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(In-)tangible Cultural Heritage as a World of Rights?

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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.

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

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rigid division between the material and the intangible dimensions of CH is not only artificial,[1] 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,[2] 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 Freeburg Declaration on CH, being the first document which affirms the existence of a human right to CH, is unquestionable.[3]

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?=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[4] by the WCCD ("cultural freedom, unlike the other freedoms, is a collective freedom")[5] 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 CESC reached the same conclusions.[6]

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 Freeburg 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:[7] "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).[8]

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[9] – and a 'qualified right' (Zagato 2012a), which considers the 'group' and thus the 'communal' profiles *per se* of the right.[10] 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 92nd 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.[11] 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.[12] 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

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).[13]

5 The Contribution of the Shaheed Report

By Resolution 10/323,[14] 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.[15]

13 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).

14 HRC, 10th Session, Resolution 10/23 of 26 March 2009, *Independent Expert in the Field of Cultural Rights*, A/HCR/Res/10/23.

15 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)

> n 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

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 [16] but also the Charter for African Cultural Renaissance,[17] the Asean Declaration on CH,[18] the Model Law for the Protection of TK and Expressions of Culture endorsed by ad the Pacific Community.[19] 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`.

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).[20]

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 geo-political 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;[21] 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 Bennoune, 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 Rreport - deserves in any case an attentive examination.

21 Some States, and part of the doctrine, have dared to assert that, in the face of terroristic 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).[22] 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

22 See also Blake 2015, 275, where the author discusses "the role of cultural heritage in constructing cultural identity".

volontariamente la loro adesione. (Bortolotto 2012)[23]

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.[24]

This is the great challenge: not only to build communities, but to create a plot of communities and a community of communities;[25] 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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23 According to Bortolotto, the community did not live before the exercise of those practices and stops to exist when the same practices break apart.

24 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 Lapiccirella Zingari, in this volume), then represents, at least under certain profiles, a positive exemplification in the desired perspective.

25 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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