and coordinate projects, programs and initiatives of public and private entities for the safeguard of intangible cultural heritage, the protection and promotion of cultural diversity and the development of intercultural dialogue for the purpose of their gaining access funding sources from both Europe and the rest of the world.

## Proposta di legge

### Capo I Disposizioni generali

#### Art. 1. *(Finalità).*

1. La Repubblica, in attuazione dell'articolo 9 della Costituzione, nel rispetto dei vincoli derivanti dal diritto dell'Unione europea e dagli obblighi internazionali in materia di cultura e di patrimonio culturale e in coerenza con le attribuzioni stabilite dagli articoli 117 e 118 della Costituzione, salvaguarda il patrimonio culturale immateriale secondo le disposizioni della presente legge.

2. La salvaguardia del patrimonio culturale immateriale concorre a preservare e a trasmettere la memoria delle comunità, dei gruppi e degli individui in relazione al loro ambiente, alle loro tradizioni e al loro territorio e a promuovere lo sviluppo della cultura in forme libere, aperte e partecipate. Tale salvaguardia costituisce uno strumento essenziale per lo sviluppo della persona umana e per la crescita sociale e culturale della comunità nazionale e fornisce un contributo importante alla creazione di un'unione sempre più stretta fra i popoli dell'Europa, fondata sui principi di democrazia, libertà, uguaglianza, pluralismo e dialogo fra le culture.

3. La salvaguardia del patrimonio culturale immateriale persegue in particolare le seguenti finalità:

- a. assicurare la vitalità delle pratiche culturali e la loro costante ricreazione da parte delle comunità, dei gruppi e degli individui in risposta al loro ambiente, alla loro storia e alla loro interazione reciproca e con la natura;
- b. preservare e trasmettere la memoria di comunità, gruppi e individui quale espressione dell'originalità e della pluralità delle identità

- culturali e promuovere lo sviluppo della cultura in un contesto di libertà, uguaglianza, partecipazione, coesione sociale e rispetto reciproco fra le persone e fra i popoli;
- c. proteggere e promuovere la diversità delle espressioni culturali e linguistiche presenti sul territorio nazionale, quale presupposto per la piena partecipazione di ciascuno alla vita della comunità e quale fattore di crescita e di arricchimento individuale e sociale;
  - d. incoraggiare il dialogo tra le culture e stimolare l'interculturalità nel rispetto delle differenze e dei diritti umani, contribuendo a rafforzare i legami fra persone e popoli e a costruire una società aperta, plurale, pacifica e democratica;
  - e. garantire la trasmissione e lo scambio delle conoscenze, delle esperienze e delle pratiche con valore tradizionale e identitario, quali espressioni della creatività umana nella continuità fra le generazioni e quali condizioni per uno sviluppo sostenibile e per un miglioramento della qualità della vita.

Art. 2.  
*(Principi).*

1. L'ordinamento giuridico italiano si conforma agli obblighi e ai principi fissati dalla Convenzione per la salvaguardia del patrimonio culturale immateriale, di seguito denominata «Convenzione», adottata a Parigi il 17 ottobre 2003 dalla XXXII sessione della Conferenza generale dell'Organizzazione delle Nazioni Unite per l'educazione, la scienza e la cultura (UNESCO), resa esecutiva dalla legge 27 settembre 2007, n. 167, e dagli altri strumenti internazionali vigenti in materia di riconoscimento e di garanzia dei diritti culturali, di tutela e di valorizzazione del patrimonio culturale, di protezione e di promozione delle diversità culturali e di sviluppo del dialogo interculturale.

2. La Repubblica salvaguarda il patrimonio culturale immateriale nel rispetto dei seguenti principi:

- a. diritti fondamentali della persona umana, in forma sia singola sia associata, riconosciuti e garantiti dalla Costituzione, dal diritto dell'Unione europea e dal diritto internazionale, con particolare riguardo alla libertà di espressione, alla libertà di religione e di culto, alla libertà dell'arte e della scienza e alla libertà della cultura;
- b. uguaglianza e solidarietà, trattando allo stesso modo tutte le forme di espressione culturale, senza alcuna discriminazione, e sostenendo con misure idonee le culture più deboli e minoritarie, che hanno maggiore difficoltà ad affermarsi e a farsi conoscere;
- c. pluralismo, favorendo la creazione, la circolazione e lo scambio dei più diversi contenuti culturali e assicurando alle diverse culture

presenti nella società la possibilità di esprimersi e di manifestarsi in un clima di dialogo e di confronto libero, aperto e rispettoso delle differenze;

- d. accessibilità, promuovendo la conoscenza e la fruizione del patrimonio culturale immateriale, quale strumento per la crescita culturale delle persone e per l'effettiva partecipazione dei cittadini alla vita culturale del Paese;
- e. partecipazione, garantendo il coinvolgimento delle comunità, dei gruppi e degli individui nelle attività di identificazione, documentazione, ricerca, conservazione, protezione, promozione, valorizzazione, trasmissione, diffusione e scambio del patrimonio culturale immateriale;
- f. cooperazione, favorendo l'impegno condiviso di soggetti pubblici e privati, singoli o associati, per la salvaguardia del patrimonio culturale immateriale, la protezione e la promozione delle diversità culturali e lo sviluppo del dialogo interculturale mediante accordi, convenzioni e altre forme di concertazione locale, nazionale e internazionale;
- g. dinamicità, tenendo conto della natura viva e vitale del patrimonio culturale immateriale e favorendone la continua ricreazione ad opera di comunità, gruppi e individui;
- h. creatività, promuovendo lo sviluppo del patrimonio culturale immateriale in forme originali e innovative ed evitando la spettacolarizzazione, la mercificazione e la banalizzazione dei suoi elementi;
- i. coordinamento tra le azioni per la salvaguardia del patrimonio culturale immateriale e quelle per la tutela e la valorizzazione dei beni culturali e paesaggistici, tenendo conto degli aspetti materiali del primo e della dimensione culturale immateriale dei secondi;
- j. comunicazione, quale strumento indispensabile per lo studio e la ricerca sul patrimonio culturale immateriale, la promozione, la valorizzazione, la trasmissione, la diffusione e lo scambio dei suoi contenuti e la comprensione dei suoi significati e del suo valore.

3. La salvaguardia del patrimonio culturale immateriale è consentita unicamente nella misura in cui è compatibile con i diritti umani e con le fondamentali esigenze di rispetto reciproco e dialogo fra comunità, gruppi e individui, di tutela dell'ambiente, dei beni culturali e del paesaggio e di sviluppo sostenibile.

#### Art. 3.

##### *(Patrimonio culturale immateriale).*

1. Il patrimonio culturale immateriale comprende le pratiche, le rappresentazioni, le espressioni, le conoscenze, i saperi, i processi, le arti e le

tecniche, nonché gli strumenti, gli oggetti, i manufatti, gli spazi culturali e i saperi pratici a essi associati, presenti nel territorio italiano o connessi a tradizioni italiane, anche per effetto di insediamenti e di scambi di culture, che comunità, gruppi o individui riconoscono quale parte del loro patrimonio culturale. Tale patrimonio, trasmesso di generazione in generazione, è costantemente ricreato dalle comunità, dai gruppi e dagli individui in risposta al loro ambiente, alla loro interazione con la natura e alla loro storia e dà loro un senso d'identità e di continuità, promuovendo in tal modo il rispetto per la diversità culturale e la creatività umana.

2. Il patrimonio culturale immateriale comprende in particolare:
  - a. tradizioni ed espressioni orali, compresi i dialetti, le lingue storiche, l'onomastica e la toponomastica;
  - b. memorie di eventi storici significativi per la loro rilevanza spirituale, morale e civile di carattere universale e per il loro valore identitario dei gruppi e delle comunità e dei loro territori, storia orale;
  - c. cognizioni e prassi relative alla natura e all'universo, conoscenze, saperi, competenze e pratiche tradizionali connessi al rapporto tra l'uomo e l'ambiente, all'uso delle risorse naturali e alla cura degli animali;
  - d. arti manuali, mestieri e manifatture tradizionali con i relativi saperi, taciti e codificati, competenze e pratiche, nonché siti, edifici, strumenti, impianti, attrezzature, oggetti, manufatti e infrastrutture a essi dedicati o associati;
  - e. competenze e saperi tecnici, produttivi e organizzativi, dell'industria e del lavoro, taciti e codificati, nonché archivi, prodotti, impianti, macchinari, attrezzature, edifici, complessi e siti industriali, reti energetiche e comunicative, infrastrutture e spazi abitativi, sociali, culturali, assistenziali e del tempo libero a essi dedicati o associati;
  - f. attività commerciali tradizionali, con i relativi saperi e competenze tecnici e organizzativi, luoghi storici del commercio;
  - g. tradizioni alimentari ed enogastronomiche, con i relativi saperi e tecniche, taciti e codificati, quali espressioni dell'identità storico-culturale del territorio e strumenti per la tutela della biodiversità alimentare;
  - h. arti orali, musiche, canti e danze, arti figurative, visive e dello spettacolo di tradizione, comprese le espressioni artistiche di strada;
  - i. usi, consuetudini, istituzioni e pratiche sociali di tradizione, giochi, cerimonie ed eventi rituali e festivi, feste storiche, con i relativi saperi e competenze organizzativi ed espressivi, cultura popolare;
  - j. risorse uniche nei campi della conoscenza e dell'espressione umane, create digitalmente o convertite in forma digitale.

3. Sono fatte salve le vigenti disposizioni di legge statale e regionale che, in



conformità ai principi della presente legge, prevedono particolari modalità di salvaguardia in relazione a specifici elementi del patrimonio culturale immateriale.

4. Sono fatte salve le disposizioni vigenti in materia di tutela e valorizzazione dei beni culturali di interesse demotnoantropologico, in quanto applicabili alla salvaguardia del patrimonio culturale immateriale.

Art. 4.

*(Salvaguardia del patrimonio culturale immateriale).*

1. La salvaguardia del patrimonio culturale immateriale si realizza mediante attività coordinate e partecipative volte a garantirne la vitalità. Tali attività comprendono l'identificazione, la documentazione, la ricerca, la conservazione, la protezione, la promozione, la valorizzazione, la trasmissione, in particolare attraverso un'educazione formale e informale, la diffusione e lo scambio dei diversi aspetti del patrimonio culturale immateriale.

2. Ai fini di cui al comma 1, lo Stato, le regioni e gli enti locali, nell'ambito delle competenze loro attribuite dall'articolo 7 e nel rispetto dei principi stabiliti dalla presente legge, adottano misure dirette a:

- a. promuovere l'identificazione degli elementi del patrimonio culturale immateriale nel loro continuo divenire, con particolare riguardo agli ambiti definiti all'articolo 3, comma 2;
- b. istituire e sviluppare inventari del patrimonio culturale immateriale con la partecipazione dei soggetti di cui all'articolo 6, comma 1;
- c. promuovere la ricerca scientifica sulle diverse componenti del patrimonio culturale immateriale, sulle loro trasformazioni nel tempo e sulle modalità e sui processi più idonei alla loro salvaguardia;
- d. assicurare la protezione, la conservazione, la promozione e la valorizzazione del patrimonio culturale in tutti i suoi aspetti, con particolare attenzione a quelli considerati più rappresentativi di comunità e gruppi presenti nel territorio italiano, o connessi a tradizioni italiane, anche per effetto di insediamenti e di scambi, e a quelli espressivi di comunità e gruppi minoritari a rischio di emarginazione o di estinzione;
- e. promuovere figure e competenze capaci di raccogliere e di interpretare le espressioni più vive e vitali del patrimonio culturale immateriale e di favorirne la trasmissione, anche in forma creativa;
- f. promuovere l'accesso dei giovani al patrimonio culturale immateriale, favorendo il loro inserimento e sostenendo la loro presenza nelle relative comunità patrimoniali;
- g. promuovere la conoscenza del patrimonio culturale immateriale e favorirne la trasmissione tra le generazioni, in particolare mediante

- attività educative, formative, di sensibilizzazione, disseminazione e promozione, realizzate anche con strumenti e supporti innovativi;
- h. promuovere il recupero, la riqualificazione e l'allestimento, in forme integrate e coerenti con l'ambiente, il paesaggio e il contesto economico e sociale, di spazi, attrezzature, infrastrutture e strumenti idonei alla salvaguardia del patrimonio culturale immateriale e alla pratica delle relative attività;
  - i. favorire processi di dialogo, confronto e scambio culturale fra comunità, gruppi e individui per la costruzione di identità aperte e plurali;
  - j. individuare e diffondere pratiche, processi e metodologie conformi ai migliori *standard* nazionali e internazionali per la salvaguardia del patrimonio culturale immateriale.

3. Sono fatte salve le disposizioni vigenti in materia di tutela della proprietà intellettuale, in quanto applicabili alla salvaguardia del patrimonio culturale immateriale.

Art. 5.

*(Patrimonio culturale immateriale e sostenibilità).*

1. La Repubblica garantisce la sostenibilità del patrimonio culturale immateriale, caratterizzata da un equilibrio dinamico tra tradizione e innovazione e da un rapporto dialettico tra identità e diversità culturali. 2. La Repubblica promuove la salvaguardia del patrimonio culturale immateriale quale strumento per uno sviluppo sostenibile, fondato su un rapporto armonico tra crescita economica e tutela dell'ambiente, nel riconoscimento e nel rispetto della storia e delle culture di gruppi e di comunità. 3. Ai fini di cui ai commi 1 e 2, lo Stato, le regioni e gli enti locali, nell'ambito delle competenze loro attribuite dall'articolo 7 e nel rispetto dei principi stabiliti dalla presente legge, adottano misure dirette a:

- a. accrescere la consapevolezza del valore del patrimonio culturale immateriale, della necessità di preservarlo, trasmetterlo e arricchirlo e dei benefici, anche economici, che possono derivarne;
- b. favorire un approccio integrato alle politiche economiche, ambientali e culturali, promuovendo la crescita economica in forme compatibili con la tutela degli ecosistemi, dell'ambiente e del paesaggio e con la salvaguardia dell'integrità, dei valori intrinseci, del carattere specifico e degli interessi del patrimonio culturale immateriale;
- c. arricchire i processi di sviluppo economico, politico, sociale e culturale e di pianificazione territoriale, orientandoli verso obiettivi di protezione della diversità biologica, geologica, paesaggistica e culturale, uso sostenibile delle risorse, razionale utilizzo e sfruttamento del suolo, riqualificazione dei luoghi e miglioramento della qualità della vita delle persone e delle popolazioni che vi sono insediate,

- ricorrendo, ove necessario, a valutazioni di impatto su tali elementi accompagnate da strategie di mitigazione dei danni;
- d. garantire l'alta qualità degli interventi sul patrimonio culturale immateriale attraverso sistemi di qualificazione e di accreditamento dei soggetti pubblici e privati tenuti o interessati alla sua salvaguardia;
  - e. promuovere il recupero, lo sviluppo, l'applicazione e l'innovazione delle competenze, dei saperi, delle tecniche e delle pratiche di cui all'articolo 3, comma 2, lettere c), d), e), f) e g), quali strumenti per il rilancio dell'economia italiana e per il rafforzamento della sua competitività in forme coerenti con le culture e le tradizioni locali e nazionali;
  - f. promuovere lo sviluppo di un turismo sostenibile e la creazione di sistemi turistici locali caratterizzati da un'offerta integrata di beni culturali, paesaggistici e ambientali e di attrazioni turistiche, compresi i prodotti tipici delle attività agrosilvopastorali, della pesca e dell'artigianato locale;
  - g. favorire processi creativi che portino a innovazioni e invenzioni condivise, capaci di assicurare vitalità e futuro ai diversi elementi del patrimonio culturale immateriale;
  - h. rafforzare la coesione sociale promuovendo il senso di responsabilità condivisa di comunità, gruppi e individui nei processi di salvaguardia del patrimonio culturale immateriale, protezione e promozione della diversità culturale, scambio culturale e dialogo fra culture e religioni.

#### Art. 6.

##### *(Partecipazione della società civile).*

1. La Repubblica garantisce la più ampia partecipazione di comunità, gruppi, organizzazioni non governative rilevanti e individui alla salvaguardia del patrimonio culturale immateriale, assicurandone il diretto coinvolgimento nelle relative attività e incoraggiandoli a prendere parte alla riflessione e al dibattito pubblico sulle opportunità e sulle sfide che esso rappresenta.

2. Ai fini della presente legge:

- a. una «comunità» è un insieme di persone il cui senso di identità e di appartenenza deriva da una relazione storica condivisa, radicata nella pratica e nella trasmissione del proprio patrimonio culturale immateriale o nel legame con esso. In particolare, una «comunità patrimoniale», o «comunità di eredità», è costituita da un insieme di persone che attribuisce valore ad aspetti specifici del patrimonio culturale e che desidera, nel quadro di un'azione pubblica o partecipata, sostenerli e trasmetterli alle generazioni future;

- b. un «gruppo» comprende persone interne o esterne alle comunità che, anche in forma organizzata o associata, condividono specifiche conoscenze, esperienze e abilità, svolgendo un ruolo significativo nella pratica, nella ricreazione o nella trasmissione, presente e futura, del patrimonio culturale immateriale;
- c. un'«organizzazione non governativa rilevante» è qualunque forma di organizzazione o associazione volontaria e non lucrativa di persone fisiche o giuridiche private, costituita a livello locale, nazionale o internazionale, indipendente da organismi governativi o intergovernativi, che agisce imparzialmente a fini sociali, culturali o umanitari e che a causa della sua natura, del suo ruolo o della sua competenza, è coinvolta in attività di salvaguardia del patrimonio culturale immateriale. In particolare, un'«organizzazione non governativa rilevante accreditata» è un'organizzazione non governativa rilevante che ha ottenuto l'accreditamento con funzioni consultive presso il Comitato intergovernativo istituito nell'ambito dell'UNESCO, di cui all'articolo 9 della Convenzione;
- d. un «individuo» è una persona interna o esterna alle comunità la quale possiede specifiche conoscenze, esperienze e abilità, o altre caratteristiche, che le attribuiscono un ruolo significativo nella pratica, nella ricreazione o nella trasmissione del patrimonio culturale immateriale;
- e. un «inventario partecipativo» è il risultato di un processo di identificazione, definizione e descrizione del patrimonio culturale immateriale attivato e realizzato con la partecipazione diretta di comunità, gruppi e individui e con il supporto di organizzazioni non governative rilevanti.

3. In attuazione del principio di sussidiarietà di cui all'articolo 118, quarto comma, della Costituzione, la Repubblica promuove politiche attive per la salvaguardia del patrimonio culturale immateriale incoraggiando, sostenendo e coordinando progetti, programmi e iniziative di comunità, gruppi, individui, organizzazioni non governative rilevanti e altre organizzazioni della società civile per l'esercizio delle attività di cui all'articolo 4, anche mediante la costituzione di associazioni, consorzi, reti, partenariati e altre forme di cooperazione locale, nazionale e transnazionale.

#### Art. 7.

#### *(Funzioni in materia di salvaguardia del patrimonio culturale immateriale).*

1. La ripartizione delle competenze in materia di salvaguardia del patrimonio culturale immateriale è stabilita in conformità ai principi costituzionali, avuto riguardo all'applicazione dei relativi strumenti internazionali e delle

norme di ratifica e di esecuzione degli stessi.

2. Al fine di garantire l'esercizio unitario delle funzioni amministrative in materia di salvaguardia del patrimonio culturale immateriale, in conformità all'articolo 118, commi primo, secondo e terzo, della Costituzione, le stesse sono attribuite allo Stato, alle regioni e agli enti locali secondo le disposizioni della presente legge.

3. Lo Stato esercita le proprie funzioni in materia di salvaguardia del patrimonio culturale immateriale tramite il Ministero dei beni e delle attività culturali e del turismo, di seguito denominato «Ministero», che opera direttamente ovvero d'intesa con le altre amministrazioni statali eventualmente competenti.

4. Le regioni esercitano le proprie funzioni in materia di salvaguardia del patrimonio culturale immateriale avvalendosi di propri uffici dotati di adeguate competenze tecnico-scientifiche e idonee risorse strumentali e finanziarie. Possono tuttavia delegarne l'esercizio, per i rispettivi territori, a enti locali, singoli o associati, purché gli stessi dispongano di strutture e di risorse adeguate, sia in termini di competenze tecnico-scientifiche sia in termini di capacità economico-finanziaria, ad assicurare l'efficacia e la qualità della loro azione, garantendo la differenziazione tra le attività di salvaguardia del patrimonio culturale immateriale e quelle di tutela e valorizzazione dei beni culturali e del paesaggio.

5. Lo Stato, le regioni e gli enti locali stipulano accordi per definire strategie comuni di salvaguardia del patrimonio culturale immateriale in attuazione del Piano nazionale di salvaguardia di cui all'articolo 10. Gli accordi possono essere conclusi su base nazionale, regionale o subregionale, in rapporto ad ambiti territoriali definiti.

6. In assenza degli accordi di cui al comma 5, le regioni sono tenute comunque ad assicurare la salvaguardia del patrimonio culturale immateriale presente nel proprio territorio, in conformità alle previsioni del Piano nazionale di salvaguardia di cui all'articolo 10 e nel rispetto dei livelli uniformi di qualità da esso definiti.

7. Sono fatte salve le competenze attribuite alla Commissione nazionale italiana per l'UNESCO dal decreto del Ministro degli affari esteri n. 4195 del 24 maggio 2007.

Capo II  
MISURE DI SALVAGUARDIA

Art. 8.

*(Osservatorio nazionale per la salvaguardia  
del patrimonio culturale immateriale).*

1. Con decreto del Ministro dei beni e delle attività culturali e del turismo, d'intesa con la Conferenza unificata di cui all'articolo 8 del decreto legislativo 28 agosto 1997, n. 281, è istituito l'Osservatorio nazionale per la salvaguardia del patrimonio culturale immateriale, di seguito denominato «Osservatorio».

2. Con il decreto di cui al comma 1 sono definiti la composizione, l'organizzazione, il funzionamento e le risorse dell'Osservatorio, in modo che sia assicurata la presenza al suo interno di esperti altamente qualificati nei diversi ambiti del patrimonio culturale immateriale, individuati ai sensi dell'articolo 3, comma 2, e di rappresentanti delle organizzazioni non governative rilevanti accreditate, operanti a livello nazionale. Sono membri di diritto dell'Osservatorio i presidenti degli osservatori regionali di cui al comma 6.

3. L'Osservatorio, in collaborazione con università e istituti di ricerca competenti, con la partecipazione dei soggetti di cui all'articolo 6, comma 1, e in coordinamento con gli Osservatori regionali di cui al comma 6:

- a. promuove processi partecipativi di identificazione, inventariazione e documentazione del patrimonio culturale immateriale, in conformità a quanto previsto dalla presente legge;
- b. realizza studi e analisi sul patrimonio culturale immateriale, sui processi, sulle pratiche e sulle metodologie per la sua salvaguardia, sulla protezione e sulla promozione delle diversità culturali e sullo sviluppo del dialogo interculturale, in un quadro di cooperazione internazionale;
- c. individua metodologie partecipative di raccolta, scambio, accesso ed elaborazione di dati e informazioni sul patrimonio culturale immateriale a livello nazionale e di integrazione in rete delle banche dati dello Stato, delle regioni e degli enti locali, ai fini dell'istituzione e dell'aggiornamento dell'Inventario di cui all'articolo 9;
- d. esegue costanti monitoraggi sulle pratiche, sulle metodologie, sui progetti e sui processi di salvaguardia del patrimonio culturale immateriale sviluppati a livello locale, nazionale e internazionale, seleziona quelli considerati più rispondenti alle finalità e ai principi della presente legge e ne propone l'inserimento nel Registro di cui all'articolo 13.

4. Sulla base delle attività di cui al comma 3, l'Osservatorio:
  - a. formula proposte per la definizione di politiche e misure di salvaguardia del patrimonio culturale immateriale da parte dello Stato, delle regioni e degli enti locali, in conformità a quanto previsto dalla presente legge;
  - b. formula proposte al Ministero per la definizione dei livelli minimi uniformi di qualità di cui all'articolo 10, comma 6, e dei criteri generali di cui agli articoli 11, comma 3, e 12, comma 3, nonché per l'adozione delle misure di salvaguardia urgente di cui all'articolo 12, comma 6;
  - c. promuove programmi di educazione, sensibilizzazione, informazione e potenziamento delle capacità, ai sensi dell'articolo 14 della Convenzione e con le modalità di cui all'articolo 16 della presente legge;
  - d. fornisce al Ministero dati e informazioni sullo stato del patrimonio culturale immateriale e sull'attuazione degli obblighi derivanti dalla Convenzione, anche ai fini della redazione del rapporto di cui all'articolo 17.
  
5. L'Osservatorio esprime pareri, su richiesta del Ministero:
  - a. obbligatoriamente, sugli schemi di accordi internazionali e di atti normativi e amministrativi generali in materia di salvaguardia del patrimonio culturale immateriale, protezione e promozione delle diversità culturali e sviluppo del dialogo interculturale;
  - b. obbligatoriamente, sul Piano nazionale di salvaguardia di cui all'articolo 10, sul piano di salvaguardia urgente di cui all'articolo 12, comma 6, e sui relativi piani di spesa predisposti dall'amministrazione;
  - c. sul rapporto di cui all'articolo 17;
  - d. su questioni in materia di salvaguardia del patrimonio culturale immateriale, protezione e promozione delle diversità culturali e sviluppo del dialogo interculturale sollevate dal Ministero e da altre amministrazioni statali, regionali e locali, nonché da Stati esteri.
  
6. Per il conseguimento delle finalità e nel rispetto dei principi stabiliti dalla presente legge, le regioni istituiscono osservatori regionali per la salvaguardia del patrimonio culturale immateriale.

#### Art. 9.

*(Inventario nazionale del patrimonio culturale immateriale).*

1. Il Ministero istituisce l'Inventario nazionale del patrimonio culturale immateriale, di seguito denominato «Inventario», ne assicura la custodia e il costante aggiornamento e garantisce l'accesso del pubblico alle informazioni in esso contenute.

2. Nell'Inventario confluisce, attraverso strumenti digitali interattivi e nel rispetto degli *standard* internazionali per l'interoperabilità delle banche dati *on line*, la documentazione relativa agli elementi del patrimonio culturale immateriale contenuta in inventari, liste, registri e atlanti dello Stato, delle regioni e degli enti locali, completa di tutte le informazioni disponibili.

3. L'Inventario costituisce la base per la formulazione del Piano nazionale di salvaguardia di cui all'articolo 10 e contribuisce a sensibilizzare comunità, gruppi e individui sui contenuti, sui significati e sul valore del patrimonio culturale immateriale, coinvolgendoli direttamente nei processi di identificazione, definizione e descrizione dei suoi elementi.

4. Le procedure e le modalità di inventariazione partecipativa del patrimonio culturale immateriale sono stabilite con decreto del Ministro dei beni e delle attività culturali e del turismo, d'intesa con la Conferenza unificata, di cui all'articolo 8 del decreto legislativo 28 agosto 1997, n. 281, sentito l'Osservatorio.

5. Sono escluse dall'Inventario le descrizioni di aspetti sensibili del patrimonio culturale immateriale qualora ne facciano motivata richiesta le comunità, i gruppi o gli individui che ne sono portatori. In tal caso, con il consenso informato degli interessati, gli stessi possono essere indicati nell'inventario come custodi dei relativi saperi. 6. Per il conseguimento delle finalità e nel rispetto dei principi stabiliti dalla presente legge, le regioni possono istituire inventari partecipativi regionali del patrimonio culturale immateriale. 7. Conformemente a quanto previsto dall'articolo 12, paragrafo 2, della Convenzione, le informazioni rilevanti sull'Inventario e sugli inventari partecipativi regionali sono inserite, a cura del Ministero, nel rapporto di cui all'articolo 17 della presente legge.

Art. 10.

*(Piano nazionale di salvaguardia del patrimonio culturale immateriale).*

1. Lo Stato, le regioni e gli enti locali definiscono d'intesa le politiche per la salvaguardia del patrimonio culturale immateriale, tenendo conto degli studi, delle analisi, dei pareri e delle proposte dell'Osservatorio.

2. Il Governo, su proposta del Ministro dei beni e delle attività culturali e del turismo, d'intesa con la Conferenza unificata, di cui all'articolo 8 del decreto legislativo 28 agosto 1997, n. 281, sentito l'Osservatorio, approva il Piano nazionale di salvaguardia del patrimonio culturale immateriale, di seguito denominato «Piano nazionale di salvaguardia», volto a garantire



una programmazione e una gestione coordinata delle attività dello Stato, delle regioni, degli enti locali e delle organizzazioni non governative rilevanti nella salvaguardia del patrimonio culturale immateriale.

3. Il procedimento di elaborazione del Piano nazionale di salvaguardia è stabilito con decreto del Ministro dei beni e delle attività culturali e del turismo, di concerto con il Ministro dell'ambiente e della tutela del territorio e del mare, con il Ministro delle politiche agricole alimentari e forestali, con il Ministro dell'istruzione, dell'università e della ricerca, con il Ministro del lavoro e delle politiche sociali e con il Ministro dello sviluppo economico, d'intesa con la Conferenza unificata, di cui all'articolo 8 del decreto legislativo 28 agosto 1997, n. 281, sentito l'Osservatorio, in conformità a quanto previsto dalla legge 7 agosto 1990, n. 241, e in modo che siano assicurate la cooperazione istituzionale e la partecipazione dei soggetti di cui all'articolo 6, comma 1.

4. Il Ministero e le regioni informano dell'avvio del procedimento mediante comunicazione pubblicata nella *Gazzetta Ufficiale* e nel Bollettino Ufficiale della regione e altre idonee forme di pubblicità.

5. Il Piano nazionale di salvaguardia effettua una puntuale ricognizione degli elementi del patrimonio culturale immateriale inclusi nell'Inventario e individua le misure più idonee per la loro salvaguardia, in conformità a quanto previsto dall'articolo 4 e tenendo conto delle peculiarità di ciascuno di essi.

6. Il Piano nazionale di salvaguardia definisce le modalità di attuazione delle misure previste dalla presente legge e di quelle da esso individuate ai sensi del comma 5, nonché i livelli minimi uniformi di qualità delle relative attività, che devono essere rispettati da tutti i soggetti pubblici e privati impegnati nella salvaguardia del patrimonio culturale immateriale.

7. Il Piano nazionale di salvaguardia ha una durata di dieci anni e può essere revisionato dopo i primi cinque anni con le procedure e le modalità di cui ai commi 2, 3 e 4.

#### Art. 11.

##### *(Lista nazionale del patrimonio culturale immateriale).*

1. Il Ministero istituisce la Lista nazionale del patrimonio culturale immateriale, di seguito denominata «Lista», ne assicura la custodia e il costante aggiornamento e garantisce l'accesso del pubblico alle informazioni in essa contenuta.

2. Nella Lista sono iscritti gli elementi del patrimonio culturale immateriale considerati più rappresentativi di comunità e di gruppi presenti nel territorio italiano o connessi a tradizioni italiane, anche per effetto di insediamenti e di scambi.

3. Il Ministero, di propria iniziativa o su richiesta motivata di regioni, enti locali, comunità, gruppi, organizzazioni non governative rilevanti o altre organizzazioni della società civile interessate alla salvaguardia del patrimonio culturale immateriale, verifica la sussistenza dei requisiti per l'iscrizione nella Lista, sulla base di criteri generali definiti dal Ministero medesimo, su proposta dell'Osservatorio, al fine di assicurare uniformità di valutazione.

4. Il procedimento per l'iscrizione nella Lista è stabilito con decreto del Ministro dei beni e delle attività culturali e del turismo, d'intesa con la Conferenza unificata, di cui all'articolo 8 del decreto legislativo 28 agosto 1997, n. 281, sentito l'Osservatorio, in conformità a quanto previsto dalla legge 7 agosto 1990, n. 241, e in modo che siano assicurate la cooperazione istituzionale e la partecipazione dei soggetti di cui all'articolo 6, comma 1.

5. Riflettendo la diversità culturale e rappresentando una testimonianza della creatività umana, la Lista contribuisce a garantire la visibilità degli elementi del patrimonio culturale immateriale che vi sono iscritti, a promuovere la consapevolezza del loro significato e del loro valore e a favorire il confronto e lo scambio fra le culture.

6. Fermo restando quanto previsto dall'articolo 12, comma 5, lo Stato, le regioni e gli enti locali adottano misure dirette a tutelare e valorizzare gli elementi iscritti nella Lista e a promuoverne la rappresentazione a livello nazionale e internazionale.

7. La mancata iscrizione di un elemento nella Lista non pregiudica la sua candidatura all'iscrizione nella Lista del patrimonio culturale immateriale dell'umanità, istituita presso l'UNESCO ai sensi dell'articolo 16 della Convenzione. L'iscrizione di un elemento in tale Lista comporta la sua automatica iscrizione nella Lista.

8. Per il conseguimento delle finalità e nel rispetto dei principi stabiliti dalla presente legge, le regioni possono istituire liste regionali del patrimonio culturale immateriale.

Art. 12.

*(Lista nazionale del patrimonio culturale immateriale che necessita di salvaguardia urgente).*

1. Il Ministero istituisce la Lista nazionale del patrimonio culturale immateriale che necessita di salvaguardia urgente, di seguito denominata «Lista di salvaguardia», ne assicura la custodia e il costante aggiornamento e garantisce l'accesso del pubblico alle informazioni in essa contenute.
2. Nella Lista di salvaguardia sono iscritti gli elementi del patrimonio culturale immateriale che necessitano di misure urgenti per garantirne la vitalità, la trasmissione e, ove occorra, la rivitalizzazione.
3. Il Ministero, di propria iniziativa o su richiesta motivata di regioni, enti locali, comunità, gruppi, organizzazioni non governative rilevanti o altre organizzazioni della società civile interessate alla salvaguardia del patrimonio culturale immateriale, verifica la sussistenza dei requisiti per l'iscrizione nella Lista di salvaguardia, sulla base di criteri generali definiti dal Ministero medesimo, su proposta dell'Osservatorio, al fine di assicurare uniformità di valutazione.
4. Il procedimento per l'iscrizione nella Lista di salvaguardia è stabilito con decreto del Ministro dei beni e delle attività culturali e del turismo, d'intesa con la Conferenza unificata, di cui all'articolo 8 del decreto legislativo 28 agosto 1997, n. 281, sentito l'Osservatorio, in conformità a quanto previsto dalla legge 7 agosto 1990, n. 241, e successive modifiche e integrazioni, e in modo che siano assicurate la cooperazione istituzionale e la partecipazione dei soggetti di cui all'articolo 6, comma 1.
5. Lo Stato, le regioni e gli enti locali adottano tutte le misure necessarie a garantire la vitalità, la trasmissione e, ove occorra, la rivitalizzazione degli elementi iscritti nella Lista di salvaguardia presenti nel proprio territorio, o a esso collegati, con priorità nell'assegnazione delle risorse destinate alla salvaguardia del patrimonio culturale immateriale.
6. Al fine di coordinare le azioni di cui al comma 5, il Ministero, d'intesa con la Conferenza unificata, di cui all'articolo 8 del decreto legislativo 28 agosto 1997, n. 281, sentito l'Osservatorio, approva un piano triennale per la salvaguardia urgente del patrimonio culturale immateriale, nel quale sono indicati i tempi e i modi dell'intervento di ciascun ente territoriale e le risorse necessarie per farvi fronte. È fatto salvo il potere del Ministero, su proposta motivata dell'Osservatorio, sentita la regione interessata, di adottare in qualsiasi momento misure per la salvaguardia urgente degli elementi iscritti nella Lista di salvaguardia.

7. La mancata iscrizione di un elemento nella Lista di salvaguardia non pregiudica la sua candidatura all'iscrizione nella Lista del patrimonio culturale immateriale che necessita di salvaguardia urgente, istituita presso l'UNESCO ai sensi dell'articolo 17 della Convenzione. L'iscrizione di un elemento in tale Lista comporta la sua automatica iscrizione nella Lista di salvaguardia.

8. Per il conseguimento delle finalità e nel rispetto dei principi stabiliti dalla presente legge, le regioni possono istituire liste regionali del patrimonio culturale immateriale che necessita di salvaguardia urgente.

Art. 13.

*(Registro delle buone pratiche di salvaguardia).*

1. Il Ministero istituisce il Registro nazionale delle buone pratiche di salvaguardia del patrimonio culturale immateriale, di seguito denominato «Registro», ne assicura la custodia e il costante aggiornamento e garantisce l'accesso del pubblico alle informazioni in esso contenute.

2. Nel Registro sono inseriti, su proposta dell'Osservatorio, ai sensi dell'articolo 8, comma 3, lettera *d*), le pratiche, le metodologie, i progetti e i processi di salvaguardia del patrimonio culturale immateriale sviluppati a livello locale, nazionale e internazionale, considerati più rispondenti alle finalità e ai principi della presente legge.

3. Il Registro costituisce una piattaforma per lo scambio di conoscenze e di esperienze sulla salvaguardia del patrimonio culturale immateriale e una fonte di ispirazione per l'adozione di misure adeguate da parte dello Stato, delle regioni, degli enti locali e degli altri soggetti pubblici e privati interessati, in un quadro di cooperazione internazionale e di cooperazione allo sviluppo.

Art. 14.

*(Ricerca sul patrimonio culturale immateriale).*

1. Lo Stato, le regioni e gli enti locali, anche in collaborazione con università e istituti di ricerca competenti e in coordinamento con l'Osservatorio, promuovono, realizzano e sostengono ricerche, studi e altre attività conoscitive sul patrimonio culturale immateriale, sui processi, sulle pratiche e sulle metodologie per la sua salvaguardia, sulla protezione e sulla promozione delle diversità culturali nonché sullo sviluppo del dialogo interculturale.

2. Al fine di garantire la raccolta e la diffusione sistematica dei risultati

delle attività di cui al comma 1, il Ministero, le regioni e gli enti locali possono stipulare accordi per istituire e sviluppare, con il concorso di università, istituti di ricerca e altri soggetti pubblici e privati interessati, centri permanenti di studio e documentazione del patrimonio culturale immateriale.

Art. 15.

*(Educazione e sensibilizzazione sul patrimonio culturale immateriale).*

1. Lo Stato, le regioni e gli enti locali, in coordinamento con l'Osservatorio e con la partecipazione di tutti i soggetti pubblici e privati interessati, promuovono l'educazione e la sensibilizzazione sul patrimonio culturale immateriale, in particolare mediante:

- a. programmi specifici di educazione e di formazione nell'ambito delle comunità e dei gruppi, volti alla trasmissione e allo scambio di conoscenze, competenze ed esperienze nei diversi ambiti del patrimonio culturale immateriale e al potenziamento delle capacità per la sua salvaguardia;
- b. realizzazione di spazi, fisici e virtuali, destinati all'espressione e alla rappresentazione del patrimonio culturale immateriale;
- c. creazione e sviluppo di centri e di istituti di formazione sulla salvaguardia del patrimonio culturale immateriale;
- d. programmi di educazione, informazione e sensibilizzazione rivolti al pubblico in generale e, in particolare, ai giovani sul significato e sul valore del patrimonio culturale immateriale, della diversità culturale e del dialogo interculturale;
- e. rimozione degli ostacoli che limitano l'accesso al patrimonio culturale immateriale e la sua fruizione da parte del pubblico, nel rispetto dei diritti di proprietà intellettuale, nonché degli usi e delle consuetudini di comunità e di gruppi in relazione a specifici aspetti del medesimo patrimonio;
- f. costante informazione del pubblico sui pericoli che minacciano il patrimonio culturale immateriale e sulle attività svolte per la sua salvaguardia.

2. Il Ministero può concludere accordi con il Ministero dell'istruzione, dell'università e della ricerca per la realizzazione degli obiettivi di cui al comma 1. Nell'ambito di tali accordi, il Ministero, le regioni e gli enti locali possono stipulare apposite convenzioni con università, istituti di ricerca e di formazione e scuole di ogni ordine e grado, appartenenti al sistema nazionale di istruzione, per l'elaborazione e l'attuazione di percorsi didattici e di progetti formativi e di aggiornamento di docenti ed operatori sul patrimonio culturale immateriale e sulla sua salvaguardia.

Art. 16.

*(Altre misure di salvaguardia).*

1. Lo Stato, le regioni e gli enti locali assicurano la salvaguardia del patrimonio culturale immateriale anche attraverso il sostegno a ecomusei, musei demoetnoantropologici, musei locali e di comunità, sistemi di mu-seogratia territoriale e la loro gestione in forma integrata.

2. Per il conseguimento delle finalità e nel rispetto dei principi stabiliti dalla presente legge e in coerenza con i contenuti del Piano nazionale di salvaguardia, le regioni possono prevedere altre misure di salvaguardia del patrimonio culturale immateriale regionale.

3. Lo Stato, le regioni e gli enti locali, anche in collaborazione con università e istituti di ricerca competenti e con la partecipazione dei soggetti di cui all'articolo 6, comma 1, e degli altri soggetti pubblici e privati interessati, promuovono, sostengono e coordinano candidature di elementi del patrimonio culturale immateriale per la loro iscrizione nelle Liste istituite presso l'UNESCO ai sensi della Convenzione.

Art. 17.

*(Rapporto sulle misure di salvaguardia).*

1. Il Ministero, sulla base dei dati e delle informazioni forniti dall'Osservatorio, presenta il rapporto sulle misure adottate per l'applicazione della Convenzione, in conformità a quanto previsto dall'articolo 29 della stessa Convenzione, dandone ampia diffusione a livello nazionale.

Art. 18.

*(Finanziamento delle misure di salvaguardia).*

1. Le misure di salvaguardia del patrimonio culturale immateriale previste dalla presente legge sono finanziate attraverso:

- a. contributi dello Stato, nella misura determinata annualmente dalla legge di bilancio in conformità alle previsioni del Piano nazionale di salvaguardia;
- b. contributi delle regioni, nella misura determinata annualmente dalle rispettive leggi regionali di bilancio in conformità alle previsioni del Piano nazionale di salvaguardia;
- c. contributi degli enti locali, nella misura determinata annualmente dai rispettivi bilanci di previsione in conformità alle previsioni del Piano nazionale di salvaguardia;
- d. sponsorizzazioni e altre forme di contribuzione di soggetti pubblici e privati con riferimento a specifiche attività.

2. Lo Stato, le regioni e gli enti locali possono stipulare, anche congiuntamente, protocolli di intesa con le fondazioni di origine bancaria, che statutariamente perseguono scopi di utilità sociale nei settori dell'arte, della cultura, del patrimonio culturale, del paesaggio e dell'ambiente, al fine di coordinare le attività di salvaguardia del patrimonio culturale immateriale e, in tale contesto, di garantire l'equilibrato impiego delle risorse finanziarie messe a disposizione. La parte pubblica può concorrere, con proprie risorse finanziarie, a garantire il perseguimento degli obiettivi stabiliti dai protocolli di intesa.

3. Lo Stato, le regioni e gli enti locali promuovono, sostengono e coordinano progetti, programmi e iniziative di comunità, gruppi, organizzazioni non governative rilevanti e altri soggetti pubblici e privati ai fini dell'accesso alle misure di sostegno assicurate dall'Unione europea e da altre istituzioni internazionali per la salvaguardia del patrimonio culturale immateriale, la protezione e la promozione delle diversità culturali e lo sviluppo del dialogo interculturale.





**Cultural Heritage. Scenarios 2015-2017**

edited by Simona Pinton and Lauso Zagato

# **The Italian Draft Law on the ‘Ratification and Implementation of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society’**

CHAMBER OF DEPUTIES

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**N. 4485**

**DRAFT LAW**

AT THE INITIATIVE OF DEPUTIES  
NARDUOLO, MANZI, RAMPI, MALISANI

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Ratification and implementation of the Council  
of Europe Framework Convention on the Value  
of Cultural Heritage for Society, Done at Faro,  
on the 27th day of October 2005

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*Presented on 12<sup>th</sup> May 2017*

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INTRODUCTORY REPORT<sup>1</sup>

HONORABLE COLLEGUES!

The Council of Europe Framework Convention on the Value of Cultural Heritage for Society, adopted at Faro on 22 October 2005, entered into force at international level on 1 October 2011, after the tenth Member State of the Council of Europe ratified the Convention (ex art. 18 of the Convention). Currently, 17 Member States have ratified the Convention. 5 States have just signed the text, Italy among them.

The Convention is a text of great breathing and highly innovative con-

<sup>1</sup> The editors decided to include the English translation of the introductory part of the Draft Law while its text is in the original language, being the Draft Law closed to been approved by the Italian Parliament.

tent, to whose elaboration our country has actively participated through the work of the then Ministries of Heritage and Cultural Activities and Tourism and of Foreign Affairs.

The signature of Italy was delayed in order to allow a more thorough assessment of the financial burden arising from the implementation of the Convention's provisions. The signature has then been placed in 2013, following the 2010 pressure exercised by the Steering Committee for Cultural Heritage and Landscape to all the Member States of the Council of Europe.

It must also be said that, thanks to its 'flexible' nature, since time the Faro Convention goes on the practical experimentation on a territorial scale, even by countries that have not yet ratified it (including our State).

Like all the framework conventions, it sets forth a number of goals-aims Member States are called to pursue - especially those indicated in parts II (Contribution of cultural heritage to society and human development, articles 7-10) and III (Shared responsibility for cultural heritage and public participation, articles 11-14) - leaving to States a wide range of normative and political freedom on the times and ways of pursuing them: this means a progressive/gradual realization of the goals, and not the absence of binding obligations incumbent upon States.

Particularly, as to the implementation of the so-called right to engage with the cultural heritage of their choice, each State Party to the Convention is obliged to comply with the principle of effectiveness by pursuing a path that leads to the concrete application of the provision and allows individuals and heritage communities to enjoy the rights established therein. The provisions of the articles encompassed in the five parts of the Convention are summarized below. Alike all international legal instruments, the Preamble is an integral and essential part of the text. In the case of the Faro Convention, part I (Aims, definitions and principles, articles 1-6) should be analyzed in the light of the indications contained therein.

The Fourth recital of the Preamble recognizes that "every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right freely to participate in cultural life enshrined in the United Nations Universal Declaration of Human Rights (1948) and guaranteed by the International Covenant on Economic, Social and Cultural Rights (1966)".

This statement must be read in conjunction with art. 27 of the Universal Declaration that lays down the right of each person to "take part freely in the cultural life of the community", and with art.15 (1) (a) of the International Covenant on Economic, Social and Cultural Rights according to which the States Parties to the Covenant recognize the right of everyone "to take part in cultural life". This provision is strictly tied to the extremely innovative assertion included in art. 1 (a) of the Faro Convention according to which "the Parties to this Convention agree to recognize that rights relating to cultural heritage are inherent in the right to participate in

cultural life, as defined in the Universal Declaration of Human Rights”.

In this way, the cultural heritage’s dimension enters the sphere of human rights, enriching it in a meaningful way.

Art. 4 (c) states then - by using a well-known restrictive clause - that the exercise of the right to cultural heritage may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others.

The Third recital of the Preamble - on the value and potential of cultural heritage as a resource for sustainable development and quality of life in a constantly evolving society - and the Sixth one - built upon the typical no-discriminatory model (the Member States of the Council of Europe are convinced of the soundness of the principle of heritage policies and educational initiatives which treat all cultural heritages equitably and so promote dialogue among cultures and religions) - confirm and strengthen the nature of the right to cultural heritage as belonging to the sphere of cultural rights.

A separate reflection deserves the Second recital, which recognizes “the need to put people and human values at the center of an enlarged and cross-disciplinary concept of cultural heritage”. It introduces art. 2 (a) which defines the “cultural heritage” as “a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time”.

In the light of the Second recital, this definition is not too wide and undetermined as it might seem at first sight. The terms “constantly evolving values, beliefs, knowledge and traditions”, according to the accurate order they follow, uphold in fact the intentionally selected prevalence of subjective elements (values, beliefs) over those objective (knowledge, traditions), a choice which represents one of the most original traits of the Convention.

This notion of cultural heritage, accompanied by the phrase “independently of ownership”, voices the intent of Member States to keep the matters relating to intellectual property rights outside the framework proposed, along the same line of the 2003 UNESCO Convention on the safeguard of intangible cultural heritage. The 2003 Convention is also re-invoked in the expression “constantly evolving heritage”, which precisely refers to a still and continuous living cultural heritage. Rather, the use of the term ‘group of resources’, also comprised in the 2003 Convention, indicates the States’ awareness on the importance and interest in the economic profiles of the cultural heritage, reminding also the terminology used by the 2005 UNESCO Convention on protection and promotion of cultural diversity.

Finally, the use of the term ‘people’, in a legal instrument which features the words ‘person’ and ‘individuals’, is to indicate that it refers to a right

which is simultaneously collective and individual.

Under art. 2 (b), “a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations”. The definition is to be tied to art. 4 (a) (Rights and responsibilities relating to cultural heritage) according to which the parties recognize that “everyone, alone or collectively, has the right to benefit from the cultural heritage and to contribute towards its enrichment”. This is a very innovative feature, on which the debate is still open and in need of further development.

Art. 3 of the Convention then encompasses a definition which has, rightly, been dealt with extensively in the doctrine, the notion of “the common heritage of Europe”. This common heritage consists, on one side, of “all forms of cultural heritage in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity” and, on the other side, of “the ideals, principles and values, derived from the experience gained through progress and past conflicts, which foster the development of a peaceful and stable society, founded on respect for human rights, democracy and the rule of law”.

The definition referred to in point (a), to be read in connection with the provisions of art. 6 of the Florence Convention on the cultural landscape, is characterized by the call to the heritage of Europe as a shared source. Under another perspective, the relationship between the provisions in points (a) and (b), second part mainly, is relevant. More than others, this norm recalls the painful events occurred in Central and Eastern Europe at the end of the last century and may explain why, in the beginning, only States belonging to that geographical area ratified the Convention. Finally, noteworthy is the appraisal for which the common heritage of Europe is also identified with the capacity of Member States of the European Union to be guarantor of the freedoms of European citizens.

The encounter between the notions of “common heritage of Europe” and “heritage community” thus defines the original trait which makes the Faro Convention evolutionary in its content. As underlined by the Steering Committee for Cultural Heritage and Landscape in 2009, the trait is represented by the “multiple cultural affiliation”.

Articles 5 and 6, ending Part I, are devoted respectively to “Cultural heritage law and policies”, and the “Effects of the Convention”.

Art. 5, as typically formulated in *framework* conventions, expresses a generic obligation for Member States to “recognize the public interest associated with elements of the cultural heritage and the value of cultural heritage situated on territories under their jurisdiction, regardless of its origin”; to “enhance the value of the cultural heritage”; to “foster an economic and social climate which supports participation in cultural heritage activities”; to “promote cultural heritage protection”; to “formulate integrated strategies to facilitate the implementation of the provisions of

the Convention". In point (c) it then affirms the undertaking of States to ensure that legislative provisions exist in their legal systems for exercising the right to cultural heritage as defined in art. 4.

Art. 6 specifies that no provision of the Convention shall be interpreted to limit or undermine the human rights and fundamental freedoms, or to affect more favorable provisions concerning cultural heritage and environment, contained in other national or international legal instruments; nor it creates enforceable rights.

Part II titled "Contribution of cultural heritage to society and human development" articulates more specifically the obligations set forth in art. 5.

Ex art. 7, the Parties undertake, through the public authorities and other competent bodies, to encourage reflection on the ethics and methods of presentation of the cultural heritage, to develop knowledge of cultural heritage as a resource to facilitate peaceful co-existence by promoting trust and mutual understanding with a view to resolution and prevention of conflicts; to integrate these approaches into all aspects of lifelong education and training. In addition, States undertake to establish processes for conciliation to deal equitably with situations where contradictory values are placed on the same cultural heritage by different communities.

The following articles 8, 9 and 10 deal with the relationship between cultural heritage and the environment and quality of life, the sustainable use of cultural heritage and the relation with economic activities.

Part III concerns the shared responsibility for cultural heritage and public participation. According to art. 11, in the management of the cultural heritage, the Parties undertake to promote an integrated and well-informed approach by public authorities in all sectors and at all levels; to develop the legal, financial and professional frameworks which make possible joint action by public authorities, experts, owners, investors, businesses, non-governmental organizations and civil society, but also to encourage voluntary initiatives of non-governmental organizations concerned with heritage conservation, provided that they act in the public interest.

States, moreover, by way of means they choose, undertake to encourage everyone to participate in the process of identification and in the public reflection and debate on the opportunities and challenges which the cultural heritage represents (art. 12).

Parties also undertake to facilitate the inclusion of the cultural heritage dimension at all levels of education, professional training, and interdisciplinary research.

Finally, the Parties undertake to develop the use of digital technology to enhance access to cultural heritage pushed by the belief that the creation of digital contents related to the heritage should not prejudice the conservation of the existing heritage.

A careful consideration should be set upon Part IV on "Monitoring and

co-operation". Indeed, art. 15 commits the Parties to develop, through the Council of Europe, a monitoring system covering legislations, policies and practices concerning cultural heritage, consistent with the principles established by the Convention (a mechanism then specified in art. 16) and to maintain, develop and contribute data to a shared information system, accessible to the public, which facilitates assessment of how each Party fulfils its commitments under the Convention. This monitoring mechanism detaches in part from the classic ones provided for in the framework conventions.

In the Faro Convention, this occurs by means of the provision that imposes an obligation to establish, through the Council of Europe, a monitoring body with a control mandate over policies, legislative activities, practices of individual States. An obligation this that becomes even more detailed with reference to States' participation in a shared information system. As the Steering Committee for Cultural Heritage and Landscape has subsequently specified, the treaty provision refers to a shared database - which also extends to other Conventions of the Council of Europe on cultural heritage - as it has been implemented through the creation of the European Cultural Heritage Information Network (HEREIN). HEREIN envisages namely: a network made-up of 46 national coordinators appointed by relevant Ministries, which ensures the definition of themes and areas of work depending on the current challenges and issues to be addressed; a database, with input from the coordinators, which provides a regularly updated inventory of European heritage policies, a program for sharing, exchanging and analyzing information and a monitoring function for Conventions, legislation, policies and practices relating to cultural heritage and; a thesaurus with more than 500 cultural and natural heritage terms in 14 European languages.

The control mechanism shaped by the Faro Convention and enlarged to other instruments on cultural heritage thus does not reproduce the instrument established in cultural rights treaties and constructed upon the periodic reports Member States are required to submit to the relevant treaty body.

More, the system ruled by articles 15 and 16, together with the timely States' obligation indicated in article 5 (c), distinguishes the Faro Convention from the standard framework conventions. Short of distorting the nature of the latter legal instruments, however, it lays down precise obligations, with no discretion for States as to their implementation.

When called to authorize the ratification and to provide the order to execute the Convention, the national legislator should be therefore aware that the obligations to participate in the European monitoring action, to be part of the HEREIN system, and to translate into the internal legal system a right to cultural heritage as an articulation of the cultural right referred to in art. 15 (a) of the International Covenant on Economic, Social and Cultural rights, constitute specific obligations that, if breached, raises the

international responsibility of our State.

Art. 17 encompasses the commitment of Parties to cooperate with each other and through the Council of Europe in pursuing the aims and principles of the Faro Convention, and especially in promoting recognition of the common heritage of Europe.

Part V, on final clauses, sets forth the standard criteria for the entry into force of the Convention (art. 18), with reference to the possibility for the European Union to accede to the Convention (art. 19). The same article also indicates how the Committee of Ministers may invite any State not a member of the Council of Europe to accede to the Convention, once it entered into force.

Ensuing to the entry into force of the Convention, the Council of Europe, through the work of the Steering Committee for Culture, Heritage and Landscape has identified some pilot experiences in Marseilles - France, Venice - Italy, Pilsen - the Czech Republic, Viscri - Romania, voicing the interest - in compliance with Action Plan 2013-2014 - to endorse an implementation approach based on the relationship between inhabitants and the territory and between these latter elements and the cultural heritage.

The determination of the Council of Europe to give new impetus to its *patrimonialista* inclination is documented also by the VI Conference of Ministers responsible for cultural heritage, held at Namur (Belgium, 22-24 April 2015) and titled *Cultural Heritage in the 21<sup>st</sup> century for living better together: towards a common strategy for Europe*.

The Faro Action Plan 2016-2017, published by the Steering Committee in May 2016, and still applicable, provides for the concrete execution of the Convention by means of a set of priorities: by increasing efforts to promote the implementation of the Convention and the visibility of its action; by increasing relations between heritage communities which strive to apply the Convention; by developing good practices, workshops; by establishing a pool of experts and generating dynamic dialogue among practitioners, facilitators and heritage actors (*Faro in action*), as well as by examining and assessing specific areas where to measure the possible role of the Convention in addressing social challenges (*Faro Spotlights*).

The proposed draft law on the ratification consists of four articles.

Article 1 provides for the authorization to ratify the Convention.

Article 2 includes the order of execution of the Convention.

Article 3 defines the financial coverage of costs arising from the implementation of the law.

Article 4 defines its entry into force.

## Proposta di legge

Art. 1.

*(Autorizzazione alla ratifica).*

1. Il Presidente della Repubblica è autorizzato a ratificare la Convenzione quadro del Consiglio d'Europa sul valore del patrimonio culturale per la società, fatta a Faro il 27 ottobre 2005.

Art. 2.

*(Ordine di esecuzione).*

1. Piena ed intera esecuzione è data alla Convenzione di cui all'articolo 1, a decorrere dalla data della sua entrata in vigore, in conformità a quanto disposto dall'articolo 18 della Convenzione stessa.

Art. 3.

*(Copertura finanziaria).*

1. All'onere derivante dall'attuazione della presente legge, valutato in euro 1 milione per l'anno 2017, in euro 1 milione per l'anno 2018 e in euro 2 milioni annui a decorrere dall'anno 2019, si provvede mediante corrispondente riduzione dello stanziamento iscritto, ai fini del bilancio triennale 2017-2019, nell'ambito del fondo speciale di parte corrente dello stato di previsione del Ministero dell'economia e delle finanze per l'anno 2017, allo scopo parzialmente utilizzando l'accantonamento relativo al Ministero degli affari esteri e della cooperazione internazionale.

2. Il Ministro dell'economia e delle finanze provvede al monitoraggio dell'attuazione del presente articolo, anche al fine dell'applicazione dell'articolo 16 della Convenzione di cui all'articolo 1 della presente legge.

Art. 4.

*(Entrata in vigore).*

1. La presente legge entra in vigore il giorno successivo a quello della sua pubblicazione nella *Gazzetta Ufficiale*.





The title of the Series “Sapere l’Europa, sapere d’Europa” voices the desire to investigate facets of the process of European integration without disregarding its most weighty, however controversial and bureaucratic, aspects, yet looking beyond them. The main intent is thus to make room for vision, feelings, imagination.

In this fourth volume, *Cultural Heritage. Scenarios 2015-2017*, the different profiles of the CH, tangible and intangible, are undoubtedly presented in an international and interdisciplinary perspective. Yet, as the constant reference to the Faro Convention proves, “practices, knowledge and collective traditions” – be they nested or not in the humus of Venice and the Veneto Region – still distinctively taste of Europe.



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