Forever Young

Celebrating 50 Years of the World Heritage Convention

edited by

Elisa Baroncini, Bert Demarsin, Ana Gemma López Martín,
Raquel Regueiro Dubra, Ruxandra-Iulia Stoica

with the collaboration of Manuel Ganarin and Alessandra Quarta

Volume II

Un'anima per il diritto: andare più in alto

Collana diretta da Geraldina Boni

6

L'orizzonte meramente tecnicistico su cui ogni tipo di riflessione sembra oggi rischiare di appiattirsi non solo non cancella quegli interrogativi fondamentali che si confermano ineludibili per ciascuna disciplina in cui si ramifica il pensiero giuridico: ma li rivela, anzi, in tutta la loro impellenza. È dunque a tale necessità che facciamo riferimento nel cogliere e sottolineare il bisogno che si avverte di 'un'anima per il diritto', ispirandoci in modo particolare a quegli ammonimenti che Aleksandr Solženicyn rivolgeva a studiosi e accademici dell'Università di Harvard nel 1978 e che, a distanza di decenni, mantengono intatta la loro validità. Muovendo dalla domanda «se mi chiedessero: vorrebbe proporre al suo paese, quale modello, l'Occidente così com'è oggi?, dovrei rispondere con franchezza: no, non potrei raccomandare la vostra società come ideale per la trasformazione della nostra. Data la ricchezza di crescita spirituale che in questo secolo il nostro paese ha acquistato nella sofferenza, il sistema occidentale, nel suo attuale stato di esaurimento spirituale, non presenta per noi alcuna attrattiva»* – dichiarazione che si riempie di significato alla luce della vicenda personale, tanto dolorosa quanto nota, di colui che l'ha pronunciata –, l'intellettuale russo individuava infatti con profetica lucidità i sintomi e le cause di tale declino. In questo senso, ad interpellarci in modo precipuo in quanto giuristi è soprattutto l'osservazione secondo cui «in conformità ai propri obiettivi la società occidentale ha scelto la forma d'esistenza che le era più comoda e che io definirei giuridica»: una 'forma d'esistenza' che tuttavia è stata assunta come fondamento esclusivo e per ciò stesso privata dell'anelito a una dimensione superiore capace di giustificarla. Con l'inevitabile, correlata conseguenza che «l'autolimitazione liberamente accettata è una cosa che non si vede quasi mai: tutti praticano per contro l'autoespansione, condotta fino all'estrema capienza delle leggi, fino a che le cornici giuridiche cominciano a scricchiolare». Sono queste le premesse da cui scaturisce quel complesso di valutazioni che trova la sua sintesi più efficace nella seguente affermazione, dalla quale intendiamo a nostra volta prendere idealmente le mosse: «No, la società non può restare in un abisso senza leggi come da noi, ma è anche derisoria la proposta di collocarsi, come qui da voi, sulla superficie tirata a specchio di un giuridismo senz'anima». Se è tale monito a costituire il principio ispiratore della presente collana di studi, quest'ultima trova nella stessa fonte anche la stella polare da seguire per cercare risposte. Essa, rinvenibile in tutti i passaggi più pregnanti del discorso, si scolpisce icasticamente nell'esortazione – che facciamo nostra – con cui si chiude: «E nessuno, sulla Terra, ha altra via d'uscita che questa: andare più in alto».

* La traduzione italiana citata è tratta da ALEKSANDR SOLŽENICYN, *Discorso alla Harvard University, Cambridge (MA) 8 giugno 1978*, in ID., *Il respiro della coscienza. Saggi e interventi sulla vera libertà 1967-1974. Con il discorso all'Università di Harvard del 1978*, a cura di SERGIO RAPETTI, Jaca Book, Milano, 2015, pp. 219-236.

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On the cover: *La Scuola di Atene*, Raffaello Sanzio, Musei Vaticani, Città del Vaticano.

TABLE OF CONTENTS

Volume II

**Section III – Cultural Heritage and the 1972 UNESCO Convention
in Europe and its State Contracting Parties**

Section III

Cultural Heritage and the 1972 UNESCO Convention in Europe and its State Contracting Parties

Marta Iglesias Berlanga

THE EUROPEAN CULTURAL HERITAGE. AN APPROACH TO CERTAIN PENDING CHALLENGES FOR MUSEUMS IN THE DIGITAL AGE[*]

Abstract: Material, inmaterial, natural, digital… Cultural heritage is a key factor in building an European identity and to drive innovation, creativity and economic growth. The need to protect and preserve Europe's cultural heritage, especially the most threatened, is an urgent challenge of the last decades whose exponent of improvement lies in digitisation. Without ignoring long-term financial, organizational and technical challenges, the development of advanced digital technologies today provides responsable institutions (museums, archives, libraries) the opportunity to automate their assets, keep them digitally, allow online access and reach wider audiences. Bearing in mind that the legislative initiative on the preservation and promotion of cultural heritage is the responsibility of the Member States of the European Union, those States must design a global digital strategy that is compatible with the current collaboration of the institutions responsable for cultural heritage with the private sector. For example, thanks to the support of Telefónica, the Prado Museum in Spain has been relocated at the forefront of museums in Internet applying artificial intelligence for greater knowledge and contextualization of the artists and works that make up their collections. The costs associated with obtaining copyright, lack of sufficient expertise in this area among industry professionals and limitations on cross-border cooperation between institutions are other parallel challenges which also require the progressive development of EU law.

1. *Concept, importance and challenges of European cultural heritage*

«Only what is known and valued can be protected and preserved»[1]. According to the Council Conclusions of 21 May 2014 on Cultural Heritage as a Strategic Resource for a Sustainable

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[*] Double-blind peer reviewed content.

[1] According to the 2012 National Education and Heritage Plan, it is very difficult to protect heritage if it is not appreciated and impossible to appreciate it if is

Europe[2], cultural heritage is a non-renewable and irreplaceable wealth, a fragile legacy vulnerable to the destruction and deterioration caused by multiple factors, a non-exchangeable, evolving and fundamental resource for Europe. Its sustainable management[3] is a tactical challenge to be combined with contemporary innovation[4] and the changing cultural, environmental, social, economic and technological interests of the international community of the 21st century. This cultural heritage «consists of the resources inherited from the past in all forms and aspects: tangible[5], intangible[6]

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not known. The full text of this Plan is available at the following URL: *www.culturaydeporte.gob.es/planes-nacionales/planes-nacionales/educacion-y-patrimonio.html*.

[2] *Vid*. Council Conclusions of 21 May 2014 on Cultural Heritage as a Strategic Resource for a Sustainable Europe (2014 C 183/08), OJ C 183/36 of 14 June 2014.

[3] This is to be understood as its sustainable conservation, development and promotion.

[4] *Vid*. *Innovación en el sector del Patrimonio Histórico, Informes sobre el sistema español de innovación*, Fundación COTEC para la Innovación Tecnológica, Madrid, 2010, p. 17 ss.

[5] Tangible heritage consists of goods, sites, objects that are considered relevant to the culture, history and identity of a given society, state or region. Its main characteristics are the following: a) it has historical, cultural or natural relevance; b) it includes natural, industrial, archaeological, cultural, artistic and architectural heritage; c) it can be quantified and measured, as it consists of objects and immovable property; d) tangible-movable heritage consists of sites or constructions that cannot be moved from one place to another; e) tangible-movable heritage includes work of art, books, documents, photographs, utensils of daily life of ancient civilisations; and f) it provides a unique testimony of a cultural tradition or of an existing or extinct civilisation.

[6] Intangible heritage consists of expressions, knowledge, activities and techniques that convey the identity and culture of a particular community or group. These are traditions and customs that are often passed down from generation to generation orally. For example, the Chilean Baile Chino, inscribed in 2014 on UNESCO's Representative List of Intangible Cultural Heritage. The main characteristics of intangible cultural heritage are as follows: a) it is transmitted from generation to generation; b) it cannot be quantified, so its value and measured from a symbolic point of view; c) it fosters cultural diversity; d) it is preserved by each community; and d) it consists of knowledge or ways of doing, celebrations, rituals, festivities, gastronomy, clothing, artistic expressions such as dance, theatre, music.

and digital[7] (both originally digital and digitised), including monuments, sites, landscapes, skills, practices, knowledge and expressions of human creativity, as well as collections held and managed by public or private entities»[8] [Box 1].

Cultural heritage is therefore a fundamental tool for the construction of a European identity based on commom values[9]. Moreover, although its main value is precisely cultural, it is also a source of wealth for various fields, giving rise to important economic activities directly related to its identification, protection, conservation, restoration, management and recognistion[10]. For example, according to recent data from the Spanish Ministry of Culture (CMU), cultural heritage has a decisive and growing impact on tourism[11]. In fact, cultural tourism represents up to 40% of all tourism in Europe, generating direct and indirect revenues of 335 billion euros per year[12]. It should not be forgotten, however, that other areas, such as the field of conservation, also employ numerous professionals in both the public sector (museums, institutions, training centres, etc.) and the private sector (foundations, centres of compa-

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[7] Heritage of digital origin is that which can be consulted online in a plurality of formats: text, databases, sound recording, films, images, etc.

[8] *Vid. www.patrimoniocultural.gob.cl/que-entendemos-por-patrimonio-cultural*. Regarding the concept of cultural heritage, see: LL. Prats, *El concepto de patrimonio cultural*, in *Cuadernos de Antropología Social*, 2000, 11, p. 115 ss.; M.C. Díaz Cabrera, *Criterios y conceptos sobre el patrimonio cultural en el siglo XXI*, in *UBP Serie Materiales de Enseñanza*, 2010, 1, p. 1 ss.; J. Loulanski, *Revising the Concept for Cultural Heritage: The Argument for a Functional Approach*, in *International Journal of Cultural Property*, 13, May 2006, 2, pp. 207-235.

[9] *Vid.* Council Conclusions on Risk Management in the Field of Cultural Heritage (2020/C 186/01), C 186, 5 June 2020, p. 1.

[10] According to the COTEC Report, «innovation […] is not an option to optimise available resources but a pressing need to make the proper preservation of our entire cultural heritage viable». *Vid. Innovación en el sector del Patrimonio Histórico, Informes sobre el sistema español de innovación*, cit., p. 13.

[11] *Vid.* CULTURAbase. System for the Dissemination of Cultural Statistics. Ministry of Culture, *www.mcu.es/culturabase/cgi/um?M=/t7/p7/a2005/&O=pcaxis&N=&L=0*.

[12] *Vid.* The Economy of Culture in Europe, Study prepared for the European Commission (Directorate-General for Education and Culture). KEA European Affairs for the European Commission, 2006, p. 306.

nies specialising in the conservation of movable property, construction companies working in the conservation of immovable property, companies and laboratories specialising in studies or in conservation products and technologies, etc.). By way of example, the estimated number of staff in the 1,474 museums and museum collections studied by the CMU in 2020 was 14,508 people, an average of 9.8 per museum institution. By gender, more tan half were women (55.1%) and 44.9% were men[13].

Box 1
Some examples of tangible, intangible and digital heritage

Tangible Heritage   *Buildings*
▪ Eiffel Tower (France)
▪ Memphis and its necrópolis (Egypt)
▪ Alhambra Palace (Spain)
▪ Great Wall of China (China)
Archeological Sites
▪ Pre-Hispanic city of Teotihuacan (Mexico)
▪ Archaeological Site of Panama Viejo (Panama)
Works of art
▪ Leonardo Da Vinci's Mona Lisa (Louvre Museum, Paris, France)
▪ Frida Kahlo's Frida and Diego Rivera (San Francisco Museum of Modern Art, San Francisco, United States of America)
▪ Salvador Dalí's Last Supper (National Gallery, London, United Kingdom)
Cities
▪ City of Venice (Italy)
▪ Historic Centre of St. Petesburg (Russia)
▪ City of Cuzco (Peru)
Natural Heritage
▪ Pantanal Conservation Area (Brazil)
▪ Los Glaciares (Argentina)
▪ Swiss Alps (Switzerland)

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[13] *Vid*. CMU. Museums and Museum Collections Statistics, 2020, p. 1.

	▪ Galapagos Islands (Ecuador)
	▪ Grand Canyon of the Colorado (United States of America)
Intangible Heritage	*Dances*
	▪ Flamenco (Spain)
	▪ Tango (Argentina)
	▪ Capoeira (Brazil)
	▪ Rumba (Cuba)
	Clothing
	▪ Taquile Textile Art (Peru)
	▪ Byzantine Chant (Cyprus, Greece)
	Crafts
	▪ The woodwork of the Azfimaniry (Madagascar)
	▪ Traditional painted pottery from Kosiv (Ukraine)
	Holidays
	▪ Barranquilla Carnival (Colombia)
	▪ Feast of the Virgen de la Candelaria (Peru)
	▪ El Yaokwa (Brazil)
	▪ Ritual ceremony of the Voladores (Mexico)
	Gastronomy
	▪ Traditional Mexican cuisine (Mexico)
Digital Heritage	▪ Electronic periodicals
	▪ World Wide Web pages
	▪ Online databases

Source: *www.ejemplos.co/20-ejemplos-de-patrimonio-tangible-e-intangible/*

The preservation and conservation of European cultural heritage, and in particular of Europe's endangered cultural heritage[14], is a current and hardly original challenge that has been, for more than ten years, at the forefront of the challenges identified by the Euro-

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[14] Cultural heritage at risk includes elements with a certain historical or architectural value that are subject to a risk of disappearance, destruction or essential alteration of their values.

pean Commission. This is reflected, *verbi gratia*, in the 2011 Recommendation on the digitisation and online accessibility of cultural material and digital preservation[15], the essence of which emphasises the important value of this phenomenon for society and for the economy of the Union.

In April 2021, the European Investment Bank (EIB) Institute and *Europa Nostra*[16] announced their annual selection of European sites and landscapes at risk. The list of the seven most endangered includes a wealth of religious heritage, such as the Mirogoj Historic Cemetery Ensemble in Zagreb (Croatia), the Dečani Monastery in Kosovo, the Church of Saint Denis, Hauts-de-France (France) and the Chapel and Hermitage of San Juan de Socueva in Cantabria (Spain). Other sites are in Austria (The Achensee steam cog railway, Tyrol), Italy (the Giusti Garden in Verona and Palazzo Ca'Zenobio, Venice), North Macedonia (the Central Post Office in Skopje), Bulgaria (the Modern Theatre in Sofia) and Georgia (the Narikala Fortress, Tblisi). The largest site is the so-called Cycladic landscape which extends over five Greek islands: Amorgos, Kimolos, Kithira, Sikinos and Tinos. The ranking also includes the Green Spaces in Cologne (Germany). These sites benefit from an EIB grant of up to 10,000 euros, which they can use to organise activities to help them scape destruction. In Spain, the red list proposed by the *Hispania Nostra Cultural Association*[17] in May 2022 does not include the Chapel and Hermitage of San Juan de Socueva in Cantabria (Spain), but it does classify nine other destinations of interest: Torralba Castle in Avila, San Andrés Chapel in Asturias, Casa Ruba in Huesca, Casa Palacio de Bustamante Rueda in Cantabria, Acequia Mayor Alquibla or Barreas in Murcia, Ermita de Santa María de

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[15] *Vid*. European Commission Recommendation on the Digitisation and Online Accessibility of Cultural Material and Digital Preservation (2011/711/EU), OJ L 283, 29 October 2011, p. 39 ss.

[16] Namely, the Federation of European Non-Governmental Organisations (NGOs) concerned with the protection of European cultural heritage.

[17] For more information see *www.hispanianostra.org/*.

Barrio in La Rioja, Ruinas Iglesia de San Salvador in Zamora, Torre Rius in Gerona and Alquería del Rey in Valencia.

The common objective of *Europa Nostra* and *Hispania Nostra Cultural Association*, namely to prevent the disappearance of heritage, underlines the need to coordinate or complement actions at european and national levels. As is well known, cultural policy is (first and foremost) a competence of the EU member States and of regional and local administrations[18]. Thus, of the three types of competences that the Union may exercise under Articles 2 to 6 of the Title I of the Treaty on the Functioning of the European Union (TFEU) (exclusive, shared and supporting, coordinating or complementary)[19], culture falls into the last category[20]. More specifically, according to Article 6 TFEU, the EU can act to support Member States's actions but cannot harmonise national legislation. In other words, the EU lacks political autonomy in the deployment of these competences. The EU's role in this scenario is therefore to facilitate a framework for cooperation between Member States that contributes to the exchange of information and experience of commom interest. In this respect, it is up to the Member States to promote political collaboration in the field of cultural heritage through the open method of coordination and the Council of Ministers of

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[18] *Vid.* B. Becerril Atienza, *La política cultural de la Unión Europea*, in *Tratado de Derecho y Políticas de la Unión Europea*, vol. 7, dir. by J.M. Beneyto Pérez, coord. by J. Maillo González-Orús, B. Becerril Atienza, Aranzadi Thomson Reuters – Universidad San Pablo-CEU, Cizur Menor (Navarra), 2016, p. 1003 ss.

[19] Regarding the competences of the European Union and its Member States, see: L.M. Hinojosa, *El reparto de competencias entre la Unión Europea y sus Estados miembros*, Tirant lo Blanch, Valencia, 2006.

[20] There are certain simultaneous and non-exclusive areas or fields of action in which the European Union may coordinate, support or complement the action of the Member States or pursue its own objectives. The Treaty on the Fonctioning of the European Union (TFEU) deals with this type of competence in a fragmented manner and with different scope in Article 4 (3), (4) and (5) TFEU and in Article 6 TFEU. Thus, Article 4 (3) and (4) cover complementary competences such as research, technological development, space, development cooperation or humanitarian aid, in which the EU can develop its competence on an individual basis and without the Member States ceasing to exercise their own.

Education, Youth, Culture and Sport (EJCD Council). Beyond the usual soft law caracter of its decisions[21], the EJCD Council is nowadays also concerned with digitisation, ensuring that Europe's potential as a global hub for the production of creative digital content contributes fully to the Digital Agenda, initially set out in 2010[22].

The need to protect and conserve Europe's cultural heritage, and in particular Europe's most endangered cultural heritage, therefore calls for a strong and comprehensive national policy response that is able to meet the challenge. To this end, EU Member States not only need to activate appropiate frameworks to enhance the recovery and transformation of the cultural heritage sector, but also to support the institutions responsible for cultural heritage[23], such as museums, in order to promote their capacity building and resilience in the future. The idea is that the implementation of these initiatives will lead to higher quality digitisation, re-use and digital preservation in the EU, ultimately indirectly contaminating other key sectors of the European economy such as tourism, research and other cultural and creative spaces[24].

During the Covid-19 pandemic, many institutions suffered signifiant financial losses or simply had to close down. Others, however, managed to retain or even expand their audiences by increasing

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[21] In some cases, where the Treaties allow, the EJCD Council can also adopt legislative measures. For example, on audiovisual matters and for the mutual recognition of diplomas.

[22] In line with the Lisbon Strategy, the Digital Agenda for Europe was initially formulated in 2010 with a ten-year time horizon. In 2015, the Digital Single Market Strategy developed this 2010 Agenda and in 2020, the five-year digital strategy, Shaping Europe'sDigital Future, was its second amendment. In 2021, this strategy was further complemented by the Commission Digital Compass: Europe's Approach for the Digital Decade, a ten-year initiative that sets out the EU's digital ambitious up to 2030.

[23] 'Cultural heritage institution' means a publicly accessible library or museum, an archive or a film or audio heritage institution, as defined in Article 2, point (3) of Directive (EU) 2019/790, OJ L 401, 12 November 2021.

[24] *Vid.* European Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a Common European Data Space for Cultural Heritage, OJ L 401, 12 November 2021, p. 6.

their digital services. Digitisation therefore has an important value for society and for the Union's finance. In the case of Spain, for example, the priority line of work of 66% of Spanish museums during the period of closure (strict confinement) was digital activity. In 2020, International Museum Day (18 May) was celebrated virtually and, among the measures adopted to favour reopening and maintaining contact with the public, 78% of Spanish museums focused on improving the availability of digital materials on different platforms (social networks (78%), museum websites (67%) and other devices such as Calameo or YouTube (58%). The greater interaction achieved both during the closure and after the reopening indicates a tendency to strengthen activity and interconnection between museums and their users on social networks[25]. In the particular case of the Prado Museum, the initiative #PradoContigo[26] managed to attract 1.969.852 users between 12 March 2020 (the day the institution closed its doors to the public due to the global health crisis caused by Covid-19) and 3 April of the same year. This means that user engagement on the museum's social networks exceded those of previous months by more than 190%. The Museo Nacional del Prado has 1.019.311, 678,318 and 1.252.586 followers on Facebook, Instagram and Twitter, respectively, with the most active countries on these networks (especially in March 2020) being Spain, Mexico, Italy and Argentina[27].

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[25] *Vid. Spanish Museums in the Face of the Covid-19 Pandemic*, Study by the Observatorio de Museos de España, Ministerio de Cultura y Deporte, Secretaría General Técnica, Subdirección General de Atención al Ciudadano, Documentación y Publicaciones, 2022, p. 49 ss.

[26] The #PradoContigo initiative is a programme of activities of the Museo del Prado through its social networks and website to maintain its connection with the public.

[27] *Vid.* Noticias del Museo del Prado, *Casi dos millones de usuarios visitan el Prado durante el confinamiento*. Online document available at the URL: *www.museodelprado.es/actualidad/noticia/casi-2-millones-de-usuarios-visitan-el-prado/8a4e-5d5a-4006-6108-9c92-c2d9b4415101*.

2. *Digital technologies at the service of the sustainable management of European cultural heritage. A reference to the Prado Museum*

As we have noted, the legislative initiative in matters of european cultural heritage lies with the Member States of the Union. This reality justifies the existence of diverse state approaches not only in relation to the heritage itself but also in terms of the specific characteristics and needs of the institutions responsible for it. An alternative to this range of regulation, which ultimately leads to increased litigation and legal uncertainty, lies, in the EU's view, in the promotion of a comprehensive multi-stakeholder digital strategy that reflects a more effective and conclusive policy response to strengthen the sector. Advanced digital technologies (such as 3D technology, artificial intelligence, machine learning, cloud computing, virtual reality and/or augmented reality) provide States and institutions responsible for cultural heritage with increasing opportunities for digitation, online access and digital conservation. Artificial intelligence and blockchain can, for example, facilitate the detection of illicit trafficking of cultural property[28]. What is needed, therefore, is for States to continue their efforts to digitise (in particular 2D digitisation) and to preserve cultural heritage assets digitally. With regard to the latter, it should be noted that digitisation does not by default lead to digital preservation. In other words, in order for States and their responsible institutions to ensure long-term access to digitised content, they have to carefully plan and implement the digital preservation of these assets, assuming the corresponding financial, organisational and technical hurdles. For the sake of com-

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[28] In this regard, see the work of A. Torres Cazorla, *La lucha contra el tráfico ilícito de bienes culturales y obras de arte: pasos dados en pos de este objetivo de la Unión Europea y sus implicaciones para España*, in *España y la Unión Europea en el orden internacional: XXVI Jornadas ordinarias de la Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales*. University of Seville, 15-16 October 2015, edited by J. Alcaide-Fernández, E. Petit De Gabriel, Tirant lo Blanch, Seville, 2017, p. 1363 ss.; B. Zeynep, *Fighting the Illict Trafficking of Cultural. A toolkit for European Judiciary and Law Enforcement*, UNESCO, 2018.

pleteness, digital preservation can reach both cultural heritage assets listed as a priority for digitisation (e.g. assets at risk) and previously digitised content.

In any case, the digitisation of European cultural heritage requires significant financial resources[29]. In this regard, the current EU budgetary framework provides States with different funding channels to boost digitisation and preservation, and thus the capacity building of the sector's agents. Thus, Digital Europe 2021-2027[30], Horizon Europe[31], the Cohesion Policy funds, the Recovery Assistance For Cohesion and Territories in Europe (REACT-EU)[32], the Technical Support Facility and the Recovery and

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[29] *Vid.* European Commission Recommendation (EU) 2021/1970 of 10 November 2021 on a Common European Data Space for Cultural Heritage, *op. cit.*, p. 7.

[30] The Digital Europe Programme (DIGITAL) is the EU's first financial instrument focused on bringing digital technology to businesses and citizens. Digital Europe 2021-2027 focuses on strengthening Europe's digital technology capabilities through large-scale deployment, scaling up its diffusion and introduction in areas of public interest and in the private sector, with the intention of maximising the benefits of digitisation. Its legal basis is found in Regulation (EU) 2021/694 of the European Parliament and of the Council of 20 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11 May 2021). For more information, please consult the official website of the European Commission *https://digital-strategy.ec.europa.eu/en/activities/digital-programme* and other references websites (Europea Health and Digital Executive Agency (HaDEA).

[31] Horizon Europe is the European Union framework programme for research and innovation (R&I) for the period 2021-2027. Horizon Europe, like its predecesor Horizon 2020, will be the key instrument for implementing EU R&D&I policies. The general objective of the programme is to achieve a scientific, technological, economic and social impact of EU investments in R&I, thereby strengthening its scientific and technological bases and fostering the competitiveness of all Member States (MS). *Vid. https://ec.europa.eu/info/funding-tenders/find-funding/eu-funding-programmes/horizon-europe_es.*

[32] REACT-EU is a programme to repair the social and economic damage caused by the Covid-19 pandemic and to prepare for a green, digital and resilient recovery. REACT-EU aims to mobilise an additional EUR 47,5 billion from the Structural Funds over the years 2021 and 2022 and to increase flexibility in cohesion policy spending. Its legal basis is found in Articles 177 and 322 of the Treaty on the Fonctioning of the European Union (TFEU) and in Regulation (EU) 2020/2221 of the European Parliament and of the Council, of 23 December 2020

Resilience Mechanism[33] support investments aimed at the recovery and digital transformation of heritage, favouring access to culture and local communities[34].

In order to share these financial efforts and enhance public access to cultural heritage, their responsible institutions are also cooperating (via agreement) with private actors. For example, thanks to the support of Telefónica, a leading communications company, the Museo Nacional del Prado is at the forefront of Internet museums, applying artificial intelligence for greater knowledge and contextualisation of the artists and works that make up its collections. The use of artificial intelligence for augmented reading[35] of the contents, as well as the creation of a timeline[36] base on semantic technology[37]

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amending Regulation (EU) 1303/2013 as regards additional resources and implementing provisions to provide assistance to support crisis repair in the context of the Covid-19 pandemic and its social consequences and to prepare for a green, digital and resilient recovery of the economy (EU REACT).

[33] The Recovery and Resilience Facility is the central element of NextGenerationEU, with 723.8 billion euros in loans and grants available to support reforms and investments undertaken by EU countries. The aim is to mitigate the economic and social impact of the coronavirus pandemic and to make european economies and societies more sustainable and resilient and better prepared for the challenges and opportunities of the green and digital transitions. Member States are working on their recovery and resilience plans to access funds from this mechanism.

[34] *Vid.* European Commission Recommendation (EU) 2021/1970 of November 2021 on a Common European Data Space for Cultural Heritage, cit.; A. McCandlish, G. McPherson, *Promoting tangible and intangible hidden cultural heritage: local communities influencing civic decision-making and international cultural policy*, in *International Journal of Cultural Policy*, 27, 2021, p. 683 ss.

[35] The augmented reading is based on a Natural Language Understanding (NLU) engine that allows entities to be recognised and disambiguated from the explanatory texts of, for the moment, 5,500 worksheets in the Spanish version and almost 2,700 in the English version.

[36] The multi-layered timeline frames and expands the Museum's collections. This tool has been enriched with the Prado's Knowledge Graph and structured information from other web sources (Wikidata and Wikipedia) in order to provide historical, political, philosophical, artistic and scientific context to the Prado's Works and authors from the 12th to the 19th century. The total number of entities contained in the timeline today amounts to 50,000.

[37] The Museo Nacional del Prado's current semantic website has been recognised, among others, with two Webby awards for the best website of a cultural institution.

which, in turn, draws on external data such as Wikipedia as a basis for context, is a worlwide novelty in the museum environment[38]. Many of these cooperation agreements, however, grant exclusive rights to private partners. Hence, Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019[39] minimally regulates the re-use of existing assets held by public sector bodies in the Member States. In particular, the Directive requires museums, archives and libraries to comply with specific provisions on exclusive arrangements, in accordance with Article 12 of the Directive.

On the other hand, despite the fact that Information and Communications Technologies (ICTs) enable greater access to information, reduce costs in the labour sector, and/or provide greater connectivity between people, digitisation is not occurring evenly across the world. This imbalance in access to the Internet and ICTs is known as the digital divide[40]. According to the International Telecommunications Union (ITU), almost half of the world's population (around 3.6 billion people) did not have access to the Internet in 2019. And, if we talk about regions, data from the Internet World Stats portal in May 2020 reveal that only 39.3% of people in Africa live online, compared to 87.2% of Europeans and 94.6% of

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[38] *Vid.* C. Llorente Barroso, M.L. Gacría Guardia, F. Rodríguez Varona, *La digitalización del Museo del Prado: una sede web convertida en una peculiar galería de arte*, in *Revista ICONO14*, 8, 2010, 2, p. 1 ss.

[39] *Vid.* Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on Open Data and the re-use of Public Sector Information, OJ L 172 of 26 June 2019.

[40] The digital divide can be of three types: a) access divide, i.e. the gap in people's possibilities to access this resource. This includes socio-economic differences between people and between countries, as digitisation requires very costly investments and infrastructures for less developed regions and rural areas; b) use divide. This gap refers to the lack of digital skills that hinders the use of technology. For example, the ITU reports that in 40 countries, more than half of the inhabitants do not know how to attach a file to a e-mail; and c) the quality of use the gap. Sometimes, people have the digital skills to use the Internet, but not the knowledge to make good use of Internet and get the most out of it. For example, in terms of access to quality information.

North Americans[41]. As a result, there is a technological gap between the various States, despite the fact that 3G and 4G networks already reach almost every corner on the planet, pending the massive expansion of 5G. Moreover, as highlighted by the European Agenda for Skills[42], the Covid-19 pandemic has widened this disparity, also accentuating the lack of digital skills of a significant number of professionals. From this perspective, the reality of cultural heritage shows that not all institutions are able to make use of advanced expertise, such as 3D technology or artificial intelligence. This is the case, for example, for small museums[43]. For this reason, beyond the financial aspects or the lack of infrastructures for access, another challenge for EU Member States is to set specific objectives to promote the training or retraining of cultural heritage workers. While the digital transition will affect employment in the sector, causing some occupations to change or even disappear, this digitisation of cultural assets and their re-use can also generate new jobs both within cultural heritage and in other cultural and creative fields. *Inter alia*, in the video game and film industries[44]. Indeed, on the basis

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[41] For more information, see: *www.itu.int/en/mediacentre/Pages/PR-09-2021-P2C-Bridging-Digital-Divide.aspx.*

[42] *Vid.* Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions, An European Capability Agenda for Sustainable Competitiveness, Social Equity and Resilience, COM (2021) 102 final, Brussels, 1 July 2020, p. 1.

[43] *Vid.* A. Vargas, E. Mínguez Pérez, R.I. Yusim, *La adaptación digital de los museos post Covid 19: oportunidades y retos para su transformación tecnológica. El caso de Casa Batlló en Barcelona*, in *Her&Mus:heritage & museography*, 22, 2021, p. 81 ss. For more information on this subject see: *https://evemuseografia.com/2021/04/30/transformacion-digital-oportunidades-para-museos-pequenos/*; E. Crooke, *Communities, Change and the Covid-19 Crisis*, in *Museum and Society*, 18, 2020, 3, pp. 305-310.

[44] These other cultural and creative sectors contribute 3.95% of the European Union's value added (477 billion euros) and employ 8.02 million people. In addition, they have 1.2 million companies, 99% of which are SMEs. *Vid.* Commission Staff Working Document SWD/2021/351. Annual Single Market Report 2021. Commission Staff Working Document, *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0351&from=enSWD/2021/352.*

of the Cultural Heritage Blueprint Alliance (CHARTER[45], 2021-2024), these industries are currently sponsoring a large-scale partnership aimed at developing the skills to be incorporated in the 2020 Skills Pact[46].

3. *Some remaining challenges for cultural heritage institutions: copyright*

The incursion of new technologies into the information and knowledge society has revolutionised the ways and channels of creating, disseminating, accessing and sharing content. This contemporary reality is precipitating the adaptation and evolution of intellectual property law[47] (traditionally applicable to analogue environments) to new digital scenarios. As regards museums making use of digitisation and museums disseminating their collections through social networks or other technological platforms[48], their activities

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[45] CHARTER – Cultural Heritage Actions to Refine Training, Education and Roles – aims to create a comprehensive long-term sectoral skills and economic sustainability, as well as digital and green skills, which strengthen the sector's role in the green and digital transition of the new development model, in line with the EU Green Deal, the New European Bauhaus or the Digital Europe Strategy.

[46] For more information on the Pact, see *https://ec.europa.eu/social/main.jsp?-catId=1517&langId=en.*

[47] Intellectual property refers to creation of the intellect. From works of art to inventions, computer programs, trademarks and other signs used in commerce. Intellectual property law protects original creations that are the fruit of the intellect of their authors, granting them a range of rights (copyright, patents, trademarks) and powers for the mere fact of creating them. Contemporary efforts to protect IP through international standards began with the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the protection of Literary and Artistic Works (1886). In relation to intellectual property law, see: L. Bently, B. Sherman, *Intellectual Property Law*, Oxford University Press, Oxford, 2014[4].

[48] Digital museums can be of different types: a) brochure museums, namely those that function as informative websites about a museum; b) content museums, which are databases about museum collections; and c) virtual museums or museums without walls, which offer a wide range of online content. *Vid.* Y. Benhamou, *Copyright in museums in the digital age*, *WIPO Magazine*, 2016, p. 1.

must, however, confront some fundamental legal issues related to the respect of copyright[49], image rights, data protection, traditional knowledge and contract law, among other areas. At this point, the focus of the following lines will be on copyright, as it determines the viability and the way content can be used. More specifically, the intention is to outline some copyright issues for those interested in undertaking a museum digitisation project, organising an exhibition on an intercative website, or launching a smartphone app supported by social media strategies and crowdfunding alternatives[50].

Copyright is the moral rights[51] and exploitation or patrimonial rights[52] that are recognised to the autor of an original work. Their purpose is in the public interest, as they seek to ensure that creators

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This work is available online at URL: *www.wipo.int/wipo_magazine/es/2016/03/article_005.html*.

[49] *Vid*. P. Marybeth, *The challenges of copyright in the digital age*, in *Revista de la Propiedad Inmaterial*, 9, 2006, pp. 59-67.

[50] *Ibídem*. Regarding copyright, digitisation and Internet see: M.T. Sanchís Martínez, *Derechos de autor, digitalización e Internet*, Ed. Universitatis, Madrid, 2004; P.J. Sánchez Bermejo, *Digitalización y derechos de autor*, in *La sociedad digital: oportunidades y retos para menores y jóvenes*, coord. por M. Reina Hidalgo, A. Navarro Ortega, J.L. Monestier Morales, dir. by F.J. Durán Ruiz, Editorial Comares, 2014, p. 152 ss.

[51] The moral rights of the creator include the right to be recognised as the autor of a work and the right to prevent the work from being altered in a way that could damage the creator's reputation. A comparative law analysis shows that States are not inclined to allow moral rights to be traded or transferred. However, sometimes a creator may waive or refrain from exercising them. Moral rights are of limited duration in some States and of permanent duration in others. *Vid*. World Intellectual Property Organisation (WIPO), *What is Intellectual Property?*, 2021, p. 22 ss. This document is available online at URL: *www.wipo.int/edocs/pubdocs/es/wipo_pub_450_2020.pdf*.

[52] In essence, economic rights derived from copyright entail the right to control the distribution of a work. Thus, the copyright owner can prevent anyone from copying or using a work without permission. For example, by translating, reproducing, performing or disseminating it. Although the penalties for copyright infringement vary from one national law to another, States usually combine civil and criminal measures. Generally, economic rights can be transferred and traded. The rightholder can agree to let someone else use a work under certain condictions (licence) or assign or sell the rights to someone who then becomes the new rightholder (assignment). In the event of the death of a copyright owner, his successors inherit his economic rights. Economic rights are of a fixed duration. Once the

can obtain fair remuneration for their work, encouraging creative effort and guaranteeing that works are adequately known and respected. Normally, the autor is the natural person who creates a literary, artistic or scientific work, although legal persons can also be copyright holders, in certain situations[53]. This is the case for computer programs or works created by salaried workers. Intellectual property protects all original literary, artistic or scientific creations expressed through any medium, tangible or intangible, that exists today or that may be invented in the future.

On the basis of these premises, in order for a museum (such as the Museo Nacional del Prado) to digitise the content of an exhibition and offer it online, the first thing it has to verify is whether the work it wants to digitise is subject to copyright[54]. Why? Because the digitisation of content protected by copyright is an act of reproduction that gives rise to a copy. This in turn means that it is an act of exploitation that only the rightholder is entitled to perform. In other words, no other subject may exploit the content without the legal or express authorisation of the righholder. Moreover, its availability online affects the right of communication. Both the right of reproduction and the right of communication ultimately require the prior permission of the copyright holder. Thus, the fact that a museum owns the physical copy of a work does not mean that it can

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so-called 'copyright term' has expired, the work enters the public domain, which means that it is free to use. *Ibidem*.

[53] Authorship does not always coincide with ownership of the work. The work may be created by a natural person but the ownership of the result may be vested in the autor or in a different natural or legal person. The status of autor is a real predicate and not an attribution of rights. The latter is a puraley legal question whose contours can be shaped by the legislature. *Vid*. Article 5 of the Texto Refundido de la Ley de Propiedad Intelectual española, Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia, BOE, nº 97, de 22 de abril de 1996.

[54] *Vid*. P. Farré López, *Los derechos de autor en Internet*, in *Anuario de la Facultad de Derecho*, 2008, 1, p. 67 ss.; M. Micunovic, L. Balkovic, *Author's rights in the digital age: how Internet and peer-to-peer file sharing tecnhonolgy shape the perception of copyrights and copywrongs*, in *Libellarium*, 8, 2015, 2, pp. 27-64.

automatically copy or exhibit it by digital means. If the work is indeed protected by copyright, what the museum then has to check is whether it has the permission of the copyright holder to digitise it. In this case, unless the rightholder has assigned or sold the right to the work to the museum by contract, donation or sale, the museum must, thirdly, investigate who the rightholder is and obtain the necessary permission to digitise the work so that it can be made available online. Obtaining such permission may be the result of direct, individual negotiation with the rightholder(s) or of a basic agreement authorising mass digitisation, in accordance with the Europeana Licensing Framework[55].

In any case, bearing in mind that a general rule has its exceptions, it should be considered that if the museum's intended use of the work constitutes an exception to copyright[56], the institution may digitise it without the permission of the rightholder. Although, as with other forms of intellectual property, laws and exceptions to copyright differ from State to State, international law sets minimun standars of protection[57] which are guaranteed by a number of treaties administered by the World Intellectual Property Organisation (WIPO)[58]. For example, according to article 9.2 of the 1967 Berne

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[55] Europeana is an initiative of the European Union, funded by the Connecting Europe Facility of the EU and its Member States. Europeana aims to strengthen the cultural heritage sector in its digital transformation process by developing domains, tools and policies that facilitate the adoption of digital change and the emergence of partnerships that promote innovation. For more information, see: *www.europeana.eu/en*. *Vid*. Y. BENHAMOU, *Copyright in museums in the digital age*, cit., p. 2.

[56] In certain circumstances, known as limitations and exceptions to copyright, copyright restrictions should not apply.

[57] Thus, copyright arises as soon as work is created. Although some States operate voluntary systems of copyright registration, it is not normally necessary for a creator to register his or her work or take any other steps to obtain protection. Moreover, States are obliged to protect most copyrighted works for the lifetime of the creator and for at least fifty years after his or her death.

[58] WIPO is an international organisation established in 1967 to develop a balanced and effective international intellectual property system that enables innovation and creativity for the benefit of all. It currently has a total of 193 Member

Convention[59], a work may be used «in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author». This is known as the 'Three Step Rule'[60]. States parties to these treaties may provide for more stringent national laws that are respectful of the international minimun protection. In Spain, for example, the exploitation rights of a work subsist seventy years after the death of the autor and are calculated from 1 January of the year following the year of death or the declaration of death. However, the term is 80 years for authors who died before 7 December 1987. If these terms are exceded, the work enters the public domain and can be used without permission, provided that its autorship and integrity are respected. In this environment, Creative Commons licences[61] promote public domain marks on works, an initiative also supported by the EU's Europeana action[62].

As regard the Union's regulatory landscape, the objective of harmonising Member States'laws on copyright and related rights (hereinafter copyright and related rights) has led to a 2019 Directive[63], the main purpose of which is to remove legal uncertainty re-

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States. For more information, please visit WIPO's website: *www.wipo.int/about-wipo/en.*

[59] The text of the treaty is available online at the following URL: *https://wipolex.wipo.int/es/text/283694.*

[60] *Vid.* K.J. Koelman, *Fixing the Three-Step Test*, in *European Intellectual Property Review*, 2006, 8, p. 407 ss.

[61] Creative Commons licences (*http://creativecommons.org*) are based on intellectual property and were created in 2001, mainly by the lawyer Lawrence Lessig. Their aim is to protect author's works and facilitate their dissemination when the uses are not for profit. These licences allow the reproduction, distribution and public communication of any work on the sole mandatory condition of citing the autor. The autor can choose other conditions such as non-profit use, no derivate works, equal sharins, etc.

[62] Europeana provides applications to find out whether or not a work has entered the public domain, *http://outofcopyright.eu/.*

[63] *Vid.* Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130 of 17 May 2019. This Directive builds on and complements the rules laid down in existing

lated to certain uses of works and other subject-matter in the digital environment. *Inter alia*, uses of a cross-border nature. In this context, the current EU copyright framework requires adaptation to the new possibilities of use offered by digital technologies, as well as further development in certain sectors. Hence, the legal mechanism designed by the 2019 Directive to acommodate certain exceptions and limitations to copyright and related rights in digital and cross-border scenarios is of particular interest, as are certain measures aimed at fostering certain licensing practices for (notably) the dissemination of works and other subject-matter outside the commercial circuit[64], the online availability of audiovisual content or video-on-demand platforms, and/or the use of assets in the public domain.

With regard to exceptions and limitations to copyright[65] related to the preservation of cultural heritage, the 2019 Directive sug-

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Directives in this área. In particular, Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20); Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1); Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10). Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28); Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16) and Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72).

[64] These are works that are protected by copyright but are not available on the market. For example, works of art unique.

[65] *Vid.* R.M. MATA Y MARTÍN, A.M. JAVATO MARTÍN, *La propiedad intelectual en la era digital: límites e infracciones a los derechos de autor en Internet*, La Ley, Madrid, 2011, p. 1 ss.; N. ELKIN-KAREN, E.M. SALZBERGER, *The Law and Economics of Intellectual Property in the Digital Age. The Limits of Analysis*, Routledge, New York, 2012.

gests, in particular, that the existing legal framework should be adjusted to the challenges associated with digital technologies by providing for a mandatory exception to the reproduction right to facilitate museums in preserving their collections for future generations[66]. More specifically, EU Member States should provide for an exception allowing museums to reproduce content that is permanently[67] in their collection for preservation purposes. For example, to cope with technological obsolescence, degradation of digital media, or to secure such works and other benefits. This exception should also include the possibility for museums to make copies by means of appropiate technologies, in any format or medium, in the necessary quantity and throughout the lifetime of the assets, provided that the purpose is preservation. Otherwise, any act of reproduction of the contents will normally be subject to prior authorisation by the righholders. The uniform transposition of this Directive in the different internal legal systems would favour cross-border cooperation, the pooling of preservation resources, the creation of transnational museum preservation networks and, ultimately, the efficient use of resources. Europeana[68] remains, in this scenario, a key device for strengthening standardisation activities for the exchange of metadata and online digital content and for cross-border cooperation at both european and international level. The RightStatements.org[69] framework provides, for example, a set of standardised rights statements that enable museums to communicate copyright

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[66] An act of conservation of a work or any other item in a museum's collection may require a reproduction and, consequently, the authorisation of the relevant righholder.

[67] According to the 2019 Directive, works and other subject-matter are permanently in the collection of an institution responsible for cultural heritage when copies of such works or other subject-matter are permanently owned or held by that institution. For example, as a result of a transfer of ownership, licensing agreements, legal deposit obligations or permanent safekeeping arrangements. *Vid.* Para. 29 of the 2019 Directive, cit.

[68] *Vid.* L.F. Ramos Simón, R. Arquero Avilés, *Europeana. La plataforma del patrimonio cultural europeo*, Trea, Gijón, 2014, p. 1 ss.

[69] *Vid. https://rightsstatements.org/es.*

and re-use status of digital objects to the public. However, in the light of the Declaration on Cooperation to Promote the Digitisation of Cultural Heritage of April 2019[70], both EU Member States and cultural heritage institutions still need to intensify their efforts to develop and promote interoperatibility structures and standars for digitisation initiatives[71]. Moreover, other European strategies also work on the principles of orphan works[72], i.e. works that are subject to intellectual property rights but whose rightholders have not been identified or whose whereabouts are unknown. By way of illustration, it is worth mentioning Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012[73]. The transposition of this Directive was implemented in Spain through Law 2/2014, of 4 November, amending the Consolidated Text of the Intellectual Property Law, approved by Royal Legislative Decree 1/1996, of 12 April, and Law 1/2000, of 7 January, on Civil Procedure[74].

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[70] The declaration has three pilars of action: a) a pan european initiative for the 3D digitisation of cultural heritage objects, monuments and sites; b) the re-use of digitised cultural resources to encourage citizen participation, innovative use and dissemination in other sectors; and c) the enhancement of cross-sectoral and cross-border cooperation and capacity building in the digitised cultural heritage sector. The text of these declaration is available online at URL: *https://digital-strategy.ec.europa.eu/en/news/eu-member-states-sign-cooperate-digitising-cultural-heritage*.

[71] *Vid*. European Commission Recommendation (EU) 2021/1970 of 10 November 2021, cit., p. 8 ss.

[72] *Vid*. J.L. González San Juan, *Régimen jurídico de las obras huérfanas en España*, in *Revista de Sistemas de Información y Documentación*, 11, 2017, 2, p. 35 ss; R. De Román Pérez, *Las obras huérfanas en la Ley de Propiedad Intelectual y Utilizaciones*, in *Actas de Derecho industrial y Derecho de autor*, 38, 2017-2018, p. 299 ss.

[73] *Vid*. OJ L 299 of 27 October 2012; J. Urban, *How Fair Use Can Help Solve the Orphan Works problem*, in *Berkeley Technology Law Journal*, 27, 2012, pp. 1380-1427.

[74] This amendment added Article 37 bis to the revised text of the Intellectual Property Law as part of the regulation of the limits to intellectual property rights. This article establishes a legislative framework that guarantans legal certainty in the use of orphan works by cultural institutions and public broadcasting organisations. *Vid*. Royal Decree 224/2016, of 27 May, which develops the legal regime of orphan works, BOE nº 141 of 11 June 2016.

However, beyond the criterion of museum use of the work, there are four other circumstances in which it is not necessary for the museum to obtain permission from the copyrights owners to digitise and make content available online. The first case is that of works[75] permanentley located[76] on a public road[77]. Article 35 of the Spanish Royal Legislative Decree 1/1996 of 12 April 1996, approving the Consolidated Text of the Law on Intellectual Property, regularising, clarifying and harmonising the current legal provisions on the matter (TRLPI) refers expressly to this case. According to this provision: «Works permanently located in parks, streets, squares or other public thoroughfares may be freely reproduced, distributed and communicated by means of paintings, drawings, photographs and audiovisual procedures». The purpose of this exception to the exclusive right of the copyright holder is to allow the creation and distribution of derivative works. The second case concerns works that are part of an archive. If national laws so allow, museums may reproduce their works for research or conservation purposes without the prior authorisation of the righholders and provided they do so without any profit-making intention. The scope of this exception often varies from one national law to another, in particular with regard to the format (analogue or digital), the intended use (only for conservation purposes or also for dissemination) or the number of copies that may be made (e.g. one back-up copy or several copies for indirect comercial or non-commercial purposes). Article 31 of the Spanish Copyright Act includes, for example, the right to private copyright explicity, i.e. the right to make personal copies without the author's permission as long as access to the work is lawful and the copy is not used in a collective or for-profit man-

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[75] These are all works that express an aesthetic content through lines, shapes, volumes or colours (e.g. a statue or a mural painting), including architectural works (a building) and works of applied art, i.e. those in which the artisitic value is incorporated into any other productive value. For example, a clock on the façade of a town hall.

[76] This excludes works placed in a public place on an occasional basis. For example, a sculpture placed in a square for a one-off exhibition.

[77] The site should be freely accesible to the general public.

ner. In order to satisfy authors, the Law introduces the payment of a compensatory digital royalty associated with certain recording media (CDs, DVDs, pen drives, MP3 players, etc.) and recorders (cameras, CD/DVD recorders, photocopiers, etc.). The amounts collected under this heading have to be administered through copyright management societies. For this reason, it is of particular interest that EU Member States uniformly transpose the above-mentioned Directive (EU) 2019/790 of 17 April 2019 into their national legislation. Thirdly, it would also be possible to exempt copyright with regard to the use of images of exhibited works in exhibition catalogues. Directive 2001/29/EC also contains such a restriction, but not all EU Member States include museums or specific whether the exception covers online publication. Finally, the last and fourth case concerns 'orphan works'[78]. Although Directive 2012/28/EU allows for the digitisation and online dissemination of 'orphan works', provided that the authors have been thoroughly searched beforehand, the exception is not applied in a similar way in all EU Member States. Moreover, the problem arises when a work is officially declare an 'orphan work'. This procedure has been unsuccessful in most european States. In Spain, for example, there is no record of any work declared as such[79].

With regard to the use of websites for crowdfunding, crowdsourcing[80] or promotional purposes (e.g. MuseoGeek, Facebook and Twitter), the desire of museums to encourage the participation of a wider public also increases the risk of users posting content that infringes copyright and other legal provisiones (criminal; personality law). For this reason, in order to avoid their legal liability, museums have to inform users about the general terms and conditions of use of their website and must be vigilant to immediatly remove any conflicting content. In this context, it goes without saying that

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[78] *Vid.* Y. Benhamou, *Copyright in museums in the digital age*, cit., p. 2 ss.

[79] *Vid.* J.L. González San Juan, *Régimen jurídico de las obras huérfanas en España*, cit., p. 35 ss.

[80] *Vid.* V. Mourelatos, *A Study on the Evolution of Crowdsourcing Websites*, in *European Journal of Social Sciences, Education and Research*, 11, 2017, 1, p. 29 ss.

museums must also respect the terms of use of the social networking platforms they use (Facebook, Twitter…), as it is posible that theses platforms re-use some of the content published by museums. In addition these issues, museums also need to be aware that the media used copyright. For this reason, museum have to obtain the necessary authorisations from the technical and grafic designers responsible for the creation of these products, especially if they are not contracted employees of the museum but external service providers. This dynamic is (or should be) repeated with regard to media obtained as a result of a technological partneship between museums and universities or the private sector. Museums would have to negotiate detailed contractual clauses on copyright with the relevant technology partnerships, in order to make full use of the digital tools they provide them with[81].

4. *Concluding remarks*

Thanks to the convergence of digital technologies, traditional museography, based on a descriptive model, is giving way to a two-way discourse (from the museum to the user and from the user to the museum) which, beyond the art of exhibiting, reflects a conceptual mental change in consumers, a need to foster the emotional factor, the demand, in others words, that museums make us relive the past. In this scenario, digital culture is a fundamental ingredient of modern 21st century museography wich, despite its fidelity, comprenhensibility and malleability, must not renounce its authenticity. The incorporation of this discourse into the legal narrative means that technological development usually requires an adaptation of the existing *corpus* of regulations on the subject. This is the

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[81] *Vid.* Y. Benhamou, *Copyright in museums in the digital age*, cit., p. 3 ss.; M.E. Jiménez-Cercado, M. Acosta-Véliz, *El crowdfunding como alternativa para el emprendedor del siglo XXI*, in *Fórum Empresarial*, 23, 2018, 2, p. 1 ss.; R.E. Pantalony, *La gestión de la propiedad intelectual en los museos*, OMPI, 2013, p. 27 ss.

case with intellectual property law and, more precisely, with copyright, image rights, data protection, traditional Knowledge and / or contract law, which must be understood, *inter alia*, by the institutions responsible for cultural heritage. Moreover, copyright responds to a technological innovation of its time: the invention of the printing press.

Bearing in mind that technology successfully outspaces the pace of national legislators, the European Union must continue to strive to create a climate of trust which, on the basis of the *ad hoc* strenghts of its Member States, will encourage the reformulation of a regulatory framework for digitisation, re-use and digital preservation which, trascending the imprecision, ambiguity and open texture of the law, weighs up the competing interests of the different actors involved and of society at large in a balance way. The design and promotion of interoperability devices and standars in digitisation strategies are crucial for the future of cultural heritage and other fields of the european economy such as creative spaces, tourism or research. Digital transformation and its legal coverage are off the table right now.

Alessandra Quarta

THE EUROPEAN APPROACH TO CULTURE: THE EUROPEAN HERITAGE LABEL[*]

Abstract: Cultural heritage is a topic with many dimensions, often complementary to each other. Even within the European Union, the topic is developed from different perspectives, partly because the European Union's involvement in the field of culture has developed gradually over the years and with different actions.

This chapter, after briefly outlining some of the different European initiatives, aims to provide an analysis of one of the measures adopted by the European Union: the European Heritage Label. This is a rather recent initiative that shows how the member States are fully aware of the potential but also of the limitations there are in managing heritage at European level; for this specific reason, in the Decision by which the European Heritage Label was adopted, there is an explicit reference to the 1972 UNESCO World Heritage Convention, a crucial tool in this field.

Starting from a more general approach inherent to the label as a whole, the selected sites in Italy will then be analysed specifically: the Alcide De Gasperi House Museum, the Fort of Cadine, the archaeological area of Ostia Antica and finally the island of Ventotene. Through the study of these heritages, it is possible to have a tangible and practical approach to what is considered cultural heritage within the European Union and which therefore deserves to be protected and disseminated.

1. *Introduction*

Cultural heritage is a theme that has many dimensions, often complementary to each other. Even within the European Union, the topic is developed from different points of view.

The main purpose of this chapter is to analyse the Decision n. 1194/2011/UE[1] with which the European Union established the

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[*] Double-blind peer reviewed content.

[1] Decision No 1194/2011/EU of the European Parliament and of the Council of 16 November 2011 establishing a European Union action for the European Heritage Label.

European Heritage Label which is one of the European Union's central heritage initiatives.

The involvement of the European Union in the field of culture has been developed over the years in a gradual way and with different actions. In the first period, the attention of the European Community was focused mainly on the creation of a common market within which, however, there was no specific discipline for such particular goods as cultural heritage. The only instrument of protection provided was article 36 EEC[2] (now Art. 36 TFEU) which allowed a derogation from the prohibition to impose restrictions on imports and exports between the Member Countries, for reasons related to the preservation of national artistic, historical, or archaeological heritage.

Based on this starting point, the Court of Justice of the European Union intervened[3], balancing the free movement of goods and the protection of cultural assets, preventing any abuse of the cultural exception provided for by Art. 36 mentioned above.

It was only in 1992 that the Maastricht Treaty introduced, in Art. 128 EC[4] (now Art. 167 TFEU), European competence in the cultural sphere, establishing that the EU contributes to the development of the cultures of the Member States while respecting national diversity and encouraging cooperation between the Member States.

Another way in which the European Union has intervened relates to external relations. The cooperation established for years be-

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[2] ECC Treaty, Art. 36.

[3] See, for instance, Judgment of the Court of 10 December 1968. Commission of the European Communities v Italian Republic Case 7-68; Judgment of the Court of 11 July 1985. Cinéthèque SA and others v Fédération nationale des cinémas français. References for a preliminary ruling: Tribunal de grande instance de Paris - France. Distribution of films in the form of video recordings - National prohibitions. Joined cases 60 and 61/84; Judgment of the Court (Fifth Chamber) of 4 May 1993. Federación de Distribuidores Cinematográficos v Estado Español and Unión de Productores de Cine y Televisión. Reference for a preliminary ruling: Tribunal Supremo - Spain. National rules intended to promote the distribution of national films. Case C-17/92.

[4] EC Treaty, Art. 128. See R. Adam, A. Tizzano, *Manuale di diritto dell'Unione europea*, Giappichelli, Torino, 2020[3].

tween the European Union and UNESCO[5] is still very close. Often various UNESCO initiatives have directly or indirectly influenced European ones. It is precisely for this reason that I have decided to analyse the European Heritage Label in this chapter. In the following paragraphs, I'll briefly explain how European Union decided to manage the cultural policy in general and in particular focusing on the European Heritage Label.

2. *The European Cultural Policy*

The process of developing cultural heritage as an EU policy area has not only been EU-led progress. Some Member States and European transnational organizations have driven cultural heritage to the top of the EU policy agenda; due to the interest of individual Member States, it became easier for the Commission to foresee measures impacting cultural heritage.

Multi-level governance characterizes EU cultural policy[6]. This logic of multi-level government creates a network of connections between actors at different levels that is central to European policy[7]. The problem with this approach, as can be easily understood,

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[5] L. Paladini, *I rapporti tra Unione europea ed UNESCO,* in *Tutela e valorizzazione del patrimonio culturale mondiale nel diritto internazionale*, edited by E. Baroncini, Bononia University Press, Bologna, 2021, pp. 45-81; L. Paladini, *La cooperazione tra l'UNESCO e l'UE: aspetti istituzionali e materiali*, in *DPCE online*, 2020.

[6] See A. Benz, *The European Union as a Loosely Coupled Multi-Level System*, in *Handbook on Multi-Level Governance*, edited by H. Enderlein, S. Wälti, M. Zürn, Edward Elgar, Cheltenham, 2010, pp. 214-226; S. Piattoni, *The Theory of Multi-Level Governance: Conceptual, Empirical and Normative Challenges*, Oxford University Press, Oxford, 2009; S. Piattoni, *Multi-Level Governance: A Historical and Conceptual Analysis*, in *Journal of European Integration*, 31, 2009, 2, pp. 163-180.

[7] See Council conclusions on participatory governance of cultural heritage (2014/C 463/01); European Commission. *Commission Staff Working Document: European Framework for Action on Cultural Heritage*. SWD (2018) 491 final, 5 December 2018, European Commission, Brussels.

is that it creates very fragmented systems also due to the lack of exclusive competence of the Union in cultural matters. It is then necessary to find the right compromise that allows this approach to develop without creating excessive imbalances between the various Countries involved.

Cultural policies are not the only way in which the European Union manages heritage. It also does so through other social and political objectives. In the EU, the European Commission's Directorate General for Education and Culture initiates cultural policy development. Still, numerous actors, such as international organizations involved in culture and institutions based on research and information sharing, are engaged in defining its agenda[8].

Lähdesmäki[9] identified five central focuses among European objectives: strengthening European cohesion and integration[10]; increasing the visibility of the EU and its branding through heritage; educating young people to become pro-European; extending EU governance to culture and heritage; supporting the economy to culture and heritage, and support economic development with tourism, creative industries, and regional development. This focus on the social sphere in EU cultural heritage policy is in line with the Faro Convention of the Council of Europe[11]. Also, for this reason it can be said that the Council of Europe has an important impact on the development and characterisation of EU policy discourse.

The purpose of the European Union's role is to assist and complement the actions of Member States in preserving and promoting Europe's cultural heritage. The European Commission has developed several policies and programs relevant to this goal. It also

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[8] P. Deway, *"Power in European Union Cultural Policy"*, in *International Cultural Policies and Power*, edited by P. Singh, Palgrave Macmillan, New York, 2010, pp. 113-126.

[9] T. Lähdesmäki T., *The EU'S Explicit and Implicit Heritage Politics*, in *European Societies*, 16, 2014, 3, pp. 401-421.

[10] O. Calligaro, *Negotiating Europe: The EU Promotion of Europeanness since the 1950s*, Palgrave Macmillan, New York, 2013.

[11] Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005).

supports and promotes policy collaboration between the Member States and cultural heritage stakeholders.

As mentioned in the introduction after the adoption of the Maastricht Treaty[12] a European cultural competence was previewed. Hence, the various programs have become much less fragmented. In the years 2000 and 2010, the EU introduced many new initiatives to encourage a narrative of Europe's common history and cultural heritage[13]. The first program based on Art. 151 of the Maastricht Treaty was the Kaleidoscope program[14], which promoted cultural cooperation through exchanges. Other programs were then adopted, such as Ariane (1997-1999)[15] for support in the book sector and Raphael (1997-2000)[16] for support of the European cultural heritage.

At the beginning of the 2000s, a structured program called Culture 2000[17] was finally envisaged to increase cultural dialogue, the dissemination of culture, and European cultural heritage, within which the European Capitals of Culture[18] measure was planned.

Already since the 1990s, the Union has engaged in closer cooperation with other international actors. An example of this is

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[12] Treaty of European Union (92/C 191/01).

[13] T. Lähdesmäki, V.L.A. Čeginskas, S. Kaasik-Krogerus, K. Mäkinen, J. Turunen, *Creating and Governing Cultural Heritage in the European Union: The European Heritage Label*, Routledge, London and New York, 2020.

[14] Decision No 719/96/EC of the European Parliament and of the Council of 29 March 1996 establishing a programme to support artistic and cultural activities having a European dimension (Kaleidoscope).

[15] Decision No 2085/97/EC establishing a support programme, including translation, in the field of books and reading (Ariane Programme).

[16] Decision No 2228/97/EC of the European Parliament and of the Council of 13 October 1997 establishing a Community action programme in the field of cultural heritage (the Raphael programme).

[17] Launched in 2000, the Culture 2000 programme ran until 2006, with a budget of € 236.4 million dedicated to promoting a common cultural area, characterised by its cultural diversity and shared cultural heritage.

[18] See more at *https://culture.ec.europa.eu/policies/culture-in-cities-and-regions/european-capitals-of-culture*.

the European Heritage Awards launched in 2002 by the European Commission and administered by Europa Nostra[19].

As early as 2006, the European Union has been working to introduce what is now the European Heritage Label, which will be analysed in the next paragraph. Among all these measures, the European Heritage Label is an essential step toward coordinated cultural actions by the Commission.

Since 2007 a global approach has been given to the programs, through the Culture 2007-2013 program[20] which was intended to support the transnational mobility of artistic heritage and operators in the sector.

An important project developed by the EU in 2008 and still active today is the creation of the European digital library: Europeana[21]. Europeana Collections provides access to more than 50 million digitized items, including books, music, and works of art. Europeana aims to be a common access point to Europe's cultural heritage by creating a space where all expressions of Europe's cultural and scientific heritage can be integrated. This project demonstrates how the European Union must set its priorities according to the needs of the moment. It has to show a strong ability to adapt to the challenges in front of it.

The European Commission declared, in its 2014 Communication Towards an integrated approach to cultural heritage for Europe[22], that heritage preservation is a shared responsibility. For this reason, especially in recent years, the EU has sought to develop policies that also include local communities.

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[19] Europa Nostra is today recognised as the most representative heritage organisation in Europe with members from over 40 countries. The awards identify and promote best practices in conserving and enhancing cultural heritage.

[20] For more information visit *https://culture.ec.europa.eu/resources/creative-europe-previous-programmes/culture-programme-2007-2013*.

[21] Council conclusions of 20 November 2008 on the European digital library EUROPEANA (2008/C 319/07).

[22] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions *Towards an integrated approach to cultural heritage for Europe /* COM/2014/0477 final */*.

In 2019, the European Commission's Informal Expert Group on Cultural Heritage was established to maintain the outstanding multi-stakeholder cooperation and policy dialogue achieved during the 2018 European Year of Cultural Heritage[23]. The objective of the expert group is to promote public policies that ensure the long-term value and sustainability of Europe's cultural heritage based on an integrated approach.

It is essential to remember that all the initiatives now mentioned, which show some of the many interventions of the EU in this field, must be conciliated with the lack of exclusive competence in cultural matters. The EU can only intervene in support of the Member States. On the contrary, an area where there is a competence that allows for a more incisive intervention is the economic one. For this reason, it has often been necessary to balance the importance of economic issues with the relevance of cultural heritage.

When we deal with the cultural sphere, it is now natural to also refer to various social aspects mentioned earlier. In fact, many of them have long been introduced into the dynamics of cultural heritage.

Cultural heritage is seen as a social process and as such must be open to change and is the result of social conflicts. In fact, when we talk about heritage, we are referring by nature to something that can be different even because of the various actors involved who can give different readings to the same asset.

In its policies, the EU has therefore sought to inculcate an idea based on common values and narratives of its past that can help build European identity. In doing so, it has tried to keep as much as possible in a position of continuity with the European Economic Community which, even if from a different perspective, had taken an interest in cultural issues.

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[23] The slogan of the program was 'Our heritage: where the past meets the future'.

Increasingly, in its policies, the EU has been appealing to what can be called a 'feeling of belonging'[24], aware that heritage is capable of affecting people's consciences and emotional spheres.

It can therefore be seen that, although in the early days of community development, issues related to these topics were mostly considered linked to economic aspects, today the perspective has changed.

It is crucial nowadays to be able to create and strengthen the bond between citizens and the Union itself. It is believed that this is also possible through cultural issues by being close to the citizens, their needs, and their heritage that represents a part of their history. Heritage is perceived as something open to change and struggle[25].

In discourses referring to the cultural sphere, the community of individuals is often referred to in various policies and discourses. In particular, the 2005 Faro Convention on the Value of Cultural Heritage for Society[26] introduced the concept of a 'heritage community' according to which every individual should be encouraged to participate in the process of identifying, protecting, and preserving heritage. It is individuals who add value to heritage and this aspect certainly cannot be ignored.

The European Union is also an important actor at the international level. For this reason, it is appropriate to underline that in the field of external relations an important collaboration has been established with UNESCO. Even if no act has been adopted, encom-

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[24] A. JAKUBOWSKI, *Cultural Heritage in the European Union. A Critical Inquiry into Law and Policy*, in *Studies in Intercultural Human Rights*, edited by A. JAKUBOWSKI, K. HAUSLER, F. FIORENTINI, Leida, 2019.

[25] See R. HARRISON, *Heritage: Critical Approaches*, Routledge, New York, 2013; B. GRAHAM, P. HOWARD, *'Heritage and identity'*, in *The Ashgate Research Companion to Heritage and Identity*, edited by B. GRAHAM, P. HOWARDS, Aldershot and Burlington, Ashgate, 2008, pp. 1-15; T. LÄHDESMÄKI, S. THOMAS, Y. ZHU, *Introduction: heritage and scale*, in *Politics of Scale. New Directions in Critical Heritage Studies*, edited by T. LÄHDESMÄKI, S. THOMAS, Y. ZHU, Berghahn's Books, New York, 2019, pp. 1-18; L. SMITH, *Uses of Heritage*, Routledge, London, 2006.

[26] Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199)

passing the modalities of the collaboration, this dates to the sixties when initially there was an exchange of letters, followed by an exchange of notes, and then the *Dispositions applicables à la coopération entre la Commission des communautés européennes et l'UNESCO* were defined[27].

The link between the two institutions was reinforced with the accession of the EEC to the 1976 Protocol to the UNESCO Agreement for the importation of objects of an educational, scientific, or cultural nature of 1950[28]. From the very beginning of the collaboration, the EU has encouraged its member countries to pursue the goals set by UNESCO. An example of this is the fact that the Commission's Recommendation of 20 December 1974[29] to the Member States on the Protection of Architectural and Natural Heritage recognizes the central role of the 1972 UNESCO Convention.

A significant expression of this cooperation is the European accession to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005[30].

Although the EU cannot technically be a UNESCO member, it has the status of an advanced observer thanks to which it can take an active part in the work of this organization as was the case for the 2005 Convention. In 2012 the Memorandum of Understanding concerning the establishment of a partnership between the United Nations Educational, Scientific and Cultural Organization Secretariat and its subsidiary bodies and the European Union was adopted to renew the willingness to collaborate[31]. Only a year after the

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[27] See UNESCO. Executive Board, 147th session, 1995, available on *https://unesdoc.unesco.org/ark:/48223/pf0000101482*, see also L. Paladini, *op cit.*

[28] Council Decision of 8 May 1979 on the conclusion of the Protocol to the Agreement on the importation of educational, scientific, and cultural materials, Official Journal of the European Communities, L 134, 31 May 1979.

[29] Commission Recommendation of 20 December 1974 to Member States concerning the protection of the architectural and natural heritage (75/65/EEC).

[30] Convention for the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005).

[31] Memorandum of Understanding Concerning the Establishment of a Partnership between the United Nations Educational, Scientific and Cultural Organi-

Memorandum was signed, the two organisations jointly issued a press release[32] renewing their intention to cooperate and emphasising the importance of their joint action.

3. *The Decision n. 1194/2011/EU Establishing a European Union Action for the European Heritage Label*

As mentioned earlier, the European Union needed to answer to several crises that have marked it. An attempt to respond has also been made with various social policies. These policies are closely linked to the economy and the development of the individual market.

An early reference to these policies dates back to the 1960s. In particular, the European Social Charter[33] guarantees fundamental social and economic rights and common standards of justice in a complementary manner to the 1950 European Convention on Human Rights[34].

These aspects have been included from time to time in the cultural policy, which not only aims to promote the sector but also to enhance certain goals related to European integration.

In the new European Agenda for Culture[35], the Commission has identified the social dimension as one of three strategic objectives with which to harness the power of culture and cultural diversity to amplify social cohesion and well-being.

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zation Secretariat and its Subsidiary Bodies and the European Union (Paris, 8 October 2012).

[32] The detailed content of the press release can be found at *https://en.unesco.org/news/unesco-european-union-working-together-change*.

[33] Council of Europe, European Social Charter, 18.X.1961, ETS (European Treaty Series), 35.

[34] ECHR, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

[35] European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. A New European Agenda for Culture*, Brussels, 22.5.2018, COM (2018) 267 final, European Commission, Brussels.

Cultural sites and institutions have the opportunity to create and represent a more equitable society through the inclusion of different groups in their exhibitions, trying to address a diverse audience and making all these people part of their activities including decision-making. There are many recent EU documents and acts in which there are explicit references to pluralism, accessibility, and participatory interaction and this highlights how heritage can without any problem strengthen the European social dimension[36]. From this perspective, the European Heritage Label is a key measure with which to implement these objectives. This initiative seeks to increase European citizens', especially young people's, understanding of Europe's history, its creation, and their common but diverse cultural heritage. This also fully reflects the EU motto: «Unity in Diversity».

As mentioned earlier, the initial idea of this label dates to 2006 when the French Minister of Culture, with the support of his Spanish and Hungarian colleagues, initiated this new measure in the form of an intergovernmental scheme. Despite some criticism due to the most practical aspects, the potential of the idea was recognized. In 2008, the Council adopted conclusions to turn the idea into an official EU action. The decision on the initiative was finally taken in 2011.

As explicitly stated on the official website of the European Commission, the European Heritage Label was introduced with the aim of reviving the European narrative and the history behind it[37]. Therefore, sites are selected according to their symbolic value for European history or integration.

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[36] See Council of the European Union, *Council Conclusions on Participatory Governance of Cultural Heritage*, Official Journal of the European Union C 463, 23.12.2014; EP [European Parliament], *Towards an Integrated Approach to Cultural Heritage for Europe*, 2015, Report (2014/2149(INI)), Committee on Culture and Education, *Rapporteur: M. Diaconu*, 24.6.2015.

[37] See V.L.A. Čeginskas, S. Kaasik-Krogerus, T. Lähdesmäki, K. Mäkinen, *Constructing social Europe through European cultural heritage, European Societies*, 23, 2021, 4, p. 2.

Official logo of the European Heritage Label[38]

The label since its introduction wants to be developed as a high-quality award. This brings it partly closer to the UNESCO List of Intangible Cultural Heritage and the Council of Europe's European Cultural Routes. Moreover, the Decision with which it was introduced in Art. 5 clearly states that «The Commission and the Member States shall ensure the added value and complementarity of the action with regard to other initiatives in the field of cultural heritage such as the UNESCO World Heritage List, the UNESCO Representative List of the Intangible Cultural Heritage of Humanity and the Council of Europe's European Cultural Routes».

Despite this, however, the visibility of these sites and their reputation among tourists is very poor[39]. Many times, the label is not known or is confused with UNESCO initiatives because they are more famous and widespread[40].

One of the main objectives – explicitly stated in the recitals of the Decision – is to increase the sense of belonging of the citizens of the Member States. With regard to the European Heritage Label,

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[38] BelinDear, CC BY-SA 4.0, via Wikimedia Commons.

[39] T. Lähdesmäki, V.L.A. Čeginskas, S. Kaasik-Krogerus, K. Mäkinen, J. Turunen, *Creating and Governing Cultural Heritage in the European Union: The European Heritage Label*, Routledge, London and New York, 2020.

[40] V.L.A. Čeginskas, *Challenges for creating visibility of European cultural heritage. A case study of the European Heritage Label*, in *Ethnologia Fennica*, 46, 2019, pp. 109-134.

the concept of community was used in the 2017 panel report[41]. Immediately after the summary in fact it is clearly stated that:

«The EHL sites reveal heritage communities of people, who are proud to interpret their past within the wider framework of European culture and history. They courageously present their site by raising questions. The stories of the EHL sites allow the European peoples to develop emotional attachment to cultural heritage in Europe. This then becomes shared heritage and enables the understanding of a multilayered European identity. These communities are outstanding examples of cultural resiliency and solidarity»[42].

The increasingly widespread policy of appealing to a sense of belonging to the Union and European identity seeks to influence citizens emotionally and affectively. According to Banús[43], it can be said that European discourses often have a 'poetic dimension'. This kind of poetic dimension manifests itself in the emphasis on numerous ideals and principles that are considered to be the basis of the Union itself.

The importance of these values is such that the application form to compete for the European Heritage Label requires an indication of the contribution of the site to the development or promotion of the values of Art. 2 TEU. This is why site narratives often insist on these aspects in their applications.

The 2019 selection report also makes extensive reference to the European relevance for obtaining the label, and in doing so, there are a number of concepts that are widely referred to[44].

One of them is the concept of peace, by which one wants to teach citizens what in the Union's past was contrary to peace and

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[41] European Commission, *European Heritage Label: 2017 Panel Report*, European Commission, Brussels, 2017.

[42] *Ivi*, p. 7.

[43] E. Banús, *Keynote speech in the 13th International Conference European Culture*, Cluj-Napoca, Romania, October, 2015.

[44] K. Mäkinen, *Interconceptualising Europe and peace: identity building under the European Heritage Label*, in *Dissonant Heritages and Memories in Contemporary Europe*, edited by T. Lähdesmäki, L. Passerini, S. Kaasik-Krogerus, I. van Huis, Palgrave Macmillan, New York, 2019, pp. 51-78.

how it was overcome. A fact that should not be underestimated is that it confirms that often, if not every time, when a site refers to this value it gets recognition.

Another concept recalled is that of diversity understood as multilingualism, diversity of religions, culture, and ethnicity. Bringing all these nuances together, we want to emphasise how the EU implements policies that are fully inclusive of all forms of manifestation of culture, with no preference of any kind.

Again, essential in the development of the Union has been mobility. It is only through it that exchanges have taken place both culturally through the migration of people and economically through the movement of goods of various kinds. Therefore, this concept can also be considered one of the pillars within the EU.

Through the pursuit of all these links with the past, an attempt is made to create, as far as possible, continuity with the past and to instil confidence in the new generations so that the Union can continue to develop in all its facets.

The insistence on this topic also results from the fact that the EU, unlike the individual member states, has no real symbols that characterise it and on which the citizen can reflect himself. It can be said that there is a kind of symbolic deficit[45]. The institutions, aware of this identity crisis of the Union, have tried to intervene with various actions that could remedy it.

Heritage not only provides a sense of belonging on a 'geographical' level but also allows for a sense of common identity, of belonging[46].

In addition to what has been said so far, it is also intended to promote the economic development of the areas in which the sites obtaining this recognition are located.

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[45] See L. PASSERINI, *Figures d'Europe: Images and Myths of Europe*, Peter Lang, Brussels, 2013; C. PEARSON, *EUtopia? The European Union and the Parlamentarium in Brussels*, in *City: Analysis of Urban Trends, Culture, Theory, Policy, Action*, 17, 2013, 5, pp. 636-653; P. PERCHOC, *Brussels: What European Urban Narrative?*, in *Journal of Contemporary European Studies*, 25, 2017, 3, pp. 367-379.

[46] For a more in-depth analysis of this concept see L. SMITH, *op.cit.*

European funding has long been less developed in cultural matters. Even today, for example, the European Heritage Label itself does not provide for any direct funding for the actors and sites involved. The winners of the label have to finance themselves, and this often happens thanks to authorities or actors engaged at national or local level and not at European level.

The European Commission has recently launched a call for funding for EHL sites[47], with a budget of € 500.000, to develop a continuous and successful collaboration between the various sites. More specifically, its objective is to identify a coordinator who can manage the several activities related to the sites. Unfortunately, not all sites can really participate in this call. Many of them in fact even if they participated would not have the strength and the ability to manage this sum and to do what the call requires. This intervention, therefore, highlighted the clear difference that can characterize the various sites while being all part of a single network.

Also tourism is closely linked to the economic factor. It has always been attempted to bring as many tourists as possible to this brand so as to entice them to visit the sites and more generally the Countries in which they are located. In doing so, emphasis has been placed on the added value that such recognition can bring.

However, it cannot be said, at least at this stage, that there is a real winning marketing campaign. Indeed, initiatives are often left to individual sites. The European Commission has planned small measures including: the development of a logo, the creation of a website dedicated to this measure, the creation of small promotional videos and little else.

The financial aspect also influences the interactions between the various sites. Every year the Commission organises a meeting for site representatives and the various national coordinators, and it is precisely on this occasion that the most financially successful sites

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[47] European Commission, *Call for Proposals – EAC/ S39/ 2018: Design and Management of Networking and Capacity Building Activities for European Heritage Label Sites*, European Commission, Brussels, 2018.

have a sort of leadership and take precedence over others in these meetings. Although this is fully in line with what is happening in other initiatives, the question arises whether, precisely because of the greater appreciation of the diversity that characterizes the EU, it would not be better to identify a mechanism by which each site can rotate to play the role of coordinator of the work of the annual meeting.

For the moment, the European States that have joined the initiative are Austria, Belgium, Bulgaria, Cyprus, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Czech Republic, Slovak Republic, Romania, Slovenia, Spain, Hungary.

According to the provisions of Art. 2 of the Decision, the sites eligible for this recognition are of three types:

- *sites*, i.e., a monument, a natural, underwater, archaeological, industrial, or urban site, a cultural landscape, a place of memory, a cultural asset in general, including intangible cultural heritage (if it is associated with a place) and contemporary cultural heritage.
- *transnational site*, i.e., a site composed of several sites, located geographically in different Member States, which converge on a specific theme to submit a joint application or a site whose geographical location straddles the territories of at least two of the Member States. For this specific type of site, special conditions for admission are foreseen in Article 12.
- *national thematic sites*, i.e., several sites, geographically located in the same Member State, that converge on a specific theme to present a common application. Article 13 sets out special requirements for admission for this specific type of site.

As already mentioned, this initiative also bears witness to the EU's collaboration with UNESCO. In fact, it is expressly stated in Article 5 that the label is in a complementary position and provides added value compared to other initiatives.

Art. 7 sets out the criteria that must be followed when applying for a site; these include, for instance, the fact that, as stated in let-

ter (a), candidate sites for the label must have a symbolic European value and must play an important role in the history and culture of Europe. Furthermore, in applying, a project must be prepared that includes all the elements indicated in letters (b) and (c) of the same article. These must be respected not only to be able to apply but also to be able to maintain the label once obtained.

Applications are subjected to a national pre-selection and at a later stage to a European-level evaluation.

Each Member State may pre-select up to two sites every two years. The pre-selection is done following the criteria of and based on the application form developed by the European Commission[48]. Although each Member State enjoys a certain amount of freedom with regard to selection procedures, it is imperative that the selection always ends by 1 March of the year of selection so that the European Commission can inform the European Parliament, the Council, and the Committee of the Regions of the results.

The selection of sites at the European level is carried out by the European panel[49], under the responsibility of the European Commission. The panel is composed of thirteen independent experts, with strong experience and demonstrated competence in the fields relevant to the objectives of the action. Of these, four are appointed by the European Parliament, four by the Council of the EU, four by the European Commission, and one by the Committee of the Regions following their respective procedures. The European panel evaluates the applications of the pre-selected sites and chooses a maximum of one site from each Member State.

After obtaining the label, periodically, each site is checked to ensure that it meets the criteria imposed and the objectives established. The planned control phase is managed entirely by the Member State, which is responsible for collecting the necessary information and preparing a report every four years to be forwarded to the Commission.

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[48] See art. 10 of the Decision.
[49] See art. 8 of the Decision.

According to Art.16, in the case in which there are problems for some sites to respect the criteria or the objectives imposed, the European panel initiates an exchange of opinions to try to remedy the situation. If the conditions do not improve within 18 months of the initiation of the dialogue, the panel shall inform the Commission. The evaluation of the various sites will then be analysed by the panel of experts once all documents have been submitted by the Commission.

If, after a further 18 months following notification to the Commission, the recommendations have not been implemented, the European panel shall issue a recommendation to the Commission for the removal of the label.

It may also be the case that it is the sites themselves that renounce the label; in which case they shall inform the Member States concerned, which shall, in turn, inform the Commission of the renunciation. The Commission will then inform the Parliament, the Council, and the Committee of the Regions.

In 2021 there was another selection of sites deserving recognition. Twelve sites of outstanding importance were chosen, among which we can mention as examples Ventotene (Italy), the Museum of Culture and Archaeological Site of Vučedol, Vukovar (Croatia), and the Historic Center of Turaida, Sigulda (Latvia)[50].

The next selection will be in 2023 while the next monitoring report will be held in 2024; In the meantime, national pre-selections will be conducted.

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[50] The twelve selected sites in 2021 are: Ventotene (Italy); Vučedol Museum of Culture and Archaeological Site, Vukovar (Croatia); Nemea Archaeological Site, Ancient Nemea (Greece); Thracian Art in the Eastern Rhodopes: Aleksandrovo Tomb, Haskovo (Bulgaria); Almadén Mining Park, Almadén (Spain); Echternach Saint Willibrord Heritage, Ville d'Echternach (Luxembourg); Turaida Historic Center, Sigulda (Latvia); Medieval Mural Painting in the Gemer and Malohont Regions, Rimavské Brezovo (Slovakia); Oderbruch, Seelow (Germany); Danube European Commission Building, Galaţi (Romania); Seminaarinmäki Campus, Jyväskylä (Finland); MigratieMuseumMigration (MMM), Brussels (Belgium).

3.1. *Italian sites selected with the European Heritage Label*

Italy, strengthened by its centrality in cultural heritage matters, immediately understood the importance of such an action. This is why it decided as early as 2006, in Granada, to join what was then still only an intergovernmental scheme.

For Italy, what was then the Ministry for Cultural Heritage and Activities identified the Campidoglio in Rome, the Casa De Gasperi Museum (Pieve Tesino, Trento), the birthplaces of the musicians Rossini (Pesaro), Verdi (Roncole di Busseto, Parma) and Puccini (Lucca), and the island of Ventotene (Latina).

The new, distinctly European initiative started the first selection of relevant sites almost 10 years ago, in 2013.

In the first selection only four sites were chosen, none of which were in our Country. It will be in the following year that the selection will reward the Museo Casa Alcide De Gasperi (Pieve Tesino, Italy)[51]. Since 2007, the De Gasperi Foundation has been working in numerous ways to valorise the Alcide De Gasperi House Museum.

The Foundation carries out research, training, and cultural dissemination activities. It promotes political culture, autonomy, and Trentino's historical and cultural identity, civil participation, and knowledge of international and community institutions.

The main message of this Museum is not the celebration of a great character such as De Gasperi, the founding father of what we know today as the European Union. The principal aim is, in full accordance with the objectives of the European label, to renew enthusiasm – especially in young people – for Europe.

Due to its centrality to European history, this Museum has also been included in another European initiative: the Network of Political Houses and Foundations of Prominent Europeans, established in 2017, which brings together houses and foundations of prominent personalities who have made a significant contribution to the process of European integration.

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[51] See R. Sassu, *European Heritage Label. L'Europa inizia qui*, Laboratorio Web per la Cultura, Roma, 2019, pp. 75-76.

Museo Casa De Gasperi (Pieve Tesino, Italy)[52]

In 2009, on the initiative of the Fondazione Trentina Alcide De Gasperi, inspired by the green spaces annexed to the other houses of the Founding Fathers of the united Europe, the Garden of Europe was created. Inaugurated on 18 August 2011, the Alcide De Gasperi Garden of Europe has an area of about 830 square metres. It consists of 14 flower beds made of steel, a material that becomes rust-colored over time, blending harmoniously into the natural environment; the composition, in the shape of a parliamentary hemicycle, is bordered by a simple fence made of wooden stakes and cordage.

Also planned is the August degasperiano, a programme of events in addition to the traditional Lectio degasperiana, which is intended to open up new perspectives on the present.

The Lectio degasperiana is a large public event that is organised to honour the memory of the Trentino statesman in his home town

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[52] Photo by LigaDue, CC BY 3.0, via Wikimedia Commons.

on the anniversary of his death. Each year, a theme is selected to explore aspects of Italian and Trentino history, the figure of the statesman, and democracy.

Those just mentioned are just two projects carried out by the De Gasperi Foundation. Indeed, their commitment continues to be important and to develop in various directions in full implementation and enhancement of De Gasperi's ideals.

Certainly, thanks to all these initiatives, the visibility of the site in question is guaranteed and in line with all the objectives required by the brand. It is hardly surprising that it was the first site selected among the Italian sites.

Another site selected, this time with the 2017 selection is the Fort Cadine, which, as expressly stated by the European Commission on its official website is a representative fortification of the defence system of about 80 such monuments built between 1860 and 1915 in the Trent region[53].

Forte Cadine (Trento, Italy)[54].

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[53] See R. SASSU, *op.cit.*, pp. 128-129.
[54] Photo by Llorenzi, CC BY-SA 3.0, via Wikimedia Commons.

It recalls historical divisions, military conflicts and border changes and provides the necessary context for a better understanding of the value of open borders and free movement.

This Fort has been owned by the Autonomous Province of Trento since the early 1990s and its management has been entrusted to the Fondazione Museo Storico del Trentino.

The official reason indicated by the panel of experts that led to the acceptance of the application is the fact that this site brings to mind the divisions and the confiscations that characterized much of the 1900s and consequently places the emphasis on the importance of peace and of freedom of movement.

These last two aspects that have just been mentioned are very important for the European Union, not only in terms of cultural policy, but also at a general level. Inside the Fort there are very dynamic installations that want to reproduce in multimedia with sounds and images the reality that characterized the Fort at the time of conflicts.

The main measure organized in this site, in addition to the general restoration and installation that reproduces the war environment, is the provision of guided tours inside.

As expressly indicated on the official website of the Fort, since 2019 Forte Cadine is part of the EHL@Network[55], a network of 19 sites that is implementing strategies and good practices for the enhancement, promotion and communication of European cultural heritage. Among the initiatives promoted also the International Photo Contest 'European Heritage Label. Europe Starts here!'.

In December 2020 the Forte and the Foundation won the call '2020 European Heritage Days'[56] promoted by the Council of Eu-

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[55] The network was created due to the fact that there was no official one that would allow the various sites to create a common network also due to the various peculiarities that characterise them and make them very different from each other also in the way they are managed. More information at *www.ehl-network.eu/*.

[56] The European Heritage Days is co-organised by the European Union and the Council of Europe, which launched the action in 1985. See more at *https://culture.ec.europa.eu/cultural-heritage/initiatives-and-success-stories/european-heritage-days*.

rope and the European Commission for the development of a new educational project for high schools. The initiative, entitled 'Fort - Europe Nice to Meet You', combines the history of the Austro-Hungarian fortifications with current European themes. The project partners are the Antonio Megalizzi Foundation, the Osservatorio Balcani Caucaso Transeuropa, the School of International Studies of the University of Trento; with the participation of De Gasperi Foundation and Europe Direct.

The Fondazione Museo Storico del Trentino, the managing body of Forte Cadine (Trento), one of the two Italian sites awarded the European Heritage Label, in 2019, has realized 'Travel in Europe' a programme dedicated to the prestigious award given by the European Commission. This program is curated by Valeria Balassone and Sara Zanatta (Fondazione Museo Storico del Trentino). The realisation is by Busacca Productions Video; the clips of the sites were made by Mostra Sa, Bruxelles and the conduction is by Valeria Balassone.

All these different initiatives demonstrate once again how a winning feature of the European Heritage Label is the ability to create a network with which further activities can be undertaken.

In the 2019 selection there were two Italian sites nominated for the brand: on the one hand the site of Ostia antica and on the other the Castello del Valentino in Turin. According to the selection made at European level, the site of Ostia was worthy of the brand. This is the first time, in Italy, that the European Heritage Label has been awarded to a site belonging to the Ministry of Cultural Heritage and Tourism.

As the main port of Rome, Ostia became a place of great strategic and commercial importance in the Mediterranean area. By the end of the 2nd century A.D. the city was still thriving and housed a population of more than 50,000. Its decline began in the middle of the third century.

Area archeologica di Ostia antica (Roma, Italy)[57]

The Archaeological Area of Ostia Antica is a place where goods circulated and different cultures and religions were mixed. As access point to Rome Ostia was a meeting point of different people who lived under the Roman Empire and a place with far-reaching influence on the earth, through the Mediterranean basin and beyond.

Its European value lies precisely in being a point where different exchanges have developed and where the diversity fundamental concept for the current European Union has developed.

The Ostia site is predominantly archaeological and for this reason several areas have been maintained that can be visited by tourists. A number of panels have been installed to accompany the visitor inside the park. In order to adapt to new technologies and the challenges that the pandemic has created in recent years, the same panels have been made available on the site's official website so that they can also be used digitally.

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[57] Photo by Sayaka Ganz on Unsplash.

In parallel, several educational services have also been developed that address children of different age ranges, starting with the very youngest and ending with university students. Again, a digital version of these services has been created to allow remote use. A sort of mascot of the park, the cat Cartilio, was also designed in 2019 to guide younger visitors to discover the heritage this site offers. Another competition to create the new mascot was launched in 2021. The winner was the donkey Eurisace.

Through the use of 'Cartilio's notebooks', a further connection with visitors is created because it is possible for younger visitors to leaf through these notebooks and take them home with them so that they can keep them as a souvenir and keep an even more vivid memory.

As mentioned above, the site's offers are also aimed at senior students. They do this through the provision of school-to-work projects that are carefully developed from year to year in an innovative way to involve as wide an audience of students as possible.

A project called 'Piccoli Ciceroni' has also been developed whereby some students, after proper study and training, are able to illustrate the characteristics of the site and act as guides to their peers in order to further develop young people's interactions with the heritage around them.

As the various illustrated initiatives show, the focus on young citizens is very broad and also involves the various schools in the area. Aware of the importance of bringing citizens closer to these issues from the outset, the Ostia site continues to develop innovative initiatives and, as the attention to digital aspects demonstrates, in step with the times.

Awarded the European Heritage Label in the last selection was the island of Ventotene (Latina). As explicitly stated in the 2021 selection report[58], the Ventotene Manifesto 'For a free and United Europe' is a historical document which inspired the construction of

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[58] European Commission, *European Heritage Label 2021 Panel report*, European Commission, Brussels, 2021.

a federal Europe. It was on this exact island that, during their exile as opponents to the fascist regime, Altiero Spinelli and Ernesto Rossi signed the Manifesto.

Isola di Ventotene (Latina, Italy)[59]

The strong interest in European issues is, for obvious reasons, also highly developed nowadays. In fact, the island has introduced several European-oriented initiatives. One of these is the 'Chiave d'Europa' (Key to Europe) with which it is intended to give recognition to those people who, at the head of prestigious governments or institutions, make an important contribution to supporting Europe and enhancing Ventotene for what it means. To date, the award was given to the previous President of the European Parliament David Sassoli and the President of the Commission Ursula von der Leyen.

As can also be seen on the island's official website, there are many associations and organisations that hold European values close to their hearts and want to develop them as far as possible.

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[59] Photo by Cats094, Public domain, via Wikimedia Commons.

Thanks to the establishment of 'Tavolo Europa', it has been possible to connect pro-European movements developing projects on the island. These include public seminars, such as that of the Altiero Spinelli Institute for Federalist Studies, and training and history education activities in which the local community is also involved.

Altiero Spinelli himself decided in 1981 to organize an annual training seminar for young people on the island. And starting from this idea, the annual seminar was maintained over the decades thanks to the activity before the European Federalist Movement and now the Institute of Federalist Studies Altiero Spinelli.

In 2019, the island of Ventotene has applied for the Diploma of Europe conferred by the Council of Europe. In the application dossier[60], the island has shown that it is well aware of its characteristics and that thanks to them it can be considered a unique.

No less important is the project with which we want to start the recovery of the prison of Santo Stefano (former Bourbon prison). Despite the pandemic in 2020, work on the project continued smoothly.

The main objectives are: giving back to the collective memory historical events and human experiences that have marked the 170 years life of the Prison; promoting a 'School of High Thoughts' (Eugenio Perucatti, former 'enlightened' Director of the Prison) inspired by the values of the Italian and European Constitutions, for the future of Europe and the Mediterranean; protecting and enhancing cultural heritage, landscape and environment in line with the 'Green European Deal'; promote cultural and artistic production.

In February 2021, the City Council of Ventotene took note of the project prepared under the supervision of the Special Commissioner of the Government and voted unanimously in favour of its implementation. In June 2021, the call for proposals was published for the international design competition for the entire former prison; the deadline for submitting projects was 23 September 2021.

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[60] The dossier can be downloaded from the official website of the Island of Ventotene: *www.ventoteneisolamemorabile.it/file/documentopresentatoalce-1.pdf*.

At the beginning of July 2022, the winner of the competition was identified, so all that remains is to wait for the completion of the work to be able to observe the result of the restoration operation in person.

Even through this intervention, it is clear that the island of Ventotene is very active on European issues in general and on cultural issues.

In developing the various projects mentioned above, the local institutions have always had a special regard for the active involvement of the population, also due to the small number of locals. It has always been very important for citizens to be involved in the various activities, not only to be able to express their personal opinions but also to develop a conscious and mature awareness that can be passed on to future generations.

4. *Conclusions*

In general, since the EU is made up of so many different States, it is difficult to describe exactly the fundamental characteristics of European heritage. If they had to choose Citizens themselves would certainly feel more attached to their national heritage than to the EU one.

This is not necessarily a bad aspect if one thinks that, in this way, national identities can be maintained, but it is undoubtedly necessary to strengthen the European feeling in citizens first and consequently in the communities.

One of the characteristic features of the European Heritage Label is that while it is inherent to heritage, it does not emphasise its preservation or protection as other measures generally adopted by both the EU and UNESCO and other actors do.

In awarding this label, special attention is paid to the intangible and symbolic aspect that these have for the main European values. The same idea of 'European meaning' has been used to condition sites to govern themselves both through and for Europeanisation.

The lack of economic funding for these places, however, also forces them to have to develop considerable visibility for themselves in order to find other solutions to raise the necessary funds for the maintenance of the site but also to develop the activities and the objectives set out in the plan which they achieved at the time of their application.

The 2017 European report[61] points out that there are great hopes for this initiative that is expected to grow considerably. This could also have negative implications for those who hoped to get the brand and to be able to focus on the small number of sites as a specialty indicator.

Given the lack of knowledge, for those who are not experts in the field, this initiative is not considered to share these concerns for a possible substantial expansion of the sites awarded the label. This is undoubtedly the aspect that differentiates the label from measures such as the UNESCO List drawn up thanks to the 1972 Convention which, without any doubt, enjoys a reputation that expands internationally.

For this reason, the choice to create a system that is complementary and that adds value to existing initiatives worldwide is the best choice because it allows States to base a system based on different protections that are not excluded among them but, on the contrary, they are meant to coexist.

A key aspect of European heritage management is the considerable attention paid to social aspects. This undoubtedly implies that, as far as possible, an attempt is made to avoid interpreting the heritage as a denial of the rights of certain groups in favour of others. In fact, we want to find a link between different cultures that allows us to arrive at a transcultural perspective.

What is envisaged at European level must always be coordinated with national frameworks because of the Union's only comple-

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[61] European Commission, *European Heritage Label. 2017 Panel report*, European Commission, Brussels, 2017.

mentary competence, and this is very clear to the European institutions when they envisage the measures to be taken in the territory.

Considering the care taken in the choice of sites to be awarded the label, it is evident how this measure is also characterised by aspects related to general EU policy. In fact, it can be seen that unlike other international measures already mentioned in this case there is also an overall view. Each site is indeed assessed individually but also as part of the more general whole of the other sites already included in the measure.

The motto 'Europe starts here!' is intended to emphasise that these sites are only the basis for building and strengthening Europe. With the continuous evolution of Europe in the first place, but also of all its constituent states and their citizens, it is essential to read the various measures taken in a dynamic manner, prepared for change.

There have been many challenges that the EU has had to face and just as many will be in the future, so being able to create a common basis in the sentiment of citizens and especially of the new generations will make it possible to face them with an eye to acceptance, to inclusion.

The continued insistence on the citizen underlines how the EU is also trying to develop participatory policies that start from the bottom and are not just imposed by the institutions so that citizens feel more involved and also accept them more easily.

By putting itself in this perspective, the Union will be able to use the various differences of the Member States as a strength to amplify the common base it has been creating for several years through its policy.

Of course, it will also be essential to approach cooperation with other international organisations with the same proactive spirit as it has already done and continues to do today.

In this case, the challenge is certainly more arduous because, unlike in purely domestic situations, in this case it has to interface with parties that may have priorities that are somewhat different from its own.

Obviously, despite the difficulties there may be, the continuous confrontation also at international level can only create insights and reflections for the entire European system.

With regard specifically to the European Heritage Label, it can be seen that this is undoubtedly a tool with multiple potential on several sensitive fronts for the EU. At the same time, unfortunately, at least at present, it is unable to fully guarantee the achievement of its objectives. There are still many shortcomings, especially when considering factors related to dissemination among non-experts in the field and the recognisability of the label, which, as already mentioned, is often overlooked by much more famous international measures.

Francesco Boldrin

DIGITAL REPRODUCTION OF CULTURAL HERITAGE IMAGES IN THE LIGHT OF THE EU COPYRIGHT DIRECTIVE AND THE ITALIAN CODE OF CULTURAL HERITAGE AND LANDSCAPE*

Abstract: The contribution aims at analysing the issue of digital reproduction of images of cultural heritage in the context of the reformed EU legislation on copyright and of the national legislation contained in the Italian Code of Cultural Heritage and Landscape. The EU legislator has recently amended the European copyright rules by adopting the Directive (EU) 2019/790 (the so-called Digital Copyright Act) which contains some provisions directly concerning the access to cultural heritage in the digital environment. The development of new digital technologies has, in fact, profoundly changed the methods of fruition of the cultural heritage in EU Member States, which are also Members of the UNESCO Convention of 1972. The digital medium represents a valuable tool available to the custodians of cultural heritage as it expands the possibilities and opportunities for access, thus helping to give new life to the past. In this perspective, the diffusion of digital reproductions of artistic works in the public domain can also facilitate «the access to and promotion of culture» as well as «the access to cultural heritage» (as recognised in recital 53 of the Digital Copyright Act). To this end, Article 14 of the Directive has expressly excluded from the protection of copyright and related rights all reproductions, for whatever purpose made, of works belonging to the visual arts that become of public domain (unless they are original). In this way, therefore, the intention was to allow the free dissemination, sharing (including online) and reuse, even for lucrative purposes, of non-original copies of works of art that have fallen into the public domain.

In Italy, the objective pursued by the EU legislator to promote access to and dissemination of cultural heritage finds a limit in the current domestic regulation of cultural heritage and, in particular, in article 108 of the Code of Cultural and Landscape Heritage subjecting the reproduction for lucrative purposes of cultural heritage works to prior authorization from the cultural entities and to the payment of a fee, even though these works have now fallen into the public domain with regard to copyright. Therefore, the article will discuss whether, in the current context of open data, the 'protectionist' vocation that animates the above provisions of domestic Italian law still has an effective and valid reason to exist.

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* Double-blind peer reviewed content.

1. *Introduction*

The development of new digital technologies has profoundly changed the methods of access and fruition of the cultural heritage. In particular, the digital medium represents a valuable tool available to the custodians of cultural heritage as it expands the possibilities and opportunities for access, thus helping to give new life to the past.

In this perspective, the diffusion of digital reproductions of artistic works in the public domain can also facilitate the access to cultural heritage in accordance with the aims of the WH Convention.

To this end, Article 14 of the EU Copyright Directive has expressly excluded from the protection of copyright and related rights all reproductions, for whatever purpose made, of works belonging to the visual arts that become of public domain. In this way, therefore, the intention was to allow the free dissemination, sharing (including online) and reuse, even for commercial purposes, of non-original copies of works of art that have fallen into the public domain.

In Italy, the objective to promote access to and dissemination of cultural heritage finds a limit in the current domestic regulation of cultural heritage and, in particular, in Article 108 of the *Codice dei bei culturali e del paesaggio* (Code of Cultural and Landscape Heritage). Article 108 subject the reproduction for commercial purposes of cultural heritage works to prior authorization from the cultural entities that have those works in their possession and to the payment of a fee, even though these works have now fallen into the public domain with regard to copyright.

Therefore, the paper discuss whether, in the current context of open data, the 'protectionist' vocation that animates the above provisions of domestic Italian law still has an effective and valid reason to exist.

2. *The presentation of the cultural heritage of humanity in the UNES-CO Convention concerning the protection of the world cultural and natural heritage of 1972*

Fifty years have now passed since the adoption - in Paris, on 16 November 1972 - by the 17th session of the UNESCO General Conference of the text of the «Convention concerning the protection of the world cultural and natural heritage» (the 'WH Convention').

The WH Convention, which was established for protecting, preserving and presenting the world's cultural and natural heritage, has had a major impact on the protection of cultural heritage and natural beauty and landscapes. The WH Convention states in fact that these assets constitute an «outstanding universal value» that transcends national borders; the duty to protect and transmit them to future generations is therefore responsibility no longer merely of the individual States in which they are physically located, but also of the international community as a whole[1].

As is well known, the ratio outlined by the WH Convention for the conservation of cultural and natural heritage[2] is essentially based

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[1] E. Baroncini, *I siti e la Convenzione Unesco del 1972 nelle controversie arbitrali internazionali sugli investimenti*, in *Tutela e valorizzazione del patrimonio culturale mondiale nel diritto internazionale*, edited by E. Baroncini, Bononia University Press, Bologna, 2021, pp. 431-432.

[2] The notions of «cultural heritage» and «natural heritage» are set out in Articles 1 and 2 of the WH Convention. In particular, according to Article 1, the following are included in the definition of «cultural heritage»: i) monuments (architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science); ii) groups of buildings (groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science); iii) sites (works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view). According to Article 2 the following are considered «natural heritage»: i) natural features consisting of physical and biological formations or groups of such formations, which

on the creation of lists: one is the World Heritage List, where assets of outstanding universal value are included; the second is the List of World Heritage in Danger, where assets threatened by serious and specific dangers are included. Both are administered by the World Heritage Committee. It is in any case considered that the obligations established by the WH Convention are applicable to all assets in the territory of a Contracting State: in fact Articles 1 and 2 state that they belong to the cultural or natural heritage and have «outstanding universal value», even if they are not included in the Lists[3]. The recognition of an asset as «part of the world heritage of mankind as a whole», by virtue of its «outstanding universal value»[4], and

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are of outstanding universal value from the aesthetic or scientific point of view; ii) geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; iii) natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Moreover, in the UNESCO international protection system, the notion of «world cultural heritage» adopted by the 1972 WH Convention, which, as has been observed, suffered from a Eurocentric and 'monumentalist' approach emphasising tangible (cultural and natural) assets having «outstanding universal value» (thus, A. Lupo, *La nozione positiva di patrimonio culturale alla prova del diritto globale,* in *Aedon*, 2019, 2, p. 109), must now be re-read in the light of the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by UNESCO on 17 October 2003 (ratified by Italy in 2007), which extended the perimeter to include «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» (Article 2, paragraph 1), as well as the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, which includes the most varied artistic and creative manifestations.

[3] M. Gestri, *Teoria e prassi di un accordo pioneristico nella gestione dei beni d'interesse generale: la Convenzione del 1972 sul patrimonio mondiale*, in *Tutela e valorizzazione del patrimonio culturale. Realtà territoriale e contesto giuridico globale*, edited by M.C. Fregni, M. Gestri, M. Santini, Giappichelli Editore, Turin, 2021, p. 136,

[4] The concept of «outstanding universal value» is not directly defined by the WH Convention but is specified in the Committee's Operational Guidelines which state: «cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is

its inclusion by the Committee in the List, maintains unchanged the ownership right of the State on whose territory that asset is located. Therefore, firstly, as can be seen from Article 4 of the WH Convention, the State owes toward the international community the duty to ensure adequate protection, conservation and presentation of its heritage in order to pass it on to future generations[5]. Secondly, the international community intervenes (through assistance and cooperation mechanisms) only in the event that Contracting States do not have in place the necessary measures to protect their own heritage adequately.

The WH Convention does not state expressly the definition and the content of the obligation of protection imposed on Contracting States. In the absence of a general definition, the content of the obligation of protection that the WH Convention imposes on Contracting States - by the adoption of the triad 'protection-conservation-presentation', can be deduced from Article 5 where are stated the list of actions that States must undertake «in so far as possible, and as appropriate for each Country». These actions include, first of all, the adoption of a general policy aimed firstly at assigning cultural and natural heritage specific functions in collective life and secondly at including the protection of this heritage in general planning programmes (Art. 5(a)). The Contracting States must therefore recognise that heritage bears an intrinsic function and has to be determined the role carried forward in the lives of citizens. This

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of the highest importance to the international community as a whole» (see point 49 of the Operational Guidelines for the Implementation of the World Heritage Convention of 31 July 2021).

[5] The French text of the WH Convention uses the wording «mise en valeur», rendered, instead, in English with the term «presentation», which is, however, much less incisive. However, that the sense of the rule in question is to value and not simply to illustrate the world heritage can be deduced from the reading of the WH Convention as a whole (in this regard, see F. Mucci, *Valorizzazione del patrimonio mondiale culturale e naturale: significato e strumento di una 'tutela sostenibile'*, in *La protezione del patrimonio mondiale culturale e naturale a venticinque anni dalla Convenzione dell'UNESCO*, edited by M.C. Ciciriello, Editoriale Scientifica, Napoli, 1997, p. 279.

is vital in order to ensure its proper protection and presentation[6]. In the light of this 'dynamic' vision of the protection of heritage (which has to achieve a key role in the development of the community), also the other obligations imposed on the Contracting States must be read in relation to the creation of services related to the protection of cultural and natural heritage with adequate staff and means (art. 5(b)), the carrying out of studies and scientific research (Art. 5(c)), the adoption of legal, scientific, technical, administrative and financial measures (Art. 5(d)), and the encouragement of national or regional training centres (Art. 5(e))[7].

In order to protect the cultural heritage of mankind, the WH Convention does not merely impose duties on the Contracting States to protect and preserve the existing cultural and natural heritage, but also requires them to present it in order to ensure maximum fruition by all mankind.

The presentation of the cultural and natural heritage of mankind therefore requires interventions aimed at giving value to the cultural heritage and promoting its potential, improving the conditions of its awareness and familiarity and increasing collective and individual fruition. Cultural and natural heritage assets are in fact assets of public interest not just on the basis that they belong to the State but because they are intrinsically considered for social community purposes. Therefore, the actions of the Contracting States should be oriented towards ensuring not only a merely static-conservative protection of the existing cultural and natural heritage but also its active role in the global community.

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[6] F. Mucci, *op. cit.*, p. 280.

[7] On the actual normative scope of the obligations set forth in Articles 4 and 5 of the WH Convention, beyond the textual formulas used, see M. Gestri, *op. cit.*, p. 122, who in this sense refers to the decision of the Australia High Court, 1 July 1983, *Commonwealth of Australia and Another v. State of Tasmania and Others*, in *International Law reports*, 1985, p. 266 ss.

3. *The role of technology in the conservation and presentation of the cultural heritage of mankind*

The changes brought about by technological innovation that we are all witnessing (the development of the Internet, the emergence of digital platforms, the increasing digitisation of content, etc.) also affect cultural heritage. In particular, modern technologies, allowing new forms of 'consumption' of culture, have made cultural heritage accessible to a wider range of users. In fact, technology has increased the possibilities for the general public to access cultural heritage, also through the creation of new cultural products and new forms of interaction between cultural sites and users (e.g. digital libraries, museum websites for virtual visits, applications for smartphones, etc.)[8].

Instant reproductions of cultural heritage by visitors have reached an impressive quality and, in most cases, without the risk of prejudice to cultural heritage. The way in which these reproductions are disseminated nowadays has also changed: they are no longer exclusively set on physical supports (books, catalogues, etc.) but are shared mainly online, in particular through social networking platforms. There has also been a change in the way in which it is used, which is no longer limited to the physical visit of a museum, a monument, an archaeological site, etc., but it continues with the subsequent online sharing, where other people can enjoy it, albeit through a mediated experience[9].

Technological innovations applied to cultural heritage therefore offer new opportunities for the promotion and presentation of cul-

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[8] M.F. Cataldo, *Preservare la memoria culturale: il ruolo della tecnologia*, in *Aedon*, 2020, 2, p. 89; M. Modolo, *Promozione del pubblico dominio e riuso dell'immagine del bene culturale*, in *Archeologia e calcolatori*, 2018, p. 73. Consider the case, for example, of 'Google Arts & Culture', which allows registered users to access the collections of numerous world museums.

[9] F.G. Albisinni, *Nuovi paradigmi e nuovi attori in tema di tutela e valorizzazione del patrimonio culturale, fra Costituzione e processi di liberalizzazione,* 2018, 4, at *www.aipda.it/paper-convegno-annuale-aipda-2018/*.

ture, in line with the objectives pursued by the WH Convention[10] because virtual fruition of cultural contents is shared on a global scale. With the advent of Internet, the culture environment (historically associated with an elite audience, and accessible to few people) has become easier to comprehend and therefore has been extended to a wider audience[11].

Modern technologies can also offer the opportunity in helping to keep alive the memory and the intangible value of cultural heritage destroyed in war or as a result of acts of terrorism or environmental disasters, opening the way to new forms of exploitation and fruition of cultural heritage[12].

Having said that, one of the most debated legal issues in relation to the new ways of using assets part of the cultural heritage is the

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[10] The potentialities deriving from technological development are also relevant from the point of view of Article 9 of the Italian Constitution, a programmatic norm indicating two guidelines for public intervention, namely the promotion of the development of culture and research (Art. 9, paragraph 1), and the protection of the landscape and the historical and artistic heritage (Art. 9, paragraph 2). It is a widespread opinion in the doctrine that the two paragraphs of Article 9 must be read as a whole since the protection of the cultural heritage is a teleologically oriented means of achieving the aim of promoting culture, which makes it possible to extend the field of public intervention to the enhancement of the existing heritage beyond its mere conservation (cf. S. Franzoni, *Costituzione e patrimonio culturale*, in M.C. Fregni, M. Gestri, M. Santini, *op. cit.*, p. 76; A. Lupo, *op. cit.*, p. 115).

[11] M.F. Cataldo, *op. cit.*, p. 90.

[12] One example is the project 'The Million Image Database' for the protection and preservation of the world's cultural heritage, promoted by The Institute for Digital Archaeology in collaboration with UNESCO, Oxford University, Dubai's Museum of the Future and the government of the United Arab Emirates, which, thanks to the use of advanced technology, has reproduced the arch of Palmyra, a Syrian monument destroyed by ISIS in 2015, displaying its 3D copy in the cities of London, New York, Dubai and Florence. Confirming UNESCO's interest on the application of new technologies to safeguard cultural heritage, we can also consider its collaboration with the French start-up Iconem whose mission is the 3D reconstruction of destroyed monuments, as well as the fight against the illicit trafficking of works of art by ISIS. In 2017, UNESCO also launched the ReACH (Reproduction of Art and Cultural Heritage) initiative, led by the Victoria and Albert Museum in London with the aim of drawing attention to the growing importance of the role of technology in the context of cultural heritage protection and the necessary regulatory adaptation to the new reality.

digital reproduction of images (especially through photography). Technological innovation and the advent of the Internet have in fact revolutionised the processes of production and dissemination of photography, changing society's relationship with the image. In the era of social networks, citizens are no longer simply passive users of data and images but are instead increasingly becoming active participants in this process of information production[13]. At the same time, the reproduction of cultural heritage is an essential tool for promoting its popularisation[14].

With respect to images reproducing cultural heritage assets, as we will see in more details below, the competent Italian administration continues to adopt outdated approach that raises some concerns in light of the latest legislative trends - as witnessed by the adoption of Directive (EU) 2019/790 (the so-called Copyright Directive) - which instead intend to encourage, through re-use, the free dissemination of cultural heritage images, regardless of the purpose actually pursued (research purposes, personal use, profit, etc.).

4. *The reproduction of cultural heritage images in the light of Directive (EU) 2019/790*

In connection to the reproduction of images of cultural heritage (which, as mentioned above, represents one of the ways of using cultural heritage promoting access to and development of culture in line with the objectives of the WH Convention) there are different sectoral areas intersecting and overlapping, as a consequence of the multiple interests involved, especially for example in the fields of copyright law, or the rules on the ownership of public assets or of the re-use of public sector information, and the legislation on the protection of personal data.

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[13] M. Modolo, *Promozione del pubblico dominio e riuso dell'immagine del bene culturale*, cit., p. 73.

[14] L. Casini, *Riprodurre il patrimonio culturale? I "pieni" e i "vuoti" normativi*, in *Aedon*, 2018, 3, p. 1.

The present writing will be focused on to the limits of reproduction of cultural heritage images still in force in the Italian legal system. Those limits are intended to protect the ownership of public goods in a context that, also thanks to the latest interventions of the European legislator on copyright, seems to be going in the opposite direction through the promotion of a progressive 'culture of re-use' in the fields of cultural heritage reproductions.

In a nutshell, and in light of the pertinent legal frame that cannot be discussed in depth here, we would just like to highlight that the international and European copyright law grants moral and patrimonial rights to the author of the work, including the exclusive right of reproduction, which expire after the author's death[15]. After this period, the work falls into the public domain.

With regard to photographic reproductions of cultural heritage, copyright may cover not only the object portrayed in the photograph, but also the photograph itself if it has creative features that make it an original work according to the copyright law.

European copyright law has recently been amended by the Copyright Directive[16], which the European Union legislator adopted in order to promote the harmonisation of the European legal framework on the protection of intellectual works and other protected subject matter. The Copyright Directive has significantly renewed the system of exceptions and limitations to copyright and related

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[15] In the Member States of the European Union, Directive 2006/116/EC on the duration of copyright protection and certain related rights recognises the protection of authors up to seventy years after their death (Art. 1). In the Italian legal system, this provision is contained in Article 25 of Law no. 633 of 22 April 1941. Outside the borders of the European Union, in the States adhering to the Berne Convention for the Protection of Literary and Artistic Works of 1896, the duration of protection may vary, but it is at least fifty years from the author's death.

[16] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. The Copyright Directive was implemented by the Italian legislator with Legislative Decree no. 177 of 8 November 2021.

rights[17], but it also contains a significant effort to promote collective access to cultural content with a particular focus on the digital environment[18].

In particular, Article 14 of the Copyright Directive, entitled «Works of the visual arts in the public domain», introduced a new rule stating that the material resulting from a reproduction of a visual arts work[19] in the public domain[20] cannot be subject to copyright or related rights unless that material is itself an original work (in which case, being an intellectual creation, it may possibly benefit from copyright protection). In other words, material resulting from the reproduction of works - such as monuments, paintings,

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[17] The Copyright Directive has been at the centre of a lively debate on the use of the Internet as an information medium, between freedom of expression and censorship. The most important provisions are those contained in Article 15, concerning online journalistic publications and introducing a related right for publishers (the so-called link tax), and Article 17, introducing a new liability regime for online content sharing platforms for content uploaded by their users. On the issue of publishers' rights, see C. ALVISI, *L'equità dei compensi per lo sfruttamento delle risorse di proprietà intellettuale*, in *AIDA*, 2021, pp. 1-15.

[18] M. ARISI, *Riproduzioni di opere d'arte visive in pubblico dominio: l'articolo 14 della Direttiva (EU) 2019/790 e la trasposizione in Italia*, in *Aedon*, 2021, 1, p. 3.

[19] The Copyright Directive does not define the notion of «works of visual art». To this end, some useful indications can be found in Directive 2012/28/EU on certain permitted uses of orphan works, whose Annex no. 3) contains a list, which is merely illustrative, of «works of visual art» including «art objects, photography, illustrations, design, architecture, drafts of such works and other material reproduced in books, magazines, newspapers or other works». In the domestic context, it should be noted that Article 32quater of Law no. 633 of 22 April 1941, a provision introduced by the legislator to implement the Copyright Directive (see *below*), refers «also» to the works of the visual arts referred to in Article 2, which include, *inter alia,* works of sculpture, painting, drawing, engraving and similar figurative arts, including set design, as well as architectural drawings and works. It can therefore be said that the reproduction of the image of a monument of «outstanding universal value» within the meaning of the WH Convention (for example, the Royal Palace of Caserta) also falls within the scope of Article 14 of the Copyright Directive. In this regard, it has been argued that it is indeed «intuitive to classify as a work of visual art the work which can be experienced visually», so M. ARISI, *op. cit.*, p. 4.

[20] As is clear from Recital 53, the term «public domain» used in Article 14 of the Copyright Directive refers to the condition of the work at the expiry of the term of protection under copyright law.

sculptures, etc. - that have fallen into the public domain is also in the public domain[21].

Under Article 14 of the Copyright Directive, therefore, materials in the public domain remain in the public domain once they have been digitised, so, the act of reproduction does not confer to the reproduction any copyright protection that no longer exists on the original. This means that the digital photographic reproduction[22] of a work of the visual arts which has fallen into the public domain will not be eligible for any copyright protection, not even according to the related rights, unless, as mentioned above, the reproduction has sufficient aspects of originality to make it an intellectual creation and therefore protectable by copyright[23]. The image reproduced for the sole purpose of documentation or online sharing (which is therefore not the creative expression of its author) of an asset of the cultural heritage has no longer copyright protection since, having come into the public domain, it will have the same regime as the original and, therefore, it will lack protection as well and will be freely reusable[24].

Moreover, Article 14 of the Copyright Directive, by excluding the protection of copyright or related rights on the abovementioned materials, makes room for different uses of them, including those of a commercial nature. Consequently, following the intervention of the EU legislator, anyone can copy, use and share online photographs of cultural heritage assets in the public domain found on the

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[21] G. Sciullo, *'Pubblico dominio' and 'Dominio pubblico' in tema di immagine dei beni culturali: note sul recepimento delle Direttive (UE) 2019/790 e 2019/1024*, in *Aedon*, 2021, 1, p. 17.

[22] It should be noted that Article 14 of the Copyright Directive does not exclusively concern photographic reproductions as the provision refers to «any material», an expression to which are attributable, for example, audiovisual works, 3D reproductions or more structured works such as collections or databases, the latter protected by Directive 96/9/EC as original, taking into account the selection of the contents and the efforts and investments for their creation.

[23] Article 14 of the Copyright Directive affects the regulation of non-original photographs as provided for by Articles 87 et seq. of Law no. 633 of 22 April 1941. See M. Arisi, *op. cit.*, p. 7.

[24] G. Sciullo, *op. cit.*, p. 18.

Internet (e.g., on the website of a museum) and reuse them, even for commercial purposes[25].

The goal promoted by Article 14 of the Copyright Directive is, to a certain extent, hindered by the rules on the protection of cultural assets still in force in the Italian legal system. In fact the Copyright Directive encourages (through the dissemination of reproductions of works in the public domain) both access to culture - and its promotion - and also to cultural heritage. The same goals can be found in the spirit of the WH Convention, where it requires the Contracting States to ensure the collective and individual fruition of the cultural heritage of mankind. In particular, the rule introduced by Article 14 overlaps with the Italian rules on the reproducibility of cultural assets contained in the Code of Cultural Heritage and Landscape - Legislative Decree no. 42 of 22 January 2004 (hereinafter the Code)[26], which will be discussed below.

5. … *and the rules of the Italian Code of Cultural Heritage and Landscape*

The cultural heritage preserved and exhibited within public entities largely falls within the public domain as the duration for the protection and exercise of copyright have expired[27]. In such cases, even in the absence of author's rights, the reproduction of the cul-

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[25] See the European Commission's Communication of 4 June 2021 «Questions and Answers – New EU copyright rules» which states: «The new Directive ensures that no one can invoke copyright protection for works that have already entered the public domain in the visual arts. Thanks to this provision, any user can disseminate copies of works of art in the public domain online with full legal certainty. For example, anyone is entitled to copy, use and share online photographs of paintings, sculptures and works of art in the public domain found on the internet and to reuse them, including for commercial purposes or to upload them to Wikipedia» (available at *https://ec.europa.eu/commission/presscorner/detail/it/QA-NDA_21_2821*).

[26] So-called 'Codice Urbani', named after the Italian Minister for Cultural Heritage and Activities, at that time, Giuliano Urbani.

[27] Which, as stated above, expire seventy years after the author's death.

tural heritage in the hands of public administrations continues to be limited by some specific rules of the Code and, in particular, by Article 108.

In this regard, it is worth summarizing the regulatory steps occurred in this field in order to highlight how the Italian legal system has sought to adapt to the changes introduced by technological innovations, especially in relation to the digital reproduction of cultural heritage. Leaving aside here the analysis of the rules dealing with reproductions of cultural heritage through casts[28], and taking into consideration the other forms of reproduction (in particular, photography), it can be stated that in the last decade the Italian legislator has started a progressive but partial liberalisation of the relevant discipline.

At the beginning, the public administration had a strong power of control on the reproduction of cultural assets, in line with the Italian law on cultural assets, historically following a proprietary model of exclusive fruition[29] and focused on the protection and preservation of the material part of the cultural asset to the detriment of its presentation and use[30]. The earliest rules were contained in Royal Decree no. 798 of 29 March 1923 concerning «rules on the reproduction by photography of movable and immovable objects of historical, palaeontological, archaeological and artistic interest», which allowed the photographing of cultural assets, regardless of any lucrative purpose, only after authorisation by the public administration and upon payment of a fee[31].

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[28] In particular, Article 177, paragraph 2 of the Code prohibits, save in exceptional cases and in accordance with the procedures established by the Ministerial Decree of 20 April 2005, «the reproduction of cultural assets consisting in making contact casts of the originals of sculptures and works in relief in general».

[29] R. De Meo, *La riproduzione digitale delle opere museali fra valorizzazione culturale ed economica*, in *Il Diritto dell'informazione e dell'informatica*, 2019, 3, p. 674.

[30] M.F. Cataldo, *op. cit.*, p. 91; F.G. Albisinni, *op. cit.*, p. 2.

[31] Article 1 of Royal Decree no. 798/1923 laid down that «Anyone wishing to reproduce by means of photographs immovable or movable objects of historical, archaeological, palaeontological or artistic interest belonging to the State, or

Subsequently, with Law no. 340 of 30 March 1965, a distinction was introduced regarding the purpose of the authorisation to take photographs, a fee exemption vis à vis public entities was introduced for activities having «artistic or cultural» purpose[32]. A further extension of this exemption came into force in 2004 with the first edition of the Code: it is therein stated that private persons can make reproductions for personal use or for study purposes, but always with the prior authorisation of the competent public administration.

Decree-Law no. 83 of 31 May 2014, converted into Law no. 106 of 29 July 2014 (the so-called 'Art Bonus') opened further to the liberalisation process of the free reproduction of images of cultural assets: the need to obtain authorisation from the administration ceased to exist for «study, research, free expression of thought or creative expression, promotion of knowledge of the cultural heritage»[33]. Law no. 124 of 4 August 2017 then extended free repro-

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held in governmental artistic institutes, must apply to the Superintendent of Monuments, or to the Superintendent of Galleries, or to the Superintendent of Museums, depending on their duties, or to the directors of those institutes». Consequently, visitors to a public museum who, at the beginning of the 1950s, wished to take a photograph of a work of art present there, had to apply to the director of the museum beforehand, waiting to be authorised, and subsequently paying a sum of money as a fee for the reproduction made.

[32] Article 5 of Law no. 340/1965 stipulates that «Anyone wishing to take photographs in Istituti statali di antichità e d'arte [State Institutes of Antiquities and Art] must apply for permission to the competent superintendent or head of the Institute. No fee is due for photography for artistic or cultural purposes. For photographs taken for profit, the permit is issued against payment of a fee, the amount of which is established in advance and in general terms by the Ministry of Finance, in agreement with the Ministry of Education, for the entire national territory. [...]». In this regard, see M. MODOLO, *op. cit.*, p. 76, who reports how the legislator, with Article 5, intended to limit, by maintaining the obligation of authorisation by the public administration, «the proliferation of amateur photographs which could have had negative repercussions on tourism in the main Italian cultural sites».

[33] Law no. 106/2014 had the merit of conceptually separating the physical use of the cultural asset from its reproduction, clearly distinguishing the two activities. Until 2014, in fact, the Code, by continuing to subject any reproduction to the authorisation of the public administration (regardless of the purpose pursued), in fact assimilated photography to a concession of use of the cultural asset.

ducibility to bibliographic and archival assets «provided that the latter are freely consultable and not subject to limits on display, for reasons of confidentiality»[34].

Following the aforesaid regulatory changes, the Code currently provides that «no royalties shall be due for reproductions requested or made by private individuals for personal use or for study purposes, or by public or private entities for the purpose of presentation, provided that they are carried out on a non-profit basis» (Article 108, paragraph 3)[35].

In addition, the following activities, «carried out on a non-profit basis for the purposes of study, research, free expression of thought or creative expression, and promotion of the knowledge of cultural heritage» are in any case free of charge: «1) the reproduction of cultural asset (excluded bibliographic and archival assets subject to restrictions on accessibility) […], carried out in compliance with the provisions protecting copyright and in a manner that does not involve any physical contact with the asset, nor the exposure of the same to light sources, nor involving in cultural institutions, the use of stands or tripods; 2) the dissemination by any means of images of cultural assets, legitimately acquired, so that they cannot be further reproduced for profit» (Article 108, paragraph 3bis).

Following the 2014 reform, reproduction for the purposes listed above is therefore free of charge and no prior authorisation is required. In the case of photographic reproductions, the (partial) liberalisation made by the legislator concerns not only the taking of photographs but also the dissemination of reproductions of cultural assets for non-profit purposes and by any means (therefore also online, on social networks, blogs, etc.).

Article 108, paragraphs 3 and 3bis of the Code states the free reproduction of images of all cultural assets as long as they are used for non-profit purposes. Therefore, only the public administration

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[34] On the troubled adoption of this legislative measure, see L. CASINI, *op. cit.*, p. 3.

[35] Applicants are in any case obliged to reimburse the costs incurred by the granting authority.

that holds these assets is entitled to carry out for profit activities or, in any case, at its own discretion and upon payment of a fee, to grant authorisation to third parties. The current legal framework of the Code reserves to the entity in charge of the property prerogatives similar to those of the owner, making it possible to take extra-contractual injunctive and compensatory protection in the case of unauthorised reproductions for profit[36].

The Italian legislator, in implementing the Copyright Directive, expressly has maintained in force the application of the above-mentioned codified provisions[37], disregarding the recommendation of those operating in the culture system who had stressed the opportunity to intervene, instead, and in line with the spirit of Article 14 of the Copyright Directive, to achieve complete liberalisation in the reproduction of images of cultural heritage.

The recent amendments to the Italian legislation are in line with the rule introduced by Article 14 of the Copyright Directive. It has nevertheless been observed that the limits to a full liberalization of the re-use of reproductions of cultural heritage assets, still provided for by the Code (Article 108) for profit activities, are instead likely to frustrate the objective pursued by the EU legislator to foster ac-

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[36] In this regard, reference is made to the decision of the Court of Palermo which, applying Articles 107 and 108 of the Code, condemned a credit institution for having used the photograph of the Teatro Massimo as part of an advertising campaign without having been previously authorised by the Fondazione Teatro Massimo to reproduce the image for private and commercial use and in the absence of payment of the relevant fee (Trib. Palermo, judgment of 21 September 2017, no. 4901). Similarly, a judge in Florence prevented, as a precautionary measure, a travel agency from using the image of Michelangelo's David for advertising purposes in the absence of a concession by the Galleria dell'Accademia in Florence (Court of Florence, order of 26 October 2017, in *DeJure*).

[37] The Copyright Directive was implemented in Italy by Legislative Decree no. 177/2021 of 8 November 2021 which introduced into the Italian Copyright Law (Law no. 633/1941) the new Article 32quater pursuant to which «Upon expiry of the term of protection of a work of the visual arts, as per Article 2, the material resulting from an act of reproduction of such work shall not be subject to copyright or related rights, unless it constitutes an original work. The provisions on the reproduction of cultural assets laid down in Legislative Decree no. 42 of 22 January 2004 shall remain unaffected».

cess to culture and its promotion as well as access to cultural heritage[38]. As mentioned above, Article 14 of the Copyright Directive, in fact, does not create a distinction between the purposes of reproduction, including both non-profit and also profit activities[39].

In the following lines we will try to summarise the orientations aiming from one side to maintain a differentiated regime in relation to the purposes of reproduction and, on the other side, those aiming at a full liberalisation.

Firstly, there is the concern that, if full liberalisation of reproductions of cultural heritage for profit purposes were to be achieved, the economic entrance currently guaranteed by fees granted by Article 108 of the Code would disappear. This is countered by the observation that the management and reporting of reproduction fees produces a volume of costs that is not proportional to the revenues[40]. At the same time, some experiences (such as the Egyptian Museum in Turin and the Rijksmuseum in Amsterdam) would show that the adoption of a fully free system for reproductions is able to bring greater advantages and benefits in terms of publicity, dissemination and popularisation of culture compared to the meagre revenues from royalty payments[41].

The prior approval for profit purposes is also considered a resource to guarantee the protection of the decorum of the cultural heritage so to avoid disrespectful uses of the images[42]. In this re-

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[38] See Recital 53 of the Copyright Directive.

[39] M. Arisi, *op. cit.*, p. 8.

[40] D. Manacorda, *L'immagine del bene culturale pubblico tra lucro e decoro: una questione di libertà*, in *Aedon*, 2021, 1, pp. 24-25; M. Modolo, *La riproduzione del bene culturale pubblico tra norme di tutela, diritto d'autore e diritto al patrimonio*, in *Aedon*, 2021, 1, p. 31.

[41] L. Casini, *op. cit.*, p. 4 and M. Modolo, *Promozione del pubblico dominio e riuso dell'immagine del bene culturale*, cit., p. 81, who refer to how the Egyptian Museum of Turin since 2014 allows the free use of images also for commercial purposes, as long as the reference to the Museum is given, similarly to what was decided by the Rijksmuseum in Amsterdam and the Statens Museum for Kunst in Copenhagen.

[42] The case of the image of Michelangelo's David used in 2014 for advertising purposes by a US arms company is emblematic in this respect.

gard, it should be noted that, in addition to the fact that decorum is a vague legal concept, and therefore potentially insidious, it seems that the main concern of the public administration is rather to prevent the private individual from making any economic profit through a cultural content[43]. It is in fact legitimate to rise the doubt that the digital copy of a physical cultural asset has the capacity to dilute its artistic and cultural value. In essence, the need for the public administration to systematically filter the uses of the image, through the instrument of the authorisation of the lucrative use of the reproduction of the cultural heritage, would be the result of a traditional, but no longer current, 'sacral' and 'sacralising' vision of the cultural heritage that assigns an absolute rather than a relational value to the cultural good[44]. In this regard, it has also been observed that the provisions of the Code that aim to limit degrading uses of cultural heritage – especially Article 20[45] – actually refer to the use of movable tangible assets and architectural buildings and spaces, but not to the use of their intangible component. The extension of prohibitions and limitations also to images of cultural heritage would therefore be illogical[46], therefore ignoring the potential of digital cultural heritage as means of developing and stimulating culture, creativity and the economy.

In support of full liberalisation, it has also been observed that the new modalities of use and access to the digital heritage made possible by digital copying would challenge the traditional concept of 'rivalry of consumption' set in the Code[47]. The use of the material, physical asset, is in fact considered as 'rival' because it excludes possible simultaneous uses by several different subjects. This form

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[43] D. MANACORDA, *op. cit.*, p. 25; M. MODOLO, *Promozione del pubblico dominio e riuso dell'immagine del bene culturale*, cit., p. 81.

[44] M. MODOLO, *La riproduzione del bene culturale pubblico tra norme di tutela, diritto d'autore e diritto al patrimonio*, cit., p. 32.

[45] Article 20 of the Code states that «Cultural assets may not be destroyed, deteriorated, damaged or put to uses that are not compatible with their historical or artistic character or that are detrimental to their conservation».

[46] D. MANACORDA, *op. cit.*, 25.

[47] D. MANACORDA, *op. cit.*, 27.

of use would then legitimize the request for authorization to the administration in charge of the asset, necessary to ensure the physical protection of the asset and the payment of a fee would be then justified by the need to compensate the community for the exclusive and excluding use (e.g. the occupation of a historic building to shoot a television commercial). On the other hand, the use of the digitised cultural asset would be typically 'non-rivalrous', as it would guarantee the simultaneous use of the same digital image to a potentially infinite number of users. In the latter case, authorisation procedures and rights of use would instead be likely to produce exclusionary effects, as they would inevitably limit the possibilities of re-use granted by digital images[48].

6. *Conclusions*

This contribution starts from the widely shared observation that technological innovation - and in particular the digital reproduction and online dissemination of images of monuments, paintings, sculptures, etc. - can contribute to the presentation of the world's cultural heritage by ensuring access to it on a global scale, in line with the spirit of the WH Convention.

Accordingly should be read the latest European measures - in particular the recent Copyright Directive[49] - promoting the culture of free re-use (also for profit purposes) of cultural heritage images in

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[48] M. Modolo, *La riproduzione del bene culturale pubblico tra norme di tutela, diritto d'autore e diritto al patrimonio*, cit., pp. 30-31.

[49] In the same direction is the adoption of Directive (EU) 2019/1024 on open data and the re-use of public sector information, which considers the free and also commercial re-use of public administration data as a wealth multiplier for the economies of the Member States, as well as the European Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation, which recommends «promoting the widest possible access to digitised public domain material and the greatest possible re-use of it for commercial and non-commercial purposes» (cf. point 5(b)). Reference is also made to the Council of Europe Framework Convention on the Value of Cul-

the public domain so to facilitate access to culture and its promotion, as well as access to cultural heritage.

However, the Italian rules contained in the Code seem to go in the opposite direction to these objectives. The use of the reproduction of cultural heritage assets, pursuant to Article 108 of the Code, has been made free, in fact, only for non-profit purposes and we have summarised the main points underlying the positions against and favourable to full liberalisation.

In this respect, it is our opinion that the 'non-rivalrous' profit use - for example to advertise goods or services - of cultural heritage images, rather than being a source of danger or concern, could represent a further resource for its presentation and dissemination as it can bring the general public closer to art and cultural heritage, increasing their visibility and access. It cannot be ignored that digital cultural assets are an extraordinary tool for development, improvement and stimulation of culture, creativity and the economy. It should also be borne in mind that advertising initiatives generally concern works already known to the public, and therefore already normally the subject of cultural presentation initiatives which, as pointed out, are also the best antidotes to counter the possible risks of diluting the symbolic value of the asset[50].

The profit taboo, which is the last obstacle to the liberalisation of reproductions of cultural heritage, is the focus of a debate that seems primary cultural (and precisely on how to conceive the cultural asset) and only in second place legal or economic. If one follows the assumption that these are common assets, to which everyone should have free access, we can share the opinion of those who affirm that «everyone should have the same opportunity to re-elaborate in the freest and most creative way their own personal image of the past», even for commercial purposes, whereas «offering

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tural Heritage for Society of 27 October 2005 (the so-called 'Faro Convention'), which recognises the right of everyone «to benefit from cultural heritage».

⁵⁰ M. Modolo, *Promozione del pubblico dominio e riuso dell'immagine del bene culturale*, cit., p. 82, who gives the example of the advertising use of the image of Michelangelo's David by an American weapons company.

everyone the same possibilities of re-use would serve, if anything, to prevent the possible emergence of exclusive concessions in favour of the wealthiest clientele in a […] genuinely democratic perspective»[51].

The unstoppable speed of technological innovation seems to impose a further reflection *de iure condendo* on the possibility of fully liberalising reproductions of cultural heritage regardless of the profit purpose, possibly pursued with a view to ensuring the widest access and use. After all, technology has reached such a high level of development and changes so quickly that it is difficult to prevent the full liberalisation of the reproduction of cultural heritage, where there is also the risk of waging anachronistic battles with no margin for success.

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[51] *Ibidem.*

Basheer Alzoughbi

BEYOND THE STRUGGLE OF THE TWO SOVEREIGNS (PALESTINE AND ISRAEL) OVER CULTURAL PROPERTY/(IES) AND HERITAGE: A CASE STUDY OF THE TWO ANCIENT AND NEIGHBOURING CITIES OF BETHLEHEM AND JERUSALEM[*]

Abstract: This research paper delineates cultural property/(ies) and heritage in the two ancient and neighbouring cities of Bethlehem and Jerusalem (incorporated within the suggested boundaries of the *corpus separatum*). It explains but does not necessarily justifies how this suggestion of the special regime of internationalization of Jerusalem known as *corpus separatum* was inspired by the deep rooted struggle over the Holy Places that form an integral part of the cultural property/(ies) or heritage of Palestine. Now with that said, it enunciates that the struggle over cultural property/(ies) or heritage exceeds the two ancient and neighbouring cities of Bethlehem and Jerusalem and further primes that it goes beyond the two sovereigns: Palestine and Israel. This research paper further presents the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage as well as Palestine and Israel ratification, acceptance or accession. It lastly identifies cultural property/(ies) and heritage vignettes of Bethlehem and Jerusalem inscribed on the World Heritage List or Tentative List by one or more of the two sovereigns, and more significantly, cultural property/(ies) and heritage not included in either list to further deepen the knowledge about the struggle over cultural property/(ies) or heritage. The methodology follows and indicates the 1949 armistice divisional lines and then the emergence of customary international law on that both Bethlehem and East Jerusalem became considered part of the occupied Palestine territory while West Jerusalem became considered part of Israel. As dealing with cultural property/(ies) and heritage (much of them are Holy Places) in a situation of international armed conflict, the research paper combines branches of international law with other disciplines, particularly, history, archaeology and religious studies.

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1. *Introduction*

Palestine passed into the hands of the British Mandate (historic Palestine) is often equated with the Holy Land; in Latin language, and some of its descendant languages such as Italian, it is translated as '*Terra Sancta*'. This equation is due to its connotation to Holy Places, which are also historical, unique or special. The Holy Places are part of the cultural property/(ies) or heritage[1]. Many cities or sites have a story, or rather stories to tell of its holiness, historicalness, uniqueness or specialness. Jerusalem, Bethlehem, Hebron, Jericho, Nazareth, Capernaum, Cana, Mount Tabor, Tabgha, the Sea of Galilee (Lake Tiberias), the Jordan river, the Dead Sea and Qumran, to name but a few out of the myriad, give an account of event(s) or experience(s) of this holiness, historicalness, uniqueness or specialness.

The connotation of the Holy Land is also rooted in the religious Order in the Catholic Church known as the Order of Friars Minor, or the Franciscans named after its founder, Saint Francis of Assisi in the Italian region of Umbria. The first friars arrived in the Holy Land in 1217 and in 1347 where the Franciscans established a permanent presence in Bethlehem, near the Basilica of the Nativity[2]. The Franciscans became known as the Custody or Custodians (Custos) of the Holy Land, safeguarding the interests of the Catholic Church. It must be remembered however, that the Pope as the Head of the Holy See represents/leads this Roman Catholic Church (Latin Church).

Because of its geographical location and historical ties, Jordan has traditionally assumed a custodianship role over Moslem Holy Places in Jerusalem. The Treaty of Peace between Israel and Jordan

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[1] For the explanation on the use and meaning of the phrase 'cultural property or heritage', see section 3 of this research paper.

[2] For the history of the Custody, see Franciscans serving the Holy Land, available at URL: *www.custodia.org/en/custody-and-its-history#*.

has acknowledged the special role of the latter[3]. The 1994 peace treaty has, however, failed to address whether this special role extends to Holy Places located in West Jerusalem (following the 1949 armistice divisional lines) and further failed to discuss the disputes of ownership over some of the Holy Places located in East or West Jerusalem.

Other States have also assumed custody and/or ownership of certain Holy Places acting on behalf of or representing traditional churches (e.g., the Russian Federation *vis-à-vis* the Russian Orthodox Church [Moscow Patriarchate] and France *vis-à-vis* the Congregation of the Augustinians of the Assumption).

This chapter is segmented into three main parts. The first one delineates the map that contains the list of the Principal Holy Places in the *corpus separatum* of Jerusalem. The second one presents the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (hereinafter the 1972 Convention) as well as Palestine and Israel ratification, acceptance or accession. The third and last one describes cultural property/(ies) and heritage vignettes in the cities of Bethlehem and Jerusalem and their provinces. The methodology follows and indicates the 1949 armistice divisional lines and then the emergence of customary international law on that both Bethlehem and East Jerusalem became considered part of the occupied Palestine territory while West Jerusalem became considered part of Israel.

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[3] 'In this regard, in accordance with the Washington Declaration, Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim [Moslem] Holy shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines. Article 9(2), Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 October 1994.

2. *Holy Places in the Suggested* corpus separatum *of Jerusalem*

The division of the territory of historic Palestine starting from the plan or suggestion of General Assembly resolution number 181 (and its *corpus separatum* of Jerusalem) of 1947 and ending up with Palestine being two separated (by Israel) parts i.e., the West Bank (including East Jerusalem) and the Gaza Strip under occupation and colonization has cultural property/(ies) and heritage facet. It was apparent that the suggestion for the internationalisation of Jerusalem, and more significantly, expanding its boundaries but still within the province of Jerusalem, back then, was inspired by the struggle over the Holy Places i.e., cultural property/(ies) and/or heritage. However, the struggle over cultural property/(ies) and/or heritage was not limited to boundaries of the suggested *corpus separatum* and is part of a wider struggle over cultural property/(ies) and/or heritage located elsewhere in the rest of Palestine, including the Cave of *Machpelah* that contains the Tomb of the Patriarchs (known also as *al-Haram al-Ibrahimi*), and the Russian Orthodox Monastery of the Holy Trinity where the Oak of *Mamre*/Abraham's Oak is located within its compound in the City of Hebron.

The boundaries of the *corpus separatum* did not only include the Old City of Jerusalem or its traditional municipal boundaries, but also neighboring towns and villages. *Abu Dis* (and Bethany 'al-Eizariya') towards the East, Bethlehem (and its neighbouring towns) towards the South, *Ein Karem* towards the West, and *Shu'fat* (and *Liftha*)[4] towards the North. During the fighting, the *corpus separatum* was divided among the belligerents creating East and West Jerusalem. The *corpus separatum* has become a house of cards; likewise the suggestion of the boundaries of the two suggested States in the territory of Palestine. In addition, some of the Palestinian towns or villages in this suggested *corpus separatum* were destroyed and their inhabitants (who were supposed to determine the future of the *cor-*

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[4] Transliterated as *Lifta* on Map No. 104 (b). It is a village situated in the North-West of Jerusalem.

pus separatum after a 10 years period)[5] were depopulated or massacred e.g., *Liftha*, *Deir Yasin* and *Ein Karem*. Recalling the words of the independent and neutral mediator of the United Nations in Palestine in 1948, Count Folke Bernadotte, who was also among the dignitaries of the Swedish Royal family:

> «The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion…There have been numerous reports from reliable sources of large-scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity … It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes, while Jewish immigrants [emigrants] flow into Palestine […]»[6].

Unlike West Jerusalem, the part that became known as East Jerusalem has the old or historical center of the City. Beside the old or historical center, an overwhelming majority of cultural property/(ies) or heritage are located in East Jerusalem. This part (East Jerusalem) became excluded from the boundaries of Israel under the 1949 armistice lines, and more so under customary international law. As a result of the 1949 divisional armistice lines and then the emergence of customary international law, cultural and natural property/(ies) became located in Palestine or Israel[7]. As a re-

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[5] See section D. Duration of the special regime, G.A. Res. 181, 29 November 1947.

[6] Progress Report of the United Nations Mediator on Palestine Submitted to the Secretary-General for Transmission to the Members of the United Nations, UN GAOR, Supp. 11, at 14, UN Doc. A/648(1948). «The violated customary principles of laws and customs of war were identified not only as serious violations but also as war crimes under individual criminal responsibility without prejudice to the international law on state responsibility»: B. ALZOUGHBI, *Legal Reflections on Count Folke Bernadotte's Proclamation on the Exodus of Palestinian Refugees*, Al Jazeera Center for Studies, 2012, p. 9.

[7] This is without prejudice that as a result of the division of Palestine, the natural properties of the Dead Sea and the Jordan River became located within the boundaries of Palestine and Israel (apart from the country of Jordan).

sult of the war and the 1949 divisional armistice lines, the clergy of the Assumptionists and their properties in Jerusalem were split between East and West Jerusalem: Notre-Dame de France and St. Louis French hospital in the latter, and the Church of Saint Peter in *Gallicantu* in the first[8]. Additionally, the divisional lines affected the native population who either found themselves under new rulers or fled/expelled outside of their hometowns.
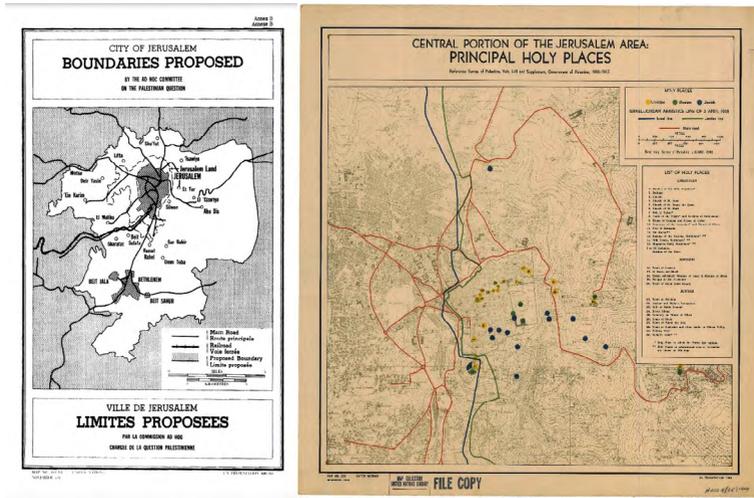
Merged maps from left to right: Map No. 104 (b), City of Jerusalem Boundaries Proposed: [Annex B to resolution 181 (II) of the General Assembly, dated 29 November 1947] - source: United Nations. Jerusalem – Principal Holy Sites – Armistice line – Map, Document symbol: 229, Publication Date: 30/11/1949- source: United Nations

The map numbered 229, issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem i.e., the *corpus separatum*) marking the armistice lines

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[8] M.C. Rioli, *A Liminal Church Refugees, Conversions and the Latin Diocese of Jerusalem, 1946-1956*, Brill, Leiden-Boston, 2020, pp. 105-106.

does not appear to paint a rosy picture but primes a complex, chaotic and confusing situation.

Firstly, the list of the Holy Places in the International Area of Jerusalem avouches that the overwhelming majority are in East Jerusalem, while West Jerusalem has the remaining very few. The overwhelming majority of those Holy Places were identified as Christian.

Secondly, some Holy Places in the International Area of Jerusalem are located within or in other Holy Places e.g., Bethany [town] (numbered 2) as a whole was considered a Christian Holy Place but the Tomb of Lazarus (numbered 16) is already located in Bethany [village or town]. Tomb of David (numbered 26) is located within (more specifically beneath) the *Cenacle* (numbered 3). *Deir es-Sultan* transliterated as *al sultan*[9] (numbered 7) is located within (more specifically on the rooftop of) the Basilica of the Holy Sepulchre (numbered 1). The House of Caiaphas and Prison of Christ (numbered 9) is located within (beneath) the Church of Saint Peter in *Gallicantu* (which was not mentioned on the map numbered 229). Mosque of the Ascension (numbered 19) and the Cemetery on Mount of Olives (numbered 25) are also located on the Mount of Olives (numbered 10) listed together with the sanctuary [Church] of Ascension (in the same way numbered 10). Tomb of Absalom (numbered 21) is located in the Kidron Valley (numbered 28). Tomb of the Virgin [Mary] and the Gardens of Gethsemane (numbered 8) are located on the foothills of Mount of Olives and across the Kidron valley. *Ein Karem* [village or town] transliterated as *Ain Karim* (numbered 12) was identified as a whole, a holy place but it basically includes a number of holy places as shall be discussed in the succeeding sections of this research paper. Some of the I to IX Stations of the Cross (which were listed and shown on map numbered 229, but not given a number) overlap with some of

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[9] In Arabic *Deir* means 'a monastery' or 'a convent' and '*es-sultan*' means 'a governor or a ruler' and comes from the noun which means 'power, influence, and control'.

the events that occur in the Basilica of the Holy Sepulchre (numbered 1).

Thirdly, (i) some of the Holy Places which are traditionally associated with one particular religion were instead considered Holy Places for another religion (ii) or otherwise listed in an overlapping manner for more than one religion.

Some Christian Holy Places were considered Moslem because in the course of history they have been converted into Mosques and / or have become property owned by Islamic public or private endowment (*Waqf*) e.g., Tomb of Lazarus (numbered 2) was considered as a Moslem Holy Place, but its heritage relate to Christianity. Different rulers/invaders such as the Persians and the Ottomans have destroyed or converted churches to purport to obliterate its heritage.

The Wailing Wall (numbered 29) for Jewish *versus* el *Burak esh-sharif* (numbered 17) for Moslems refers to the same Wall i.e., Western Wall. The Sanctuary [Church] of the Ascension for Christians (numbered 10) *versus* the Mosque of the Ascension (numbered 19) for Moslems refers to the same structure. Tomb of David (numbered 26) for Jewish and Tomb of David -*Nebi Daoud*[10] (numbered 20) for Moslems refers to the same place. The Cenacle (numbered 3) was listed as a Christian Holy Place but was converted into a mosque, and then after the 1949 Armistice lines, Israel completely controlled it and converted beneath it (Tomb of David) into a Jewish Synagogue as shall be discussed in the succeeding sections.

Fourthly, some Holy Places in the International Area of Jerusalem were listed but marked with two stars to indicate that they were not shown on the map numbered 229, these are: *Ein Karem* [town] transliterated as *Ain Karim* (numbered 12), Basilica of the Nativity - Bethlehem (numbered 13), Milk Grotto - Bethlehem (numbered 14), Shepherds Field - Bethlehem (numbered 15) and Rachel's Tomb [Bethlehem] (numbered 30).

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[10] In Arabic, *Nebi Daoud* means 'prophet David'.

Fifthly, some Holy Places in the International Area of Jerusalem were marked with a star to demonstrate the applicability of the *Status Quo*, these are: the Basilica of the Holy Sepulchre, *Deir al- Sultan*, Tomb of the Virgin [Mary], Sanctuary of Ascension, Basilica of the Nativity, Milk Grotto, Shepherds Field, Wailing Wall and Rachel's Tomb:

«The Status Quo is in effect the perpetuation of arrangements approved by the Ottoman Decree of 1757 concerning rights, privileges and practices in certain Holy Places to which conflicting claims had been put forward. The conflicting claims related to disputes between religious faiths concerning a Holy Place (Cf. Rachel's Tomb, the ownership of which has been claimed by both Jews and Moslems) and disputes between branches of religious faiths (Cf. the Basilica of the Holy Sepulchre, where rights and claims have been contested by the Latin, Greek Orthodox, Armenian, Coptic and Syrian Jacobite Churches). In the main the disputes concerned (a)questions of ownership and matters devolving therefrom, such as the right to carry out repair work or alterations; (b)questions relating to the right to hold religious services»[11].

The Palestine-Israel international armed conflict is not simply a struggle about sovereignty over a territory but also about ownership of, access to and a denial of access to many of its cultural property/(ies) based on (i) religion or ethnicity or (ii) the divisional lines of 1949 (iii) occupation and annexation post 1967, coupled with the construction of the Wall and its associated regime post 2002. This struggle over ownership goes beyond the two sovereigns exceeding to third States acting on behalf of or representing a religious denomination *versus* one of the two sovereigns. It also reveals that it is inhered in an inter-Christian conflict i.e., between various Christian denominations or churches, Christian-Jewish conflict, Christian-Moslem conflict and Moslem-Jewish conflict.

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[11] United Nations Conciliation Commission for Palestine Working Paper on the Holy Places, 8 April 1949, p. 5.

Having had an explication of the mish-mash of the listing of cultural property/(ies) or heritage (the Holy Places) of the *corpus separatum,* the next section will unravel the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage as well as Palestine and Israel ratification, acceptance or accession.

3. *The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage: Palestine and Israel Ratification, Acceptance or Accession*

The 1972 Convention defined cultural heritage in Article 1 while it defined Natural Heritage in Article 2[12]. Cultural heritage is grouped into three categories: (i) monuments, (ii) groups of buildings and (iii) sites[13]. Other Articles in the 1972 Convention have referred to «properties»[14] in the plural, or simply «property»[15] «or cultural property»[16]. Cultural asset(s) could also be used *in lieu* of cultural property. Other synonyms that could be used include 'patrimony'. However, in some of the Latin descent languages such as Italian, French, Spanish and Portuguese the terms *patrimonio*, *patrimoine*, *patrimonio*, *patrimônio*, means heritage, respectively.

So what are then the similarities or dissimilarities between cultural property and cultural heritage? As has been previously mentioned, the 1972 Convention classified cultural heritage into three categories and further used the phrase cultural property in an overlapping manner to refer to those three categories. To understand

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[12] Article 1 and 2, Convention Concerning the Protection of the World Cultural and Natural Heritage Adopted by the General Conference at its seventeenth session Paris, 16 November 1972.

[13] Article 1, *loc. cit.*

[14] See Articles 3 and 11, *loc. cit.*

[15] See Articles 6, 11, 12, 13, 19, 20 (while referring to property forming part of the cultural and natural heritage) and 26, *loc. cit.*

[16] See Articles 8, 11, 13 and 14 (while referring to the International Centre for the Study of the Preservation and the Restoration of Cultural Property 'The Rome Centre'), *loc. cit.*

better the phrase «cultural property», one needs to analyse the meaning of culture and property so long as they do not end in contradicting each other; i.e., an element of culture has to be associated with property (movable or immovable). One element of culture such as customs may, however, not relate to property and therefore it is cultural but not cultural property.

Similarly, to understand the phrase «cultural heritage», one needs to define the two terms culture and heritage. Cultural heritage is more profound than cultural property, where one could relate to a given narrative that has occurred in a given area but the exact location may be unidentified or otherwise does not necessarily have to be associated with a specific property. Therefore, cultural property should be understood to be tangible, while cultural heritage may be tangible or intangible. Cultural property relates to cultural heritage, while cultural heritage may or may not relate to property. However, this understanding was not precisely interpreted as such in the 1972 Convention. The Convention for the Safeguarding of the Intangible Cultural Heritage of 2003 (entered into force 2006) mentions the domains of the «intangible cultural heritage» such as oral traditions and expressions, including language, performing arts, social practices, rituals and festive events; knowledge and practices concerning nature and the universe; traditional craftsmanship[17].

Article 3 in the 1972 Convention provides that «[i]t is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above»[18]. Article 4 in the 1972 Convention provides that «[e]ach State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage

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[17] Article 2, The Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003, entered into force 20 April 2006.

[18] Convention Concerning the Protection of the World Cultural and Natural Heritage, cit., Article 3.

[…] and situated on its territory, belongs primarily to that State»[19]. Article 11 calls upon the State Parties to submit to the World Heritage Committee an inventory of property forming part of their cultural and natural heritage[20]. The decisions of the World Heritage Committee shall be taken by a majority of two-thirds of its members present and voting[21].

Palestine became a UNESCO Member State on 23 November 2011 after the latter's General Conference voted on 31 October 2011 to admit the first as a Member State[22]. Ever since its successful application to UNESCO in November 2011, Palestine has ratified the Convention Concerning the Protection of the World Cultural and Natural Heritage in 8 December 2011[23] and further rat-

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[19] Article 4, *loc. cit.*

[20] Article 11(1), *loc. cit.*

[21] Article 13(1), *loc. cit.*

[22] The Executive Board of UNESCO voted 27 Sept. 2011 on a recommendation to admit Palestine to the Organization. From the 58 Member States on the Board, the recommendation was passed by a vote of 40 in favor to 4 against, with 14 abstentions. UNESCO's General Conference voted on 31 Oct. 2011 to admit Palestine as a Member of this Specialised Organization. The vote was carried by 107 votes in favour of admission and 14 votes against, with 52 abstentions. For Palestine entry into the 'Vienna formula,' see B. ALZOUGHBI, *The de jure State of Palestine under Belligerent Occupation: Application for Admission to the United Nations*, in *Palestine Membership in the United Nations: Legal and Practical Implications* edited by M.M. QAFISHEH, Cambridge Scholars Publishing, Newcastle, 2013, pp. 172-174. For Palestine's former attempts to join United Nations Specialized Agencies in 1989, see B. ALZOUGHBI, *ivi*, pp. 182-184. Palestine could have entered into the 'Vienna formula' by an easier mode other than membership in any of specialised agency i.e., by acceding to any of the conventions of the 'Vienna formula' based on an invitation by the General Assembly of the United Nations (*ivi*, p. 173). At least two thirds of the States in the General Assembly have a positive and supportive attitude towards Palestine.

[23] «For States which may deposit their instruments of ratification or acceptance after the date of the Agreement coming into force, these measures shall be taken within a period of three months from the date of deposit». See Article XII(2) Convention Concerning the Protection of the World Cultural and Natural Heritage, cit. The list of States parties is available at URL: *https://treaties.un.org/Pages/ showDetails.aspx?objid=08000002800fece0&clang=_en*.

ified/acceded to other nine conventions[24]. Palestine has then managed to inscribe three properties on the World Heritage List[25] and nominated fourteen properties on the tentative list[26]. Two out of the three inscribed properties were also put in the List of World Heritage in Danger[27]. One of the tentative lists of Palestine is *El-Bariyah*: wilderness with monasteries. *El-Bariyah* is the Arabic term for wilderness. The tentative list of *El-Bariyah*: wilderness with monasteries includes several cultural properties (e.g., Herodion, Monastery of

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[24] These are: 1. Convention for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 14 May 1954; 2. Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954; 3. Convention against Discrimination in Education, Paris, 14 December 1960; 4. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property Paris, 14 November 1970; 5. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999; 6. Convention on the protection of the underwater cultural heritage, Paris, 2 November 2017; 7. The Convention for the Safeguarding of the Intangible Cultural Heritage,17 October 2003; 8. International Convention against Doping in Sport, Paris, 19 October 2005; 9. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Paris, 20 October 2005. Therefore, the total number of UNESCO conventions Palestine is a State party to is 10.

[25] 1. The Birthplace of Jesus: Church [Basilica] of the Nativity and the Pilgrimage Route, Bethlehem (2012); 2. Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, *Battir* (2014) [Note from author: *Battir* is a village West of Bethlehem and Southwest of Jerusalem]; 3. Hebron/*Al-Khalil* Old Town (2017), available at URL: *https://whc.unesco.org/en/statesparties/ps*.

[26] 1. Mount Gerizim and the Samaritans (2012); 2. *QUMRAN*: Caves and Monastery of the Dead Sea Scrolls (2012); 3. *El-Bariyah*: wilderness with monasteries (2012); 4. *Wadi* Natuf and *Shuqba* Cave (2013); 5. Old Town of Nablus and its environs (2012); 6. *Tell Umm Amer* (2012); 7. Throne Villages (2013); 8. *Sebastia* (2012); 9. Anthedon Harbour (2012); 10. *Umm Al-Rihan* forest (2012); 11. *Wadi* Gaza Coastal Wetlands (2012); 12. Baptism Site '*Eshria'a*' ([*a*]*l-Maghtas*) (2015); 13. Ancient Jericho/*Tell es-Sultan* (2020); 14. Hisham's Palace/*Khirbet al-Mafjar* (2020), available at URL: *https://whc.unesco.org/en/statesparties/ps.*

[27] List of World Heritage in Danger, Hebron/*Al-Khalil* Old Town (2017) Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir (2014). Available at URL: *https://whc.unesco.org/en/danger/*.

Mar[28] *Saba* and the Monastery of Saint Theodosius)[29]. Remarks on both lists will be in incorporated into the fourth section of this research paper.

Israel joined UNESCO on 16 September 1949, which makes its membership (unlike Palestine) a straightforward one simply because of the support of many of the Western States. Israel has then accepted the 1972 Convention on the 6th of October 1999, with date of effect on the 6th of January 200[30]. Israel has also ratified/acceded to other sixteen UNESCO conventions[31]. Because of Pal-

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[28] *Mar* is a Syriac word meaning 'master'. Christians in the Arab world including Palestine use it as a prefix to convey the meaning of a saint, so when we say 'Mar Saba' it means Saint Saba. *Mar-Saba* Monastery is located some 20 kilometers to the East of Bethlehem, within the province of Bethlehem and some 20 kilometers South East of the Old City of Jerusalem but not within the suggested boundaries of the *corpus separatum*.

[29] *El-Bariyah*: wilderness with monasteries, available at URL: *https://whc.unesco.org/en/tentativelists/5708/*.

[30] Convention for the protection of the world cultural and natural heritage, available at URL: *https://treaties.un.org/Pages/showDetails.aspx?objid=0800000 2800fece0&clang=_en*.

[31] These are: 1. Agreement on the Importation of Educational, Scientific and Cultural Materials, with Annexes A to E and Protocol annexed, Florence, 17 June 1950; 2. Universal Copyright Convention of 6 September 1952, With Appendix Declaration relating to Article XVII and Resolution concerning Article XI; 3. Protocol 1. Annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to works of Stateless persons and refugees, Geneva 6 September 1952; 4. Protocol 2. Annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to the works of certain international organizations Geneva 6 September 1952; 5. Protocol 3. Annexed to the Universal Copyright Convention concerning Protocol 3 annexed to the Universal Copyright Convention concerning the effective date of instruments of ratification or acceptance of or accession to that Convention, Geneva 6 September 1952; 6. Convention for the Protection of Cultural Property in the Event of Armed Conflict The Hague 14 May 1954; 7. Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 14 May 1954; 8. Convention concerning the International Exchange of Publications, Paris 13 December 1958; 9. Convention concerning the Exchange of Official Publications and Government Documents between States, Paris, 3 December 1958; 10. Convention against Discrimination in Education, Paris 14 December 1960; 11. International Convention for the Protection of Performers, Producers of Phonograms

estine's membership in UNESCO in 2011, Israel and the United States decided to withdraw in 2017 (which took effect in December 2018). With their withdrawal, Israel and the U.S. lost their voting rights in UNESCO. That is two votes less against Palestine in any upcoming UNESCO resolutions (in favor of Palestine). Losing voting rights may also affect member States if they do not pay the total amount of contributions[32]. For the United States, this is its second withdrawal from UNESCO. The first was in 1983, which in turn, took effect in 1984, but then re-joined in 2003. Israel has managed to inscribe nine properties on the World Heritage List[33] and nominated eighteen properties on the Tentative List[34].

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and Broadcasting Organisations, Rome 26 October 1961; 12. Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education, Paris 10 December 1962; 13. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva, October 29, 1971; 14. Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region, Paris 21 December 1979; 15. Convention on the Recognition of Qualifications concerning Higher Education in the European Region Lisbon, 11 April 1997; 16. International Convention against Doping in Sport, Paris 19 October 2005. Therefore, the total number of UNESCO conventions Israel is a State party to is 17.

[32] Article IV: «A Member State shall have no vote in the General Conference if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year». Constitution of UNESCO, signed on 16 November 1945, came into force on 4 November 1946. The exception is force majeure: «(c) The General Conference may nevertheless permit such a Member State to vote, if it is satisfied that failure to pay is due to conditions beyond the control of the Member State».

[33] 1. Bahá'i Holy Places in Haifa and the Western Galilee (2008); 2. Biblical Tels - Megiddo, *Hazor*, Beer Sheba (2005); 3. Caves of *Maresha* and *Bet-Guvrin* in the Judean Lowlands as a Microcosm of the Land of the Caves (2014); 4. Incense Route - Desert Cities in the Negev (2005); 5. Masada (2001); 6. Necropolis of *Bet She'arim*: A Landmark of Jewish Renewal (2015); 7. Old City of Acre (2001); 8. Sites of Human Evolution at Mount Carmel: *The Nahal Me'arot / Wadi el-Mughara* Caves (2012); 9. White City of Tel-Aviv, the Modern Movement (2013).

[34] 1. Triple-arch Gate at Dan & Sources of the Jordan (2000); 2. Early Synagogues in the Galilee (2000); 3. The Galilee Journeys of Jesus & the Apostles (2000); 4. Sea of Galilee & its Ancient Sites (2000); 5. Horvat Minnim (2000);

If the international community has been advocating for the two State solution, then let each State (Palestine and Israel) list their cultural property/(ies) located within their recognized boundaries under customary international law. It must be remembered that there is a prohibition under customary international diplomatic law to establish or maintain diplomatic missions in Jerusalem[35]. The following last section gives a brief overview of the cities of Bethlehem and Jerusalem. It then revolves around a compilation of vignettes of some of the major cultural property/(ies) and heritage of the cities of Bethlehem and Jerusalem and their provinces, respectively.

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6. Arbel (*arbel*, *nebe shueb*, horns of *hittim*) 2000; 7. *Degania* & *Nahalal* (2000); 8. Bet She'an (2000); 9. Caesarea (2000); 10. White Mosque in Ramle (2000); 11. Jerusalem* [see information and analysis below] 2000; 12. Mount *Karkom* (2000); 13. Timna (2000); 14. The Crusader Fortresses (2000); 15. *Makhteshim* Country (2001); 16. The Great Rift Valley - migratory routes - The Hula (2004); 17. *Liftah* (*Mey Naftoah*) - Traditional mountain village (2015); 18. *Ein Karem*, a village and its cultural landscape (2015).

The Committee at its 25th Session (Helsinki, 2001) endorsed the recommendation of the 25th session of its Bureau (Paris, June 2001) «to postpone further consideration of this nomination proposal until an agreement on the status of the City of Jerusalem in conformity with International Law is reached, or until the parties concerned submit a joint nomination». See Jerusalem, available at URL: *https://whc.unesco.org/en/tentativelists/1483/UNESCO*. General Conference in its Resolutions 32C/39 and 33C/50 have both affirmed that: «[…] nothing in the present decision, which is aimed at the safeguarding of the cultural heritage of the Old City of Jerusalem, shall in any way affect the relevant United Nations resolutions and decisions, in particular the relevant Security Council resolutions on the legal status of Jerusalem». Jerusalem, available at URL: *https://whc.unesco.org/en/tentativelists/1483/*. The relevant Security Council and even the authoritative General Assembly resolutions on the legal status of Jerusalem manifested in the emergence of customary international law of a determination that East Jerusalem is part of the occupied Palestine territory. Furthermore, the relevant Security Council General Assembly resolutions aimed at asserting on the principle of the prohibition of acquisition of territory by force. B. ALZOUGHBI, *The Relocation of the U.S. Embassy from Tel Aviv to Jerusalem (Palestine V. United States of America): A Commentary on the Merits of the Case, Jurisdiction of the International Court of Justice and Admissibility of Palestine's Application*, in *University of Bologna Law Review* 4, 2019, 1, pp. 138-139.

[35] *Ivi*, pp. 123-133.

4. *Cultural property/(ies) or Heritage in Bethlehem and Jerusalem*

4.1. *Bethlehem*

Bethlehem is situated on a hilly plateau and its height ranges between 750 to 770 meters above sea level. To the North of Bethlehem is the City of Jerusalem, some 10 kilometers (which makes it the nearest major City); to South is the City of Hebron, some 30 km away; to the East is the Dead Sea some 35 kilometers[36]; and to the far west is the Mediterranean sea, some 70 km. Bethlehem (together with Jericho) was defined under the administrative classification of the territory of historic Palestine to be under the province of Jerusalem. Bethlehem was a small town or City, and up until now it is still relatively so; in population, size and scale. The 1931 Census records that Bethlehem had 7,320 inhabitants[37]. The overwhelming majority of its Palestinian population were Christians[38]. Nowadays the City of Bethlehem, with its current municipal borders has some 30,000 inhabitants.

The name Bethlehem is a compound term of semitic origin: *Beit* means a house e.g., in Syriac, Aramaic, Hebrew, and Arabic. *Lehhemo* in Syriac, Aramaic and *Lehem* in Hebrew means bread while *Laham* in Arabic means meat. It was understood that the meaning of Bethlehem was the 'House of Bread' in the first three sets of semitic languages and therefore is associated with food and particularly bread which grain is but one of its main components. Apart from Bethlehem, many biblical towns or areas are of compound names which start with the word *Beit* or otherwise transliterated *Beth* or *Bet* e.g., *Beit El*, *Bethesda*, *Bethphage* and *Bethany*. In addition, several villages or neighbourhoods in Palestine was named or had its

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[36] The Jordan River empties into the Dead Sea. Jericho is located towards the North East of Bethlehem.

[37] Table 8 b, *A Survey of Palestine prepared in December 1945 and January 1946 for the Information of the Anglo-American Committee of Inquiry*, vol. I, p. 151.

[38] In 1931 out of the 7,320 inhabitants in the City of Bethlehem, 5.804 Palestinian were identified as Christians, *loc. cit.*

name starting with the word *Beit* e.g., *Beit Safafa* (a neighbourhood of Jerusalem that was also divided between East and West Jerusalem post the fighting in 1948 and the armistice lines of 1949), *Beit Jala* and *Beit Sahour* (two adjunct towns to Bethlehem within the province of Bethlehem).

Bethlehem has significant cultural property/(ies) or heritage, which attests to its holiness, historicalness, uniqueness or specialness. The Old Testament of the Bible mentioned Bethlehem several times, including or particularly for the Birthplace of Benjamin and death of his mother Rachel, the place where Ruth was gleaning in the field of Boaz, King David's well(s) and the Gate of Bethlehem, the place where David's was anointed by Prophet Samuel and prophecies that predicted the Birth of Jesus Christ. The New Testament of the Bible records Bethlehem as the place where the prophecies were fulfilled on the Birthplace of Jesus Christ, the annunciation to the shepherds, the Wise Men visitation and adoration of the new born baby (Jesus Christ) and King Herod killing all children (two years and under). In addition, King Herod had a fortress- palace located some 5 Km South East of Bethlehem. The compilation of those cultural property/(ies) or heritage vignettes of Bethlehem City and province is not an exhaustive list[39].

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[39] Other cultural properties of Bethlehem or within its province which deserves attention and were neither covered in this research paper or tentatively listed by Palestine include: The Convent of the *Hortus Conclusus* / Sealed Garden in the village of Artas some 4 kilometers South West of Bethlehem, Solomon's Pools some 4 kilometers South West of Bethlehem, Chapel of the Milk Grotto (a few hundred meters from the Basilica of Nativity), the Saint George's Monastery in *al-Khader* village some five kilometers to the West of Bethlehem, and the Old olive tree in *al-Walaja* village some 5 kilometers north West of Bethlehem.

A view of Manger Square with the Basilica of the Nativity in Bethlehem - source: author

4.1.1. *The Birthplace of Benjamin and Death of his Mother - Rachel's Tomb*

Bethlehem was first mentioned in the Book of Genesis in the Bible in relation to the birth of Benjamin and the death of his mother Rachel[40]. Some three kilometres north of the historic center of Bethlehem, and some seven kilometres south of the historic center of Jerusalem, the shrine of Tomb of Rachel is located. «The Moslem claim to own the building rests on its being a place of prayer for the Moslems of the neighbourhood and an integral part of the

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[40] «And Rachel died, and was buried in the way to Ephrath, which is Bethlehem. Over her [T]omb Jacob [Rachel's husband] set up a pillar, and to this day that pillar marks Rachel's [T]omb», Genesis 35, 19-20, King James Version.

Moslem cemetery within which it lies»[41]. In 1921 the Chief Rabbinate applied to Bethlehem Municipality for permission to repair the shrine, which gave rise to a Moslem protest[42].

Post 2002, Israel constructed an eight-meter concrete Wall on that part of Palestine, and therefore it completely surrounded Rachel's Tomb. Rachel's Tomb became technically detached from Bethlehem (by that Wall) and further became administratively part of East Jerusalem as defined by Israel on a *de facto* or unilateral basis. The Wall obliterated this specific area, its cultural heritage, and the geography of Palestine in general. Additionally, the construction of the Wall and its associated regime in an occupied territory ran contrary to the principles and rules concerning appropriation and destruction of property in that it lacked military necessity[43].

Israel's control of Rachel's Tomb post 1967 and further its annexation to East Jerusalem made Palestinian inhabitants whether Christians or Moslems excluded from entry to this cultural property based on ethnicity or religion[44]. The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, has identified Rachel's Tomb as one of the Jewish holy places where the *Status Quo* applies. Since Rachel's Tomb is the first mention of the City of Bethlehem in the Bible and is located within the frontiers of its occupied territory, the State of Palestine could identify/nominate it on the tentative list of World Heritage.

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[41] United Nations Conciliation Commission for Palestine Working Paper, cit., p. 24.

[42] *Ibidem.*

[43] See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion', 2004, *ICJ*, p. 167.

[44] Unlike Israeli settlers/colonists living in settlements/colonies in the West Bank, Palestinian Christians or Moslems of the West Bank (not including those Palestinians residing in East Jerusalem), and the Gaza Strip are required to apply for a visa to enter East Jerusalem. A decision is then taken by the Occupying Power of acceptance or refusal. If accepted, the Occupying Power decides on duration and can range from few hours, days, weeks, months and so on.

4.1.2. *Ruth Gleaning in the Field of Boaz*

Here's the story of a family consisting of Elimelech, his wife Naomi, and their two sons Mahlon and Chilion, Ephrathites of Bethlehem, who have moved into the country of Moab[45] (in present time Jordan). The story narrates that Naomi's sons got married to women from Moab; Orpah and Ruth[46]. After the death of Naomi's husband and later on her two sons; Ruth moved with her mother-in-Law 'Naomi' to Bethlehem at the beginning of the barley harvest[47]. There, Ruth gleaned in the Field of Boaz (kinsman of Naomi's deceased husband)[48] until the end of the barley and wheat harvests[49]. The Book Ruth tells of a love story between Boaz and Ruth, who got married and had a child named Obed who became the father of Jesse, the father of David[50]. Tradition relates the site of the field of Boaz where Ruth was gleaning in the present time town of *Beit Sahour*, some 2 kilometres south-east of Bethlehem, within the province of Bethlehem. The narrative of Ruth and Boaz is part of the cultural heritage of Bethlehem.

4.1.3. *King David's Wells and the Gate of Bethlehem*

Prior to the birth of Jesus Christ, Bethlehem was first known to be the City of David because David and his ancestors were born / raised there. Later on, Jerusalem or parts of it became known as the City of David. It must be remembered that David became the King for the ancient Israelites replacing King Saul[51]. While hiding in the cave of Adullam, David desired water and requested his sol-

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[45] Ruth 1, 2, King James Version.
[46] *Ivi*, 1, 4.
[47] *Ivi*, 1, 3, 5 and 22.
[48] *Ivi*, 2, 2.
[49] *Ivi*, 2, 2 and 23.
[50] *Ivi*, 4, 17.
[51] 2 Samuel 17, 27, King James Version.

diers to bring him water from the well near the gate of Bethlehem[52]. Here we learn that Bethlehem had a Gate and a water well, or rather wells.

In present time, there are three wells (became known as King David's wells) located within the compound of the Catholic Action Cultural Center in the historic part of the City of Bethlehem. Tradition relates these three wells to the place where David mighty warriors drew water. A few hundred meters from the wells there you can find a small Arch, which marks the traditional entrance to the historic part of Bethlehem (towards the way to the Basilica of the Nativity). This Arch is known as Arch of *Al-Zarara* or *Qos*[53] *Al-Zarara.* The Arch of *Al-Zarara* has also been historically known as 'Damascus Gate' and the place where the main Gate of Bethlehem stood, and which David had referred to.

4.1.4. *The Birthplace of Jesus Christ - the Grotto in the Basilica of the Nativity*

Several prophets in the Old Testament prophesied about the coming of Jesus Christ. Micah prophesied that the *Messiah* would come from Bethlehem[54]. Isaiah, a contemporary prophet of Micah, prophesied about the Virgin birth of Jesus Christ[55]. The New Testament records the fulfilment of the prophesies about the birth

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[52] *Ivi*, 23, 15. «[…] the three mighty men brake through the host of the Philistines, and drew water out of the well of Bethlehem, that was by the gate, and took it, and brought it to David: nevertheless he would not drink thereof, but poured it out unto the Lord» (*ivi*, 23, 16). It was Prophet Samuel who anointed David in Bethlehem to be the chosen King to replace King Saul (*ivi*, 17, 27).

[53] *Qos* is the Arabic word for an Arch.

[54] «[b]ut as for you, Bethlehem Ephrathah, Too little to be among the clans of Judah, From you One will come forth for Me to be ruler in Israel; whose goings forth have been from of old, from everlasting»: Micah 5, 2, King James Version.

[55] «Therefore the Lord himself shall give you a sign; Behold, a [V]irgin shall conceive, and bear a son, and shall call his name Immanuel»: Isaiah 7, 14, King James Version. See also: «[f]or unto us a child is born, unto us a son is given: and the government shall be upon his shoulder: and his name shall be called Wonder-

of Jesus Christ in Bethlehem after Joseph and Mary travelled all the way from Nazareth of the Galilee to Bethlehem[56]. In Bethlehem, Mary gave birth to her firstborn son, wrapped him in swaddling clothes and placed him in a manger, as they could not find an available room in the inn[57]. The birthplace in a manger indicated, among others, the humility of Jesus Christ.

The Basilica of Nativity was built over the grotto that witnessed the birth of Jesus Christ. The grotto of Nativity can be accessed via two staircases from two sides. The construction of the original basilica, enclosing the grotto was begun in 326 by Emperor Constantine and his mother, St. Helena[58]. Another grotto or cave is located in the Basilica of Nativity, known as St. Jerome cave, who apparently lived in it, and translated the New Testament from Hebrew and Greek into Vulgate Latin. The Basilica of Nativity was ruined by fire during the Samaritan revolt of 529, it was rebuilt a few years later by Emperor Justinian[59]. Unlike the other Basilicas or churches which the Persians destroyed when they invaded Palestine, the Basilica of the Nativity was spared from destruction. Popular word has it that, when the Persians entered the Basilica of Nativity, they saw a painting of the Magi (identified as Persian people by their dress) on one of the walls of the Basilica and therefore opted for non -destruction.

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, identifies the Basilica of the Nativity as one of the Christian holy places where also the *Status Quo* applies. The Orthodox Church claims exclusive ownership of the whole Church, but parts of it belong to the Latin and Armenian Church-

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ful, Counsellor, The mighty God, The everlasting Father, The Prince of Peace» (*ivi*, 9, 6, King James Version).

[56] Luke 2, 1-6, King James Version.

[57] *Ivi*, 2, 7.

[58] E. Cerny, *Archaeological corner: Bethlehem: Basilica of the Nativity*, in *the Catholic Biblical Quarterly*, 2, 1940, 4, p. 346.

[59] *Ibidem*.

es- the right to hold religious services is shared by Latin, Armenians, Copts and Syrian Jacobites[60]. Several repairs were made to the Basilica of Nativity, of which the Franciscans put a new roof in the fifteenth century, where the Republic of Venice and the lead Edward IV of England supplied the timber[61]. Another roof was put in 1672, and again was renewed in 1842 by the Greeks[62].

When Palestine inscribed 'the Birthplace of Jesus: Church [Basilica] of the Nativity and the Pilgrimage Route' on the World Heritage list, it was implicitly understood that the Arch (near King David Wells) is part of this pilgrimage route. In its description, the State of Palestine documented the following: «[t]he eastern end of the traditional route from Jerusalem to the Church, known as the Pilgrimage route, marks the road that connects the traditional entrance of Bethlehem, near King David's Wells with the Church of the Nativity, and extends along the Star Street through the Damascus Gate, or *Qos Al-Zarara*, the historical gate of the town, towards the Manger Square»[63]. However, in the opinion of the present author, Palestine should have listed *Qos Al-Zarara* and King David wells separately from the Church [Basilica] of Nativity in order to emphasise on each historical or holy site in a single manner.

Many Pilgrims from across the world come to visit the small City of Bethlehem and its central attraction of the Basilica of the Nativity, which is open to all visitors. The 25th of December of each year became the Christmas day for Christians following the Western Gregorian calendar, and the 7th of January for Christians following the Eastern Liturgical calendar[64]. Palestinian Christians

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[60] United Nations Conciliation Commission for Palestine Working Paper, cit., p. 11.

[61] E. CERNY, *Archaeological corner: Bethlehem: Basilica of the Nativity*, cit., p. 348.

[62] *Ivi*, 348-349.

[63] Birthplace of Jesus: Church of the Nativity and the Pilgrimage Route, Bethlehem available at URL: *https://whc.unesco.org/en/list/1433/*.

[64] Unlike Christian followers of Western Gregorian calendar and Eastern Liturgical Calendar, Armenian Christians of Palestine celebrate Christmas day on the 18th January of each year.

currently present in Palestine and Israel coupled with other Christians worldwide commemorate Christmas Eve with processions, church services and ceremonies where local scouts groups bang drums and play the bagpipes.

4.1.5. *The Annunciation to the Shepherds -Shepherds' field(s)*

After the birth of Jesus Christ in Bethlehem, the angel of the Lord appeared to the shepherds who were abiding in the field, keeping watch over their flock at night[65]. The angel of the Lord told the frightened shepherds to fear not and announced the good tidings of great joy «[f]or unto you is born this day in the [C]ity of David a Saviour, which is Christ the Lord. And this shall be a sign unto you; Ye shall find the babe wrapped in swaddling clothes, lying in a manger»[66]. Then a group of angels appeared and said «[g]lory to God in the highest, and on earth peace, good will toward men»[67]. The shepherds then went to Bethlehem and found Mary, Joseph, and the newly born baby lying in a manger[68].

A modern Roman Catholic Chapel or Church marks the area where the shepherds were abiding in the field, when the angle(s) of the Lord appeared to them and notified them of the joyful news. It is located some two kilometers southeast of Bethlehem, in the town known in the present day as *Beit Sahour* within the province of Bethlehem. The compound of this Roman Catholic Church includes natural caves and ruins. The ruins belonged to a monastery built around 400 A.D, which was expanded and partially rebuilt in the sixth century, and lasted until the year 800[69].

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[65] Luke 2, 8-9, King James Version.

[66] *Ivi*, 2, 11.

[67] *Ivi*, 2, 14.

[68] *Ivi*, 2, 15-16.

[69] Custodia Terrae Sanctae: Custody of the Holy Land, Bethlehem - *The Shepherds' Field and Grotto*, www.custodia.org/en/sanctuaries/bethlehem-shepherds-field-and-grotto.

Another modern Greek Orthodox church in the vicinity of the above-mentioned Roman Catholic Church (less than one kilometer away) marks also the area of the same shepherds in the same town known in the present day as *Beit Sahour* within the province of Bethlehem. The Tomb of the Shepherds is also located in a cave (within the compound of this Greek Orthodox property), which has the remains of a mosaic floor. The compound of this Greek Orthodox property marks also the remains of three Basilicas destroyed in the 5th, 6th and 7th Centuries.

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, shows the Shepherds' Field as one of the Christian Holy Places where the *Status Quo* applies. No record is given to the *Status Quo*[70]. It must be remembered that the two locations of those two compounds marking the Shepherds' field area, albeit located not far away in distance, are completely separate. The State of Palestine could identify/nominate the two Shepherds' Fields areas (the compounds of the Roman Catholic and the Greek Orthodox churches) on the tentative list of World Heritage.

4.1.6. *The Adoration of the Wise Men (Magi)*

After the Shepherds visit, Joseph, Mary and the newly born child (Jesus Christ) had another no less important visit by three Wise Men (*Magi*). Seeing a Star, the three Wise Men came from the East and arrived in Jerusalem to search for the newly born baby so as to worship him[71]. This East was interpreted to be Persia. From Persia to Palestine they have passed through the boundaries of the present day countries Iraq and Syria or Iraq and Jordan. Astronomers are not limited to confining the word star to the literal meaning; the word planet means wandering star, nova means new star,

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[70] United Nations Conciliation Commission for Palestine Working, cit., p. 19.
[71] Matthew 2, 2, King James Version.

comet means hairy star and a meteor is called a shooting or falling star[72]. However, the term Star must be appreciated in the original ancient languages and rather be taken in the literal meaning.

Frightened King Herod called the Wise Men privately and sent them to Bethlehem to search for the child in order to inform him of the exact location, so that as King Herod claimed to worship him as well[73]. The Wise Men kept following the Star where it finally stood over on the house where Joseph, Mary and the newborn baby were, and ultimately located Jesus Christ[74]. The Wise Men presented to Jesus Christ three gifts: gold, frankincense and myrrh - they did not go back to King Herod as they were warned by God in a dream not to return to him[75]. An altar in the Grotto of the Nativity is devoted to the Adoration of the Magi. The Wise Men visit to Bethlehem and their adoration to Jesus Christ is part of the cultural heritage of Bethlehem and Christianity.

4.1.7. *King Herod Order of Killing the Children of Bethlehem*

King Herod ordered the killing of the innocent children (two years old and under) who were born/raised in Bethlehem and its surroundings[76], mistakenly thinking that by such horrific acts, he would be able to achieve his plot to kill Jesus Christ. King Herod did not know/ had reason to know that his plot to kill Jesus Christ was a failure. An angel of the Lord appeared to Joseph in a dream

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[72] «Star of Bethlehem». *The Science News-Letter*, 80, 1961, 24, p. 386. See also: «[…] astronomers, who are often asked […] for an explanation of the "Star", have made many suggestions concerning it. Included among their ideas are a comet, a supernova, a brilliant meteor and an unusual configuration of planets» (*ibidem*).

[73] Matthew 2, 7-8, King James Version.

[74] *Ivi*, 2, 11.

[75] *Ivi*, 2, 11-12.

[76] «Then Herod, when he saw that he was mocked of the [W]ise [M]en, was exceeding wroth, and sent forth, and slew all the children that were in Bethlehem, and in all the coasts thereof, from two years old and under, according to the time which he had diligently enquired of the [W]ise [M]en» (*ivi*, 2, 16).

and told him to take the child and his mother and escape to Egypt, as Herod is going to search for the child to kill him[77]. Therefore, Joseph, Mary and the child (Jesus Christ) travelled all the way to Egypt. One of the Caves in the Basilica of the Nativity contains skulls and bones. Popular word has it that, some of those skulls and bones belong to the children of Bethlehem who were killed on the order of King Herod.

4.1.8. *King Herod Palace- Fortress*

King Herod's palace- fortress is located five kilometers southeast of Bethlehem, known as *Herodion* or Herodium in Latin. King Herod's palace-fortress is also referred to in Arabic as *Jebel al-Furedis*[78]. In Hebrew it is known as *Har Hordus*[79]. Strategically built on an artificial hill, *Herodion* can be seen from many parts of Bethlehem and Jerusalem and obviously its neighboring villages or even the settlements/colonies Israel established post 1967 in that area, such as *Nikodim* settlement/colony. From *Herodion* the visitor can have a view of Bethlehem, Jerusalem, the Desert or wilderness, the area of the Dead Sea, and the Jordanian Mountains. King Herod's palace- fortress includes water cisterns and complex tunnel systems. Lower *Herodion* is situated at the bottom of this palace- fortress, which includes gardens and a pool (this explains the Arabic name/ reference to it as *Jebel al-Furedis).* Josephus described it as being situated «on a hill, raised to a (greater) height by the hand of man […] At intervals it has round towers, and it has a steep ascent formed of two hundred steps of hewn stone. Within it are costly royal apartments […]»[80].

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[77] *Ivi*, 2, 13.

[78] In Arabic *Jebel* literally means 'a mountain' conveying (in this context), the meaning of a hill and *al-Furedis* means 'the garden, the fertile valley or Paradise'.

[79] In Hebrew *Har* means 'a mountain', and *Hordus* is the name for 'Herod'.

[80] John Wilkinson. 1 Josephus, Ant. XV, 324; War I, 419 and III, 5 in, D. JACOBSON, *The Design of the Fortress of Herodium*, in *Zeitschrift Des Deutschen Palästi-*

Herodion is administered by Israel Nature and Parks Authority (the authorities of the Occupying Power), is open to all visitors, and an entrance fee is collected. Herodion was nominated by Palestine in 2012 on the tentative list of World Heritage as part of the title *'El-Bariyah*: wilderness with monasteries. This wilderness forms part of Palestine's Desert known historically or biblically as Judean Desert. The overwhelming majority of this Desert is located in the remnants of the territory of historic Palestine that became known as the West Bank. As this wilderness includes several cultural property/(ies), it would have been better to treat/list them individually rather than grouping them collectively. Additionally, Palestine did not attach a map of this wilderness, and should have done so in order to mark where this area starts and ends, to give the reader some sort of visualisation. Despite that Palestine gave examples on the names of cultural property/(ies) located in this wilderness, it failed to present each one adequately. On top of that, the reader becomes muddled between Palestine's description of the wilderness and the cultural property/(ies) because of a lack of a bulleted or numbered list. Similarly, Israel has used an approach of grouping a number of sites distant from each other's in the tentative list e.g., Sea of Galilee & its Ancient Sites (Korazim, Capernaum, Tabgha)[81], and the Galilee Journeys of Jesus & the Apostles (Nazareth, travels via *Sepheris*, *Kafar Kana*, The Horns of *Hittin* and *Magdala*, around the Sea of Galilee and ending at Tiberias)[82].

As the *corpus separatum* map did not contain georeferencing, the author requested in writing information from the United Nations Geospatial section in April 2022 on whether Herodion was included in the *corpus separatum.* The Geospatial Information Section replied in writing in the same month that they are unable to provide the author with Geographic Information System (GIS) data or

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na-Vereins (1953-), 100, 1984, p. 127.

[81] The Galilee Journeys of Jesus & the Apostles, available at URL: *https://whc.unesco.org/en/tentativelists/1471/*.

[82] Sea of Galilee & its Ancient Sites, available at URL: *https://whc.unesco.org/en/tentativelists/1473/*.

shapefiles. After a basic and manual measurement of the area, the author concluded that Herodion is located outside the frontiers of the suggested *corpus separatum* (within the range of one and a half to two kilometres outside its south frontiers). Herodion is located in Palestine territory occupied by Israel in 1967. Therefore, with the exception of King Herod palace- fortress, all the above-mentioned titles of cultural property/(ies) or heritage in the City of Bethlehem or its province were included in the *corpus separatum.*

Consequently, the map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, has not listed King Herod palace- fortress because it was outside the range of the suggested boundaries of the *corpus separatum.* In addition, King Herod's palace- fortress is more of a historical place rather than a holy place. Even though an overlap may occur between holy and historical places, the definition of holy and historical places may open a Pandora's box. The location of King Herod palace- fortress shows that the struggle over cultural property/(ies) goes beyond the suggested boundaries of the *corpus separatum.*

4.2. *Jerusalem*

Jerusalem's height above sea level is a bit more than the City of Bethlehem and ranges between 780 to 825 meters. The City of Jerusalem has been associated with many names, e.g., Jebus, after the Jebusites who dwelled there[83]; Salem[84] and Zion[85] after Mount Zion, which is but one of its hills. In Hebrew, Jerusalem is known as *Urushalim* or *Yerushalayim,* which also has its roots in the name Salem. The name Urushalim is well documented in 2nd-millenni-

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[83] See Judges 19, 10; 1 Chronicles 11, 4; Joshua 15, 63, King James Version.

[84] Genesis 14, 18. See also Psalms 76, 2, King James Version.

[85] Psalms 76, 2, King James Version.

um sources[86]. Shalem (shulman) was the name of pagan deity[87]. In Hebrew, Aramaic and Arabic the terms *Shalom*, *Shalma* and *salam* mean peace respectively. Special mention should be made that Ur of the Chaldeans [Iraq] is the place where Abraham lived[88] before moving to the Land of Canaan. All the great celestial powers were worshiped by the Canaanites e.g., *uru*: light in *Uru-salim*[89]. In Arabic, *al-Quds* is the name for Jerusalem, which means 'the holy'.

The Old City of Jerusalem has four quarters Jewish, Christian, Armenian and Moslem. The Armenians are also Christians but affiliate themselves with a different ethnicity/denomination originating from Armenia. The old City of Jerusalem has seven open Gates, Damascus Gate (*Bab al-Amud*)[90], the Jaffa Gate (*Bab el-Khalil*)[91], Lions' Gate or the Gate of the Tribes or St Stephen's Gate (*Bab-el-Asbat*)[92], the Dung Gate (the Moroccan or *Mughrabi*[93] Gate), Herod's Gate (*Bab az-Zahra*)[94], Zion Gate, or Gate of the Prophet David (*Bab en-Nebi Daoud*) and New Gate (*Bad ij-Jdid*)[95]. In addition, the Old City of Jerusalem has other sealed Gates: Golden Gate (Mercy), the *Huldah* Gates (the Double and Triple Gates) and the Single Gate. The various different names for the Gates depend on the religious group and reflect different history narratives[96].

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[86] Helck, W. 1971 Die Beziehungen Agyptens zu Vorderasien im 3. und 2. Jahrtausend v. Chr. Wiesbaden, 1978, in A.F. Rainey, *The Toponymics of Eretz-Israel*, in *Bulletin of the American Schools of Oriental Research*, 1978, 231, p. 3.

[87] Yeivin, Zion, IX (1944), 53 and nn. 30 and 33, in S. Yeivin, *The Sepulchers of the Kings of the House of David*, in *Journal of Near Eastern Studies*, 7, 1948, 1, p. 40.

[88] See Genesis 11, 26-31, King James Version.

[89] L.B. Paton, *Canaanite Influence on the Religion of Israel*, in *The American Journal of Theology*, 18, 1914, 2, p. 210.

[90] In Arabic, *Bab* means 'a door or a Gate' *al-Amud* means 'the column'.

[91] In Arabic, *el-Khalil* is the name for Hebron, and it also means 'a friend'.

[92] In Arabic, *el-Asbat* means 'tribes'.

[93] In Arabic, *Mughrabi* means 'Moroccan'.

[94] In Arabic, *az-Zahra* means 'a flower'.

[95] In Arabic, *ij-Jdid* means 'new'.

[96] S. Goldhill, *Jerusalem: City of Longing*, Harvard University Press, Cambridge, 2008, p. 139.

The Old City of Jerusalem and its Walls (based on a proposal by Jordan) was inscribed as a holy City for Judaism, Christianity and Islam, on the World Heritage List in 1981. In addition, it has been inscribed since 1982 on the List of World Heritage in Danger in accordance with Article 11 (4) of the 1972 Convention[97]. During that time, Palestine was not part of the 'Vienna formula' and more so, the Government of the Palestine Liberation Organization' did not recognize Israel. The Old City of Jerusalem and its Walls is the only City on the List of World Heritage in Danger not nominated by its 'original' sovereign State.

As Jerusalem (both East and West) includes cultural property/(ies) or heritage, it would not be ideal for any of the sovereign States (Palestine over East Jerusalem or Israel over West Jerusalem) to list the City in the current divisions, but rather methodologically identify its cultural property/(ies) or heritage located within their boundaries under customary international law. There are cultural property/(ies) or heritage in the (i) Old City of Jerusalem (East Jerusalem) in the occupied Palestine territory such as the Basilica of the Holy Sepulchre, the Dome of the Rock and the Western Wall (ii) outside the Old City of Jerusalem within East Jerusalem or its suburbs in the occupied Palestine territory such as the Mount of Olives, its Churches and Sanctuaries, the Kidron Valley, Lazarus Tomb and the Church of Saint Peter in *Gallicantu* (iii) outside the Old City of Jerusalem within West Jerusalem i.e, within Israel's boundaries of 1949 such as the *Cenacle*, *Ein Karem* and *Liftah*.

Not only does Jerusalem have a unique cultural importance, but its centrality also possess a geographical significance not only pivotal to the whole territory of historic Palestine (that was put under the British mandate) but also to the geographical territory of the remnants of the territory of historic Palestine that became known as the

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[97] List of World Heritage in Danger, available at URL: *https://whc.unesco.org/en/danger/*, New Inscribed Properties 1981, available at URL: *https://whc.unesco.org/en/newproperties/date=1981&mode=list.*

West Bank[98]. Jerusalem is the connecting hub to the cities located to the south of it (such as Bethlehem and Hebron) to the Central or Northern cities (such as Jericho and Nablus) and *vice versa*[99]. Post 1967, Israel, in its capacity as an Occupying Power, annexed East Jerusalem and extensively transferred parts of its civilian population into that part of Palestine (East Jerusalem), where some one third of the Israeli settlers/colonists are currently living in settlements/colonies established thereof contrary to plain provisions of the Fourth Geneva Convention[100].

> «East Jerusalem is a term of convenience adopted by the international community and the United Nations which is understood to be that part of the occupied territory which Israel annexed (this means the old [C]ity of Jerusalem, the "no man's areas" of Jerusalem, various villages and towns from the governorate of Jerusalem and other areas administratively located within the boundaries of other governorates of the West Bank e.g. Bethlehem)»[101].

The Holy Places in Jerusalem have events or experiences associated with one or more of the three religions (Judaism, Christianity and Islam). The compilation of cultural property/(ies) and heritage

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[98] B. ALZOUGHBI, *The Relocation of the U.S. Embassy from Tel Aviv to Jerusalem (Palestine V. United States of America): A Commentary on the Merits of the Case, Jurisdiction of the International Court of Justice and Admissibility of Palestine's Application*, cit., p. 117.

[99] *Ivi*, pp. 117-118.

[100] Article 49(6), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV), 12 Aug. 1949, 6 UST 3516, 75 UNTS 287. The approximate numbers of the Israeli Jewish settlers/colonists in the occupied and annexed East Jerusalem is 215, 000. Israeli Central Bureau of Statistics, 2017, in Office of the European Union Representative (West Bank and Gaza Strip,), Six-Month Report on Israeli settlements in the occupied West Bank, including East Jerusalem (Reporting period July-December 2018). The numbers of the Israeli settlers in the other parts of the West Bank are 463,901 (by the end of 2019), the Yesha Council, available at URL: *http://myesha.org.il/?CategoryID=521*.

[101] B. ALZOUGHBI, *The Relocation of the U.S. Embassy from Tel Aviv to Jerusalem (Palestine V. United States of America): A Commentary on the Merits of the Case, Jurisdiction of the International Court of Justice and Admissibility of Palestine's Application*, cit., p. 118.

vignettes of Jerusalem and its province (also located within the suggested boundaries of the *corpus separatum*) are the Mount of Olives, its Churches and Sanctuaries, the Kidron Valley, Lazarus Tomb in Bethany, the route of Jesus Christ Triumphal entry into Jerusalem, the *Cenacle*, the Church of Saint Peter in *Gallicantu, Via Dolorosa*, the Basilica of the Holy Sepulchre, *al-Haram esh-sharif,* the Western Wall, *Ein Karem* and *Liftah*. The *Cenacle*, *Ein Karem* and *Liftah* are located in West Jerusalem, while all the rest are located in East Jerusalem or its suburbs, i.e., within Jerusalem province, and within the 1967 frontiers of the occupied Palestine territory. The com-

A general view of Jerusalem with some of its cultural property/(ies) including the Dome of the Rock , Domes of the basilica of the Holy Sepulchre in the Old City, as well as churches on the Mount of Olives including the church of Mary Magdalene and the church of *Dominus Flevit -* source: author

pilation of those cultural property/(ies) or heritage vignettes of Jerusalem is not an exhaustive list[102].

4.2.1. *Mount of Olives, its Churches and Sanctuaries*

The toponymy of the Mount of Olives in Jerusalem is traced to its olive groves, which apparently covered it more so in the past. Up until now, the visitor to the Mount of Olives can notice fewer but still ancient numbers of olive trees from the Roman era. Olive trees are not peculiar to the agriculture of Palestine, including the cities of Bethlehem and Jerusalem. Located towards the Eastern side of Jerusalem, the Mount of Olives offers a panoramic view of the City where it can also be viewed from many parts of the City itself. It was mentioned several times in the Bible, either in an explicit or implicit manner, and has therefore a religious and historical heritage. For example, in the Old Testament David fled to the Mount of Olives, where he wept, as a result of the rebellion led by his son Absalom[103]. The book of Ezekiel mentioned «the mountain east of it»[104], where the pronoun 'it' refers to Jerusalem. This simply avouches its current location. The Prophet Zechariah has mentioned the Mount of Olives in a prophetic manner predicting the split of the Mountain into two from East to West[105].

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[102] Other cultural properties of Jerusalem which deserves attention and were neither mentioned or covered in this research paper or tentatively listed by Palestine or Israel include: Pool of Bethesda [East Jerusalem], St. James Cathedral Church [East Jerusalem], Church of Saint Mark [East Jerusalem] Tomb of Simeon the Just/Righteous [East Jerusalem], The house of the High Priest Annas [East Jerusalem], Monastery of the Cross [West Jerusalem], Abu Ghosh village some 10 kilometeres to the West of Jerusalem [West Jerusalem].

[103] «[b]ut David went up the ascent of the Mount of Olives, weeping as he went, barefoot and with his head covered. And all the people who were with him covered their heads, and they went up, weeping as they went»: 2 Samuel 15, 30, King James Version.

[104] Ezekiel 11, 23, King James Version

[105] Zechariah 14, 4, King James Version.

In the New Testament, the four Evangelists Matthew, Mark, Luke and John recorded that Jesus Christ was a frequent visitor to the Mount of Olives[106], where he has also taught his disciples[107]. Jesus Christ wept when he saw the City of Jerusalem from the Mount of Olives[108]. The Roman Catholic church on the Mount of Olives, named in Latin *Dominus Flevit* (meaning Lord Wept), was constructed in the shape of a teardrop between 1953-1955, where parts of its ground floor contain Mosaics of the ruins of an original church from the seventh century.

In *Gethsemane*[109], at the western slopes of the Mount of Olives, Jesus Christ prayed three times[110] before he was betrayed by Judas Iscariot and arrested by the crowd sent from the chief priests and the elders[111]. The Garden of *Gethsemane* includes a Grotto that marks the site where Jesus Christ was apprehended. The grotto of Gethsemane marks also the exact place where Jesus Christ was betrayed by Judas Iscariot. Next to Gethsemane, and still on the Mount of Olives, there is the Church of 'All Nations' known also as the Basilica of the agony and contains a rock where it is believed that Jesus Christ had prayed there before his betrayal by Judas Iscariot and arrest. The Russian Orthodox Church known as the Church of Mary Magdalene is also located next to Gethsemane. On the Mount of Olives too, the Church of the *Pater Noster* was built on the site where Jesus Christ taught his disciples the Lord's prayer[112].

After his resurrection, Jesus Christ ended his journey on earth with his ascension to heaven from the Mount of Olives. The church or chapel of the Ascension is located on the Mount of Olives, where

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[106] See Luke 21, 37; Luke 22, 39; Matthew 26, 30; John 8, 1; Mark 14, 26, King James Version.

[107] See Mark 13, 3, King James Version.

[108] Luke 19, 41, King James Version.

[109] *Gethsemane* is a compound name of Semitic origin, in Hebrew and Aramaic, '*Gat Shemanei*', which means 'olive press'.

[110] Matthew 26, 36, King James Version.

[111] *Ivi*, 26, 47.

[112] See footnote 141 in relation to the Republic of France ownership of this Church or other churches.

it contains the site where Jesus Christ ascended into Heaven 40 days after his resurrection. Jesus Christ ascended to Heaven from the Mount of Olives while being surrounded by his disciples who watched him as he went up there[113]. The earliest church on this site was built between AD. 333 and AD. 378, which was damaged by the Persians in 614, and restored under the Byzantines in 630[114]. The church was again restored by the Crusaders early in the 12th century, and Saladin converted it into a mosque in 1198 and was almost completely destroyed about 1530; all that now remains is the aedicule, built by the Crusaders[115]. The Armenian, Latin and Orthodox Churches and Copts, Syrian Jacobites are allowed to have their masses[116]. Inside the aedicule there is a rock that marks the exact site where Jesus Christ ascended to heaven[117]. Outside (and adjunct to) the Sanctuary [Church] of the Ascension (which was already converted into a Mosque), a mosque with minaret was also built during *Salah ad-Din* era.

As has been earlier mentioned, the map issued by the United Nations of the Holy Places in Jerusalem Area marking the armistice lines shows the 'Mosque of Ascension' as one of the Holy Places for Moslems and 'the Sanctuary of Ascension' as well as the Mount of Olives as one of Holy Places for Christians where the *Status Quo* applies to the Sanctuary of Ascension. The site or Sanctuary of Ascension is still commonly known as the Church or Chapel of Ascension due to its origin and essential connection to Christianity, and is open to visitors who have access to Jerusalem. A small entrance fee is also collected from visitors.

The map issued by the United Nations of the Holy Places in Jerusalem Area marking the armistice lines, shows the cemetery on

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[113] See Acts 1, 9-12, King James Version.

[114] United Nations Conciliation Commission for Palestine Working, cit., p. 21.

[115] *Ivi*, p. 21.

[116] *Ivi*, p. 20.

[117] Cf. with Russian Orthodox Convent of the Ascension on the Mount of Olives.

the Mount of Olives as one of the Jewish Holy Places. The State of Palestine can identify/nominate the Mount of Olives, with its plenty of churches and sanctuaries, as one single unit and can nominate it on the tentative List of World Heritage.

4.2.2. *Kidron Valley- Zecharias' Tomb et al*

The Kidron Valley starts in the northern part of the City of Jerusalem and continues to the eastern side of the Old City, separating *al-Haram esh-Sharif* from the Mount of Olives. The Kidron Valley further descends into the desert, passing through the Monastery of *Mar Saba*, and ends at the Northern parts of the Dead Sea. Valley of Hinnom and the Kidron Valley seem to have been ancient burial-ground[118]. Kidron may be an ancient Greek word for κοιμητήριον [*koimeterion*] conveying the meaning of a cemetery, and may be a transposition of *riqdon* from the stem *raqad,* which means in Arabic to sleep[119] or rest[120]. A similar transposition in Assyrian, *diqaru* means pot and in Syriac *qidra* means black[121]. The Kidron Valley is associated with several events and narratives, including David crossing it when he was escaping the rebellion of his son Absalom[122], and Jesus Christ crossing it to go to the Mount of Olives[123]. The Valley of Jehoshaphat, or valley of decision, was mentioned in a prophetic manner[124] and has been interpreted to refer to Kidron Valley[125]. «The Valley of Jehoshaphat was the narrow glen which runs north and south between Jerusalem and the [M]ount of Olives, through which flows the Kidron. The name seems

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[118] P. HAUPT, *Hinnom and Kidron*, in *Journal of Biblical Literature*, 38, 1919, 1-2, p. 45.
[119] *Ibidem*.
[120] In Arabic, *Airqud bisalam* means 'rest in peace'.
[121] P. HAUPT, *Hinnom and Kidron*, cit., p. 47.
[122] See e.g., 2 Samuel 15, 23, King James Version.
[123] See John 18, 1, King James Version.
[124] Joel 3, 2 and 14, King James Version.
[125] Jaos 34, 412, in P. HAUPT, *Hinnom and Kidron*, cit., p. 46.

to be applied more particularly to the southern part of it, below the city»[126].

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem), marking the armistice lines, shows that the Tomb of Zechariah and other tombs in Kidron Valley are Holy Places for the Jewish. Zechariah was the father of John the Baptist. The other tombs located in the Kidron Valley are said to include Absalom's and Jehoshaphat. Yet the Old Testament records that Jehoshaphat rested with his ancestors and was buried with them in the City of David[127]. «[…] an unbroken tradition in favor of the location of the City David on S[outh]E[ast] [Summit], from the earliest times down to Josephus»[128]. The State of Palestine can identify/nominate the Kidron Valley tombs in Jerusalem or the Kidron Valley in general on the tentative list of World Heritage. However, '*El-Bariyah*: wilderness with monasteries' nominated by Palestine on the Tentative List of World Heritage include *Mar* Saba monastery which is actually located in Kidron Valley within the province of Bethlehem.

4.2.3. *Lazarus Tomb - Bethany*

Set-in a village some three kilometers from Jerusalem on its eastern side, Bethany was the hometown of Lazarus and his sisters Mary and Martha. Bethany was about fifteen furlongs from Jerusalem[129], which is a true reflection of its geographical position. In Aramaic Bethany means 'house of misery' and in Arabic *Bietania* where here again *Biet* means a house and *ania* comes from the verb *ana*, which means suffered. Bethany is most famous for Lazarus burial place

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[126] E. Robinson, *Dictionary of the Holy Bible: For the Use of Schools and Young Persons*, Crocker & Brewster, Boston, 1845[4], pp. 159-160.

[127] See 1 Kings 22, 50; 2 Chronicles 21, 1, King James Version.

[128] L. Paton, *Jerusalem in Bible Times: IV. The City of David*, in *The Biblical World*, 29, 1097, 4, p. 259.

[129] John 11, 18, King James Version.

'Tomb of Lazarus', where he was buried for four days before Jesus Christ raised him from the death[130]. The town has been re-named to *al-Eizariya*, after Lazarus, whose name in Arabic is *al-Eizar*. The visitor to Lazarus Tomb will enter through a small door and descent a spiral staircase to arrive at a landing of a small chamber; leading to another smaller chamber that contains the actual Tomb. The Franciscans built the staircase in the 16th century as the original entrance to Lazarus tomb is walled off.

As mentioned earlier, the map issued by the United Nations of the Holy Places in Jerusalem Area, marking the armistice lines, identifies Bethany as one of the Christian Holy Places, and Lazarus Tomb as one of the Moslem Holy Places. By the time of St. Jerome (A.D, 349-419), a church had already been built over Lazarus Tomb, and in 1134 Queen Melisande built an abbey a short distance east of the Tomb, which it fell into ruins after the capture of Jerusalem by Saladin in 1187[131]. Towards the end of the 16th century the remains of the ruins of the original church were converted into a mosque- Christians were forbidden to enter[132]. The Custos of the Holy Land were however able to obtain permission from the Ottoman Government to open a new entrance into the Tomb, which has ever since been available to the veneration of Christians[133]. The Custos of the Holy Land lists the Tomb as being used 'in common' – presumably by the Latin, Armenian and Greek Churches[134]. Lazarus Tomb is open to all visitors, and this could be interpreted as the *Status Quo*. The map issued by the United Nations of the Holy Places in Jerusalem Area is silent about any *Status Quo* to Lazarus' Tomb.

In addition to Lazarus Tomb, Bethany has the Stone of Meeting, the ruined Church of St. Lazarus (the House of Martha and

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[130] *Ivi*, 11, 38.
[131] United Nations Conciliation Commission for Palestine Working, cit., p. 10.
[132] *Ibidem.*
[133] *Ibidem.*
[134] *Ibidem.*

Mary and the adjoining ruins of monastery), the Monastery of Bethany and the House of Simon the Leper, the site of the departure for the triumphal entry into Jerusalem and the Monastery of Bethphage (Greek Orthodox)[135]. The Greek Orthodox Church of Bethphage is nearby the Monastery of Bethphage 'Franciscan Church of Bethphage' on the Mount of Olives. If the site of the departure for the triumphal entry into Jerusalem and the churches of Bethphage were considered administratively part of Bethany, then they should be included under Bethany town. Traditionally, Bethphage and Bethany were mentioned as two different but adjacent villages in the time of Jesus Christ.

Post 2002, Israel constructed a Wall where the town of Bethany '*al-Eizariya*' has been cut off from Jerusalem and is located to the East side of the Wall while the churche(s) of Bethphage are located to the West side of the Wall. Since Bethany includes several holy and historical places (Lazarus Tomb along with the other Holy Places) and is located within the frontiers of the 1967 occupied territory, the State of Palestine can identify/nominate them on the Tentative List of World Heritage.

4.2.4. *The Route of Jesus Christ Triumphal Entry into Jerusalem – Palm's Sunday*

Here is the story of Jesus Christ and his disciples approaching Jerusalem and coming to Bethphage and Bethany (on the Eastern side of the Mount of Olives)- the first has sent two of his disciples to the village to bring a colt[136]. As Jesus Christ was entering Jerusalem on colt, where the road goes down the Mount of Olives, the crowd shouted or chanted «[b]lessed is the king who comes in the name of the Lord!», «Peace in heaven and glory in the highest!»[137].

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[135] *Ibidem.*
[136] Matthew 21, 1-3; Mark 11, 1-7; Luke 19, 28-36, King James Version.
[137] Luke 19, 37-38, King James Version.

A very large crowd spread their cloaks on the road, while others cut branches from the trees and spread them on the road[138]. The Book of John mentions that those tree branches were palms[139]. Like olive trees, palms are not peculiar to the agriculture of Palestine, including Jerusalem and Jericho.

Jesus Christ triumphal entry into Jerusalem was seen as a fulfillment of the prophecy made by the prophet Zechariah in the Old Testament[140]. In present time, Palm Sunday (one week before Easter) is commemorated by Palestinian Christians and other Christians Worldwide by a procession with crowds holding Palm trees and/or other branches of trees starting from Bethphage through the Mount of Olives to the Roman Catholic Church of St. Anne's in the Old City of Jerusalem. The Church of St. Anne's (St. Anne is the mother of the Virgin Mary) and its site have been, since 1856, the exclusive property of the French Government[141].

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, did not identify the route of Jesus Christ Triumphal entry into Jerusalem as a Holy Place. However, since the original route of Jesus Christ Triumphal entry into Jerusalem is essential to Christian heritage and located in East Jerusalem, the State of Palestine can identify/nominate it on the Tentative List

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[138] Matthew 21, 8, King James Version.

[139] John 12, 13, King James Version.

[140] «[r]ejoice greatly, Daughter Zion! Shout, Daughter Jerusalem! See, your king comes to you, righteous and victorious, lowly and riding on a donkey, on a colt, the foal of a donkey»: Zechariah 9, 9, New King James Version.

[141] United Nations Conciliation Commission for Palestine Working, cit., p. 15. French President Emmanuel Macron demanded that Israeli security forces [part of the Israeli occupying force] to leave St. Anne Church during his visit to Jerusalem in 2020. Similarly, in 1996, France president Jacques Chirac refused to enter St. Anne's Church until the members of the Israeli armed forces had exited. In addition to St Anne Church which is located in East Jerusalem, the French Government owns the Church of the *Pater Noster* on the Mount of Olives, Benedictine monastery in *Abu Ghosh* (St Mary of the Resurrection Abbey) located in West Jerusalem and Tombs of the Kings are located in East Jerusalem. These cultural properties are of French national domain.

of World Heritage, even though an overlap occurs between Beth-phage, Bethany and the Mount of Olives.

4.2.5. *The Last Supper of Jesus Christ with his Disciples - the Cenacle*

In Latin Language *cenaculum* means dining room. In some of its descendant languages such as Italian *cena* is dinner from the verb *cenare*. The *Cenacle* commemorates several events that occurred (i) during the Last supper, (ii) post the arrest, crucifixion and death of Jesus Christ, (iii) post the resurrection of Jesus Christ and (iv) post the ascension of Jesus Christ to heaven.

Jesus Christ had the last supper with his disciples in Jerusalem, before his arrest, crucifixion, death and resurrection. Jesus Christ took bread and broke it (representing his body) and gave it to the disciples, and he took a cup [of wine] (representing the new covenant of his blood)[142]. This tradition of the last supper is practiced as the Holy Communion 'The Eucharist' by Christian tradition. During the last supper, Jesus Christ predicated that one of his twelve disciples would betray him (Judas Iscariot)[143] and further predicated that another disciple (Peter) would deny him three times before the rooster crows twice[144]. Eventually, Judas Iscariot betrayed Jesus Christ by receiving 30 pieces of silver[145], and Peter denied him three times. The event of the last supper witnessed also Jesus Christ pouring water into a basin and washing his disciples' feet and drying them with a towel[146].

The *Cenacle* (known also as the 'upper room' located on Mount Zion) witnessed two of Jesus Christ appearances after his resurrection[147]. In this context, the disciples of Jesus Christ were hiding in

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[142] 1 Corinthians 11, 23-25, King James Version.
[143] Matthew 26, 21, King James Version.
[144] Mark 14, 30, King James Version.
[145] Matthew 26, 15, King James Version.
[146] John 13, 5, King James Version.
[147] See *ivi*, 20, 19-26.

the upper room in fear of the Jewish leaders[148]. Therefore, the upper room commemorates the First Church and a resembles persecution of early Christians. It also commemorates the coming of the Holy Spirit on the disciples of Jesus Christ (the Pentecost)[149], after Jesus Christ ascension to heaven.

During the 4th Century a basilica was built on the site of the primitive church, and then was destroyed by Moslems and Jews in 966; rebuilt by the Crusaders in the 12th Century; and destroyed once again by the Sultan of Damascus in 1219 but the *Cenacle* itself escaped destruction[150]. In the early 14th century, it passed into the hands of the Franciscans until 1552, when it became under Moslem control[151]. The Monastery was inhabited until 1552, after the friars were chased out by the Ottomans (who converted the *Cenacle* into a mosque)[152]. The conversion of the *Cenacle* was motivated by a rumour originated in the eleventh century and circulated by the Jewish and then among the Moslems that the sanctuary contained the Tomb of the prophet David[153]. One oral tradition narrates that a beggar came to the door of the monastery asking for help, and, in revenge for being refused, circulated a rumor of the location of Tomb of David[154].

The collection of scripture readings reveals that during the Byzantine period, a memorial service for David and James the Less was held in the church of Mount Zion[155]. The tradition of David's

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[148] *Ibidem*.

[149] Acts 2, King James Version.

[150] United Nations Conciliation Commission for Palestine Working, cit., p. 15.

[151] *Ibidem*.

[152] St. Francis *Ad Coenaculum*, available at URL: *www.custodia.org/en/sanctuaries/st-francis-ad-coenaculum*.

[153] P. Edmond, *The Rights of the Catholic Church in the Holy Land*, in *Studies: An Irish Quarterly Review*, 14, 1925, 56, pp. 576-577.

[154] J. Hackenbroch, *A trip to Palestine and Syria*, Printed by the Richardson press, New York, 1913, p. 69.

[155] Le codex arménien Jérusalem, 121, Po 35, fasc. 1, no 163 (Turnhout 1964); PO 36 fasc. 2, no. 168 (Turnhout1971). In O. Limor, *The Origins of a Tradition: King David's Tomb on Mount Zion*, in *Traditio*, 44, 1988, p. 457.

Tomb on Mount Zion is sourced in the religious ceremony during the Byzantine period[156]. Of course, reading verses from the Psalms of David or having a memorial for him or one of the disciples of Jesus Christ [i.e, James the less] in the early church does not give evidence of identification of a place of burial. The reference in the Bible to David's death and his burial place is in the City of David[157].

> «After the destruction of Jerusalem the City of David was supposed to have lain on S[outh] W[est], where today the [T]omb of David is shown by Moselms; but there is no trace of this tradition before the fourth century A.D., and it is worthless over against the large body of ancient evidence in favor of S[outh] E[ast]»[158].

Post 1948, the *Cenacle* became under the control of Israel, and beneath it 'Tomb of David' was basically converted into a Synagogue. The Moslems first took control over the *Cenacle* and then followed by the Jewish after the establishment of Israel. The ownership of the *Cenacle* remains a matter of dispute between the Vatican and the Franciscans, on one part, and Israel, on the other part. The struggle over the *Cenacle* between the Franciscans and the Jewish is not as recent as 1948 (after the establishment of Israel) but dates back to many centuries ago. During the fifteenth century violent

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[156] O. LIMOR, *The Origins of a Tradition: King David's Tomb on Mount Zion*, cit., p. 462.

[157] «So David slept with his fathers, and was buried in the [C]ity of David»: 1 Kings 2, 10, King James Version. Cf. with Peter speech on the Pentecost: «[m]en and brethren, let me freely speak unto you of the patriarch David, that he is both dead and buried, and his sepulchre is with us unto this day»: Acts 2, 29, King James Version. The meaning of the preposition 'with' and the pronoun 'us' in Peter's speech should mean the City of David i.e., South East of the Old City of Jerusalem.

[158] L. PATON, *Jerusalem in Bible Times: IV. The City of David*, in *The Biblical World*, cit., p. 259. The *Cenacle* and the City of David are however not far from each other, within the range of about one kilometre.

clashes between the Franciscan monks and Jews living on Mount Zion occurred over the Tomb of David[159].

Israel has failed to list the *Cenacle* or the beneath of it (the allegedly or arguably the Tomb of David) on the tentative list of World Heritage, even though it listed other villages in West Jerusalem on the tentative list of World Heritage, i.e., *Ein Karem* and *Liftha* (as shall be demonstrated). This reflects a muddled position. Overall, the failure of identification/nomination of this specific cultural property 'the *Cenacle*' on the tentative list of World Heritage could be interpreted in more ways than one including, the failure to recount its Christian heritage and what it resembles of persecution of early Christians.

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, shows that the *Cenacle* as one of the Christian Holy Places. No *Status Quo* has been shown. The *Cenacle* is open to all visitors who have access to Jerusalem. Christians are not allowed to have liturgy inside the *Cenacle* but in contrast Jewish have the complete freedom for their prayers beneath it. But when Pope Francis visited Palestine and Israel in 2014, he has celebrated a Mass at the *Cenacle*. The *Status Quo* for the *Cenacle* under Muslim *waqf* was interpreted to be open to both Jewish and Christian[160]. The 'Franciscan Chapel of the *Cenacle*' is listed by the Custos of the Holy Land as being under the exclusive jurisdiction of the Latin Church[161]. As has been previously mentioned, the map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, shows that the Tomb of David is a Holy Place for the Jewish and Moslems.

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[159] O. LIMOR, *The Origins of a Tradition: King David's Tomb on Mount Zion*, cit., 454. See also the other sources listed by that specific author under footnote 3 of her research paper.

[160] C. EMMETT, *The Status Quo Solution for Jerusalem*, in *Journal of Palestine Studies*, 26, 1997, 2, p. 24.

[161] St. Francis *Ad Coenaculum*, available at URL: *www.custodia.org/en/sanctuaries/st-francis-ad-coenaculum*.

4.2.6. *Peter's Denial of Jesus Christ, Prison of the Latter and House of Caiaphas - the Church of Saint Peter in Gallicantu*

After Judas Iscariot betrayal, Peter denied his knowledge of Jesus Christ three times before the rooster crows (as the latter predicted)[162]. In the present time, the Church of Saint Peter in *Gallicantu* is located on the eastern slope of Mount Zion in Jerusalem. *Gallicantu* in Latin and Italian means cockcrow. In Italian and Latin *Gallina* is a Hen and *Canta* from the verb *cantare*, which also means to sing. In 1882, Comte Amedee de Piellat bought it with the adjacent ground, and in 1887 it became owned by the Augustinians of the Assumption, or the Assumptionists[163]. Under the ruins of a church or churches, the lead Archeologists P. Germer-Durand, and P. P. Étienne found a deep pit corresponding to the older testimonies concerning the cave into which Jesus Christ was thrown in the House of Caiaphas, after his arrest in the Garden of Gethsemane[164].

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, identifies the House of Caiaphas and Prison of Christ as Holy Place(s) for Christians, which are basically located under the Church of Saint Peter in *Gallicantu* (Church of Saint Peter in *Gallicantu* was not listed on the map numbered 229). The State of Palestine can identify/nominate the Church of Saint Peter in *Gallicantu* on the Tentative List of World Heritage

4.2.7. *Via Dolorosa – Stages or Stations of the Cross*

In Latin *mater dolorosa* is sorrowful mother and refers to Virgin Mary grieving over the pain, sorrows and suffering endured by her

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[162] Mark 14, 66-72, King James Version.

[163] R. BUTIN, *Christian Arachnology in Palestine*, in *Bulletin of the American Schools of Oriental Research*, 1927, 27, p. 8.

[164] *Ibidem.*

son Jesus Christ after his arrest. In Latin and some of its descendant languages such as Italian *dolor* is pain or sorrow. Therefore, Via *Dolorosa* translates into the road of the sorrowful or painful. *Via Dolorosa* is a small route comprising of a number of *vicoli* rather than a *via* or *viale*. It represents 14 stages or stations marking events in Jesus Christ starting from his trial (that resulted in his condemnation by Pontius Pilate in front of the Jewish chief priests and the crowd) until laying him in the Tomb after his crucifixion in Jerusalem. The 14 stages or stations are primarily based or traced to events that the Gospels recorded while few others are based on tradition.

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, shows the 14 stations of the cross (I to IX) as Holy Places for Christians. Since *Via Dolorosa* is located in East Jerusalem, the State of Palestine can identify/nominate those stages or stations of the Cross on the Tentative List of World Heritage, even though the last few Stages or Stations of *via Dolorosa* occur within or overlap with events located at the Basilica of the Holy Sepulchre.

4.2.8. *Crucifixion, Burial and Resurrection of Jesus Christ - Basilica of the Holy Sepulchre*

The Basilica of the Holy Sepulchre[165] was built over the sites that has witnessed the following events of Jesus Christ: arrival at the crucifixion site, crucifixion on the cross (known as 'Golgotha'[166] or 'Calvary'), death on the cross and taking his body down from the cross and placing it in the Tomb. Such events overlap with some of the stages or Stations of the Cross of *via dolorosa*. The resurrection of Jesus Christ marking the empty Tomb of his body after the third

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[165] The Basilica of the Holy Sepulchre is known in Arabic as *Kanisat al Qiyamah* which literally means 'the Church of Resurrection'.

[166] In Aramaic and Hebrew, *Golgotha* means 'a skull'.

day of his death could be added to the series of events that took place in the Holy Sepulchre.

In 313 A.D. Emperor Constantine acknowledged Christianity and he along with his mother, St. Helena made a journey from Constantinople to Jerusalem[167]. The original Church of the Holy Sepulchre was built by Emperor Constantine (over the crucifixion and burial of Jesus Christ). The work of construction began in 328, consecrated in 336[168]. It was then burnt when King Chosroes of Persia captured Jerusalem from the Romans in AD 614 and was partly rebuilt by the Byzantine Emperor Constantine X in A.D. 1048, and then rebuilt by the crusaders in A.D. 1149[169]. «The stone which so many thousands pilgrims kiss, is not the stone which tradition calls the Stone of Unction, that being buried beneath the present slab, which was placed here in 1810»[170].

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, shows the Basilica of the Holy Sepulchre as one of the Christian Holy Places where the *Status Quo* applies. The Latins, Orthodox and Armenian Churches share possessory rights in the Basilica[171]. The Copts and Syrian Jacobites also possess the right to hold religious services under certain conditions where the copts retain ownership of a small Chapel in the Basilica[172]. The Abyssinians hold a right to religious services during Easter Week and then only on the roof of St. Helena's Chapel[173]. The Basilica of the Holy Sepulchre is open to all visitors who have access to Jerusalem. Since the Basilica of the Holy Sepulchre is located in

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[167] G.T. ARMSTRONG, *Constantine's Churches*, in *Gesta*, 6, 1967, p. 4.

[168] *Ivi*, p. 55.

[169] United Nations Conciliation Commission for Palestine Working, cit., p. 14.

[170] J. HACKENBROCH, *A trip to Palestine and Syria*, cit., p. 43.

[171] United Nations Conciliation Commission for Palestine Working, cit., p. 14.

[172] *Ibidem*.

[173] *Ibidem*.

East Jerusalem, the State of Palestine can identify/nominate it on Tentative List of World Heritage.

Deir es-Sultan is situated on the roof of the Armenian Chapel of Saint Helena (in the lower level of the Basilica of the Holy Sepulchre). This given name/title of this convent '*es-sultan*' originates from the period of *Caliphate/es-sultan Abd al-Malik ibn Marwan*, who has granted ownership of this specific Convent to the Copts. This explains the association of this specific title '*es-sultan*' with this particular convent. *Deir es-Sultan* consists of a courtyard and a cluster of hovels occupied by Abyssinian monks under a Coptic guardian[174]. The Chapels of St. Michael and the Four Martyrs are attached to the Convent[175].

The possession of *Deir es-Sultan* is claimed by both Copts and Abyssinians (Ethiopians)[176]. The Copts hold that the Convent has always been their property, but that they hosted the Abyssinians out of charity when the latter were expelled from their possessions[177]. Regrettably enough, clashes between Ethiopian Abyssinian and Egyptian Coptic monks have occurred several times at the Convent of *Deir es-Sultan*, including in April 2022 over issues such as raising the Ethiopian Flag within the compound of this Convent. *Deir es-Sultan* became a source of conflict between Egypt and Ethiopia in Jerusalem. The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, identified *Deir es-Sultan* as one of the Holy Places for Christians where the *Status Quo* applies. Near the Basilica of Holy Sepulchre, the visitor can find the Russian Orthodox Church of Alexander Nevsky in East Jerusalem. Russia has demanded Israel (in its capacity as an Occupying Power) to restitute it to its control and ownership more recently in April 2022.

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[174] *Ivi*, p. 16.
[175] *Ibidem*.
[176] *Ibidem*.
[177] *Ibidem*.

4.2.9.   *al-Haram esh-sharif - the Dome of the Rock et al*

The compound of *al-Haram esh-sharif*[178] is located southeast of the Old City of Jerusalem (and within the old City) on Mount Moriah and includes a number of Islamic architectural structures, schools and Mosques, domes (e.g., al-Aqsa Mosque [with its grey or silver dome], Dome of the Rock [with its golden dome], *El-Marwani* Mosque, *al-Buraq* Mosque, Dome of the Chain, a museum, *al-Manjakiyah* school and *al-Ashrafiyah* school). *al-Haram esh-sharif* is often equated with al-Aksa Mosque and therefore the Dome of the Rock *et al.*, is considered part of al-Aksa Mosque. al-Aksa Mosque is the umbrella phrase for *al-Haram esh-sharif* compound even though its mosques and other structures have specific names.

al-Haram esh-sharif is also often equated with the Temple Mount because it is understood that the Jewish temple once stood there. The Jewish temple was first built by King Solomon (the son of King David) in Jerusalem on Mount Moriah[179]. It was subjected to destruction by the Babylonians. Then, Cyrus king of Persia, made a proclamation to allow the Jews to return from exile to Jerusalem and rebuilt the temple[180]. The Jewish people then returned to Jerusalem from Exile including Zerubbabel, Joshua, Nehemiah, Seraiah, Reelaiah, Mordecai, Bilshan, Mispar, Bigvai, Rehum and Baanah)[181] followed by Ezra[182] whom (along with others) had rebuilt the temple for the second time. Then Herod rebuilt /expanded the temple which was destroyed again by the Romans in A.D. 70.

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[178] *al-Haram esh-sharif* means 'Noble Sanctuary' in Arabic.

[179] 2 Chronicles 3, 1, King James Version.

[180] Ezra 1, 1-4, King James Version.

[181] Ezra: 2, 1-2, King James Version. See also: «[t]he hands of Zerubbabel have laid the foundation of this house; his hands shall also finish it; and thou shalt know that the Lord of hosts hath sent me unto you»: Zechariah 4, 9, King James Version.

[182] Ezra 7, King James Version.

The Dome of the Rock was built in the seventh century A.D by *Abd al-Malik ibn Marwan* i.e., many centuries after the destruction of the Jewish temple. It is built over a rock where the Moslems believe that their prophet Mohammaed journeyed from Mecca to Jerusalem[183] and then to heaven. While *al-Haram esh-sharif is* the site of the Solomon's temple, there is no definite Biblical reference to the Rock[184]. It is however not definitely determined if the Rock was also the threshing-floor of the Jebusite (2 Samuel 24, 15 and 1 Chronicles 21, 15), or if it was an ancient Canaanite Holy Place fitted by Solomon into the Jewish temple, or a *podium* which the alter stood (2 Chronicles 8, 12) or if it was the site where Solomon's consecrated the middle part of the courtyard in front of the temple (2 Chronicles 7, 7)[185]. It must be remembered that the ark of the covenant of the Lord was put unto its place, in the oracle of the house i.e., the most holy place (Holy of Holies)[186]. Mount Moriah is also the place where Abraham built an altar and arranged the wood on it when tested by God to sacrifice his son Isaac[187]. During the Crusaders period, the Dome of the Rock was converted into a Church. In 1969, parts of the compound of *al-Aqsa* Mosque was subject to arson. Security Council resolution 271 of 1969 condemned the act of arson[188].

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[183] «Exalted is He who took His Servant by night from *al-Masjid al-haram* to *al-Masjid al- Aqsa*, whose surroundings We have blessed, to show him of Our signs. Indeed, He is the Hearing, the Seeing»: Sahih International version of Quran chapter 17 (*sūrat l-isra*̄).

[184] O. GRABAR, *The Umayyad Dome of the Rock in Jerusalem*, in *Ars Orientalis*, 3, 1959, p. 38.

[185] H. SCHMIDT, *Der heilige Fels in Jerusalem*, Tubingen, 1933, p. 47. See also G. DALMAN, *Neue Petra-Forschungen*, Leipzig, 1912, p. III s., and esp. p. 137 ss.; J. SIMONS, *Jerusalem in the Old Testament*, Leyden, 1952, p. 344 ss. and esp. p. 381 ss., with full bibliography; A. PARROT, *Le temple de Jerusalem*, Neuchâtel and Paris, 1954, p. 7 ss.

[186] 1 Kings 8, 6, King James Version.

[187] Genesis 22, King James Version.

[188] The preamble of Security Council resolution numbered 271 of September 15, 1969 provides that «[g]rieved at the extensive damage caused by arson to the Holy Al-Aqsa Mosque in Jerusalem on 21 August 1969 under the military occupation of Israel, Mindful of the consequent loss to human culture».

The map issued by the United Nations of the Holy Places in Jerusalem Area (this includes the international area of Jerusalem) marking the armistice lines, has identified [*al-*]*Haram esh-sharif* (Mosque of Omar & Mosque of [al]-Aksa) as Moslem Holy Places. 'Omar's Mosque is located in the southerneast corner of [a]l[-]Qibly Mosque and is considered part of it. It is an oblong building that has two entrances: one in [a]l[-]Qibly Mosque, the other overlooking Al-Aqsa's courtyards. Today, part of the mosque is used as an emergency clinic[189]. Another Mosque is named after Omar 'Mosque of Omar' located in the Christian Quarter in Jerusalem, to the south of the Basilica of the Holy Sepulchre. The latter is outside the boundaries of the compound of *al-Haram esh-sharif* and is therefore not technically part of it.

The map issued by the United Nations of the Holy Places in Jerusalem Area did not mention any applicable *Status Quo* to [*al-*]*Haram esh-sharif;* however a *Status Quo* exists. Non- Moslems are not allowed to access the compound of *al-Haram esh-sharif* with the exception of pre-organized tours to its courtyard. Several Jewish groups of people however regularly enter *al-Haram esh-sharif* courtyards often through *Mughrabi* Gate (the adjacent Gate to Western Wall) under the protection of the Israeli army of occupation which has been a continued source of tensions. Ariel Sharon's visit to *al-Haram esh-sharif* in September 2000 in his capacity as the Prime of Minster of Israel was one of the reasons to spark the second Palestine uprising. The Moslems have well founded fear the State of Israel or Jewish individuals or groups impose a temporal and spatial division of *al-Haram esh-sharif*. Some Jews want to access *al-Haram esh-sharif* for prayers, others plan to rebuild the destroyed Temple[190], others aspire to blow the *shofar* and sacrifice goats. These speak volumes to the continuous and rising tensions. Since *al-Har-*

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[189] The Hashemite Fund for Building and Maintenance of the Blessed Aqsa Mosque, Department of Awqaf and Islamic Affairs, Jerusalem - Palestinian Academic Society for the Study of International Affairs, PASSIA, Jerusalem, *A Guide to Al-Aqsa Mosque Al-Haram Ash-Sharif*, 1st edition, January 2015, p. 11.

[190] See also C. EMMETT, *The Status Quo Solution for Jerusalem*, cit., p. 25.

am esh-sharif is located in East Jerusalem, the State of Palestine can identify/nominate it on the Tentative List of World Heritage.

4.2.10. *The Western Wall (the Wailing Wall) - Remnants of the Jewish Temple Re - built by King Herod*

The Western Wall is often equated with the Wailing Wall' because the Jews while praying, simultaneously weep and wail over the destruction of the Jewish temple. Some of the stones of the Western Wall date back to the remnants of the western exterior of the second Jewish temple re-built by Herod. After a few centuries, the Moslems named it '*al-Buraq*' Wall, and was incorporated into or became to constitute the southern side of the Western Wall of the al-Aqsa Mosque. It spans between the *Mughrabi* Gate towards the South and the *al-Tenkizia* School towards the North. For the Moslems, '*al-Buraq*' Wall and its surrounding area formed the *Maghribi* (Moroccan) Quarter and the property of *Abu Madyan al- Ghuth waqf*[191]. In Islamic belief, *al-Buraq*[192] is an animal that transported the prophet of the Moslems on his journey going up to heaven, commemorated in the event of '*Isra* and *Miraj*'.

The ownership of and access to the Western Wall was a source of conflict/tensions between the Moslems and the Jewish even before the establishment of Israel. On 23 September 1928, a dividing screen was affixed to the pavement adjoining the Western Wall, which was the subject of protest by *Mutawali* (guardian) of the *Abu Madian al- Ghuth Waqf*, where the dividing screen had been removed by the British police[193]. The disputes arose from Jewish demands to bring to the pavement in front of the Wall appurtenanc-

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[191] P. MATTAR, *The Mufti of Jerusalem and the Politics of Palestine 1928-29*, in *Middle East Journal*, 42, 1988, 2, p. 105.

[192] In Arabic, *al-Buraq* also means 'shining' from the verb '*baraq*'.

[193] Great Britain. Colonial Office, The Western or Wailing Wall in Jerusalem. Memorandum by the Secretary of State for the Colonies, London, H.M. Stationary Office, 1928.Cmd. (Great Britain. Parliament), 3229, p. 3.

es such as chairs and benches for the elderly, an ark, and a screen to divide men from women[194]. Objects such as ritual Lamps '*Hanukkah menorah*', the Shofars, Benches, Chairs, Mats, and dividing Screens have been used by Jews during their prayers and have become a source of tension in this specific property. The Moslems feared that the pavement would become an open synagogue and a Jewish property which would risk the access of the Moslems to their homes and for the most part *al-Haram esh-sharif*[195].

The 1928 Memorandum by the Secretary of State for the Colonies on the Western or Wailing Wall acknowledged that the Wall was Holy for Jews and Moslems[196]. The 1928 Memorandum has further acknowledged that the Wall is legally the absolute property of the Moslem community, and the strip of pavement facing it is a *Waqf* property[197]. The Status Quo was interpreted that the Jewish community had a right of access to the pavement for the purposes of their devotions but only could bring to the Wall appurtenances of worship, which were permitted under Ottoman rule[198]. The Western Wall is associated with the August 1929 revolt (named as the 1929 al-Buraq revolution) during the era of the British mandate. Later on, a commission of inquiry was formed in 1929, named as the 'Commission on the Palestine Disturbances of August 1929', known also as the Shaw Commission, after its chairman, Sir Walter Shaw and produced its report in 1930. The conclusions arrived by the Shaw Commission:

> «A. To the Moslems belong the sole ownership of, and the sole proprietary right to, the Western Wall, seeing that it forms an integral part of the Haram-esh-Sherif area, which is a Waqf property. To the Moslems there also belongs the ownership of the Pavement in front of the

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[194] P. MATTAR, *The Mufti of Jerusalem and the Politics of Palestine 1928-29*, in *Middle East Journal*, cit., p. 105.

[195] *Ibidem*.

[196] Great Britain. Colonial Office, cit., p. 3.

[197] *Ibidem*.

[198] *Ivi*, pp. 3-4

Wall and of the adjacent so-called Moghrabi (Moroccan) Quarter opposite the Wall, inasmuch as the last-mentioned property was made Waqf under Moslem Sharia Law, it being dedicated to charitable purposes. […] B. The Jews shall have free access to the Western Wall for the purpose of devotions at all times subject to the explicit stipulations hereinafter to be mentioned […]»[199].

As has been previously mentioned, the map issued by the United Nations of the Holy Places in Jerusalem Area, marking the armistice lines, has identified the Wailing Wall as one of the Jewish Holy Places where the *Status Quo* applies, and the same Wall '*al-Buraq*' transliterated on the map as [*e*]*l- Burak*, as one of the Moslem Holy Places. The *Status Quo* for the Western Wall was interpreted by the Palestine administration under the British mandate, as the Jewish Community had a right of access of the pavement in front of the Wall for their devotions, but that the Wall itself, the pavement in front of it, and the adjacent Moroccan Quarter, were Moslem property[200].

With the occupation of East Jerusalem in 1967, the Western Wall became controlled by Israel, including *Al-Tenkizia* School which parts of it was converted into a Synagogue and then a station for the Israeli Police or the Border Guards units. The big plaza in front of the Western Wall was the output of Israel's complete destruction of the Moroccan-Quarter in 1967. The Memorandum of 26 August 1967 Concerning the Measures Taken by Israel with respect to the City of Jerusalem, Submitted by Ruhi al-Khatib (Mayor of East Jerusalem who was then deported by Israel in 1968) mentioned that «[o]ne hundred and thirty-five houses in the Moroccan Quarter adjoining the Wailing Wall and adjacent

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[199] Report of the Commission appointed by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, with the approval of the Council of the League of Nations, to determine the rights and claims of Moslems and Jews in connection with the Western or Wailing Wall at Jerusalem December, 1930, Printed and published by His Majesty's Stationery Office, London, 1931.

[200] United Nations Conciliation Commission for Palestine Working, cit., p. 26.

to the two Mosques of Omar and Aqsa, have been dynamited and razed by bulldozers»[201]. This was accompanied by the destruction of two Moslem Mosques in the *Maghrabi* Quarter[202]. As a result of the destruction of *Maghrabi* Quarter, 650 Palestinian Moslems were forcibly displaced[203]. The destruction was extensive, without apparent military necessity and therefore contravened plain provisions of The 1899 and 1907 Hague Regulations[204] and the Fourth Geneva Convention[205]. The destruction was accompanied by appropriation of property and is motivated by reasons other than military necessity, i.e., religious reasons to make more space for Jewish worshipers and their appurtenance. A network of tunnels were digged under *al-Haram esh-sharif* and the Western Wall before the establishment of Israel in 1948, and also before it fell under Israel's occupation and during Israel's occupation. Those network of tunnels could not be adequately covered in this research paper and are beyond its scope. However, Israel archeologist activities under *al-Haram esh-sharif* and the Western Wall is seen as attempts to trace the destroyed Jewish temple and exercise ownership of at least beneath the compound of *al-Haram esh-sharif* and the Western Wall (apart

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[201] B. Memorandum concerning the measures taken by Israel with respect to the City of Jerusalem, submitted by Mr. Rauhi El-Khatib on 26 August 1967, available at URL: *www.un.org/unispal/document/auto-insert-205217/*.

[202] C. Message dated 24 July 1967 addressed to the Military Governor for the West Bank by Mr. Anwar El-Khatib and twenty-three other.

[203] See Memorandum concerning the measures taken by Israel with respect to the City of Jerusalem, cit.

[204] «Besides the prohibitions provided by special Conventions, it is especially prohibited […] (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war»: Article 23 (g), Hague Convention II with respect to the Laws and Customs of War (with Annexed Regulations) July 29, 1899. «In addition to the prohibitions provided by special Conventions, it is especially forbidden […] to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war»: Article 23 (g), Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

[205] Article 53, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV), 12 Aug. 1949, 6 UST 3516, 75 UNTS 287.

from the Western Wall itself). Since the Western Wall is located in East Jerusalem, the State of Palestine can identify/nominate it on the Tentative List of World Heritage with an overview of its historical and religious significance for the relevant religions.

4.2.11. *Ein Karem – Church of Visitation et al*

Set-in some 12 km South West of Jerusalem, *Ein Karem*[206] is one of the panoramic villages that has significant cultural property/(ies) and heritage. *Ein Karem* is believed to be the site of that hill mentioned in the Book of Luke where the Virgin Mary paid a visit to Elizabeth[207]. Therefore, tradition associates *Ein Karem* as the home of Zecharia and his wife Elizabeth and the birthplace of their son John the Baptist (accompanied by the Virgin Mary visit to Elizabeth). *Ein Karem* is the home of many churches and monasteries, including the Church of the Visitation (the Virgin Mary visit to Elizabeth), the Church of Saint John the Baptist, and the Monastery of Saint John in the Wilderness (some 4 km to the west of Ein Karem). *Beth Hakkerem* or transliterated *Bethhaccerem* was mentioned two times in the Old Testament of the Bible[208]. A neighbourhood to the East of *Ein Karem* (some 4 kilometers away) is currently named *Beth Hakkerem*.

Ein Karem was suggested to be part of the 1947 United Nations *corpus separatum* of Jerusalem. It was one of the villages that was inhabited prior to the establishment of Israel by Palestinian Christians and Moslems. The Palestinian population fled or were forced

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[206] In Hebrew and Arabic, *Ein* means both 'eye' and 'spring' [of water]. *keh'-rem* in Hebrew means 'vineyard' and *Khorum* is the plural of *khorm* in Arabic which similarly means 'vineyard' [of grapes].

[207] «[a]t that time Mary got ready and hurried to a town in the hill country of Judea, where she entered Zechariah's home and greeted Elizabeth. When Elizabeth heard Mary's greeting, the baby leaped in her womb, and Elizabeth was filled with the Holy Spirit»: Luke 1, 39-41, King James Version.

[208] Jeremiah 6, 1; Nehemiah 3, 14, cf. with the transliterations under King James Version and New International Version of the Bible.

to flee (expelled) as a result of the fighting and attacks. Israel nominated 'Ein Karem, a village and its cultural landscape' on the tentative List of World Heritage sites in 2015. In its Justification of outstanding universal value, Israel narrates the Christian heritage of the village and how this village was an Arab Palestinian village and again a Jewish one[209]. Israel has not however, mentioned how this village was depopulated of its native Palestinian population, who were also prohibited to return to their hometowns even though many of them took refuge just few kilometers away.

4.2.12. *Liftah- Nephtoah*

Set-in the Western side of Jerusalem (the Western entrance to the City of Jerusalem and on the main road between Jerusalem and Jaffa), *Liftah* village is located some five kilometers to the historic center of Jerusalem. It was historically or biblically known as *Nephtoah,* where it was associated with the spring of the waters of *Nephtoah*[210]. *Liftah* village has up until now a spring of water which made the agriculture of this Palestinian village flourish. *Nephtoah* toponymy originates from Semitic languages. For example, the verb open means *patach*, *nif'tach* in Hebrew. In the same way, in Aramaic *pthaḥ* means to open. Similarly, in Arabic *Fataha* means to open. *Liftah* was suggested to be part of the 1947 United Nations *corpus separatum* of Jerusalem Instead, it was depopulated by the Stern para-military[211] in 1947- 1948, before the establishment of Israel.

Israel nominated '*Liftah* (*Mey Naftoah*) - Traditional mountain village' on the Tentative List of World Heritage Sites in 2015. In its Justification of outstanding universal value, Israel narrates the following «[t]he only historic, intact Palestinian village. Due to its

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[209] Ein Karem, a village and its cultural landscape, available at URL: *https://whc.unesco.org/en/tentativelists/6062/*.

[210] See Joshua 15:9 & 18:15, King James Version.

[211] For more information about Stern paramilitary see e.g., Y.S. Brenner, *The 'Stern Gang' 1940-48*, in *Middle Eastern Studies*, 2, 1965, 1, pp. 2-30.

abandonment in 1948, as [a] result of historic events, it has never been re-occupied, or demolished, thus preserving in the most authentic way all the elements of a hilly, East Mediterranean village»[212].

Israel used the terms 'abandoned and never occupied' but failed to mention the mere truth on how the Palestinian owners of *Liftah* village fled and/or expelled and were further not allowed to return even though many of its owners or lawful possessors took refuge only a few kilometers away. The movable and immovable property of Palestinians who fled or were expelled from Israel and the occupied Palestine territory of 1967 were regulated by Absentee property law of 1950 and Military Order concerning Abandoned (Private) Property (West Bank) No. 58 of 23 July 1967. 'Abandoned' or 'Absentee' property is, broadly speaking Israel's euphemistic terms for the property of Palestinian refugees' who fled or were forced to the flee (expelled), and were then prohibited by Israel to return to their private property/(ies) even though some or many of them took refuge in the remnants of historic of Palestine. The Tentative List of World Heritage Sites nominated by Israel must not be used as a platform to obliterate history or injustices.

5. *Conclusion*

We have now a situation, whether we like it or not, of two sovereigns i.e., Palestine (over its occupied territory of 1967, including East Jerusalem) and Israel (over its territory of 1949, including West Jerusalem). Both States are parties to the 1972 Convention. While the first is still a member of UNESCO, the second (along with the US) have withdrawn from it. The reason for their withdrawal is the membership of the State of Palestine to UNESCO. The best suggestion at this point is that each State should follow their borders under customary international law and proceed

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[212] Liftah (*Mey Naftoah*) – Traditional mountain village, available at URL: *https://whc.unesco.org/en/tentativelists/6061/*.

in submitting inventories of their cultural or natural property/(ies), documentation about their location of the properties in question, their significance and the outstanding universal value in line with Article 11 of the 1972 Convention. This is important to do as the history of cultural property/(ies) has been subjected to destruction, rebuilding or conversion, often more than once.

The Palestine-Israel situation is not only about sovereignty over a territory but also about ownership of, access to and a denial of access to many of the cultural property/(ies) based on (i) religion or ethnicity or (ii) the divisional lines of 1949 (iii) occupation and annexation post 1967 coupled with the construction of the Wall and its associated regime post 2002. The title of this research paper primed the struggle of the two sovereigns (Palestine and Israel) over cultural property/(ies) has gone beyond them to include other States e.g., the Holy See, the Russian Federation, France, Egypt, Ethiopia and Jordan. It is also rooted in an inter-Christian conflict i.e, between the various Christian traditional denominations or churches, Christian-Jewish conflict, Christian-Moslem conflict and Moslem-Jewish conflict.

Rachel's Tomb, the Basilica of the Nativity, the Basilica of the Holy Sepulchre, Church of St Alexander Nevsky, the sanctuary of Ascension, the Tomb of Lazarus, the *Cenacle*, King David Tomb, the Western Wall to the name but few attest to this aspect of the conflict. The struggle over cultural property/(ies) in Bethlehem and Jerusalem are part of a wider struggle over cultural property/(ies) located elsewhere in the rest of Palestine, including the Cave of *Machpelah* that contains the Tomb of the Patriarchs (known also as *al-Haram al-Ibrahimi*), and the Russian Orthodox Monastery of the Holy Trinity (where the Oak of *Mamre*/Abraham's Oak is located within its compound) in the City of Hebron. Cultural property/(ies) or heritage, including the tombs or cenotaphs of our famous ancestors, has become a source of conflict and tensions instead of being a source of inspiration and meditation. The *Status Quo* served to palliate the conflict and tensions, but did not cure the root struggle.

Israel failure to identify/nominate the *Cenacle* (West Jerusalem) on the tentative list of World Heritage while its documentation of *Ein Karem* and *Liftha* villages (West Jerusalem) as sites identified/ nominated on the tentative List of World Heritage are questionable and muddled. First, it has failed to recount/reflect the Christian heritage of the *Cenacle* including the first Church and what it resembles of persecution against early Christians. Second, it did not narrate the historical injustices, or rather war crimes that accompanied the establishment of its State, which has also resulted to the fleeing or expulsion of Palestinians and further a prohibition of their rightful return back to their ordinary places of residence or private properties (e.g., *Ein Karem* and *Liftha*) based on a mixture of their ethnicity and religion i.e., Palestinian and non-Jewish, either Christians or Moslems.

Claudia Tubertini

THE COORDINATED PROTECTION OF UNESCO SITES: LIGHTS AND SHADOWS OF THE ITALIAN EXPERIENCE[*]

Abstract: The globalisation of cultural heritage law, and, as a consequence of it, the impact of UNESCO's treaties and activities, is increasingly evident in national cultural heritage systems. In Italy, however, the full achievement of the objectives of the Convention on the Protection of World Cultural Heritage has to face not only the variety of legal status of the asset involved, but also the fragmentation of powers between the various territorial levels which are responsible for the protection and enhancement of UNESCO sites and monuments.

The coordination of these leves, and between them and the private actors, plays a fundamental role in order to balance conservation and exploitation of the sites; in this perspective, a more stronger interpretation of the obligations deriving from the UNESCO Convention should lead to a widespread application of the collaborative method in this, so essential, material sphere, as it is now believed in other spheres of public intervention where constitutional rights are at stake.

1. *The multilevel character of the protection of UNESCO sites: the international perspective.*

According to the opinion of the majority, cultural heritage law nowadays constitutes an autonomous regulatory system in which the growing influence of the international dimension has generated important transformations on its structure, methods and tools. A first peculiar element of this system is the multilevel character of its rules: sources of international law, sources of European Union law, internal, national and sub-State rules are destined to coexist and intertwine, often generating quite a few problems of coexistence, starting from the very identification of the perimeter – wider or narrower –

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[*] Double-blind peer reviewed content.

of the subject of the regulation[1]. On the other hand, the affirmation of the unity and universality of culture and cultural heritage, according to the phenomenon that has long since been defined as the globalization of cultural heritage[2], has led to find forms of coexistence between the various institutions called, at different levels, to contribute to the realization of the objectives to which all the law of cultural heritage is oriented, and to try a difficult reconciliation between the primary objectives to which they are respectively intended: protection and enhancement; conservation and use.

It is in this context that the 1972 UNESCO Paris Convention on the protection of the world's cultural and natural heritage is placed, which counts Italy not only as a long-standing member State[3], but also as an important contributor, both in terms of financial support that of number of recognized and protected sites. It is to this Convention that we owe the introduction into the cultural heritage regulatory system of the innovative notion of *Cultural Heritage*, including monuments, sites and complexes (agglomerations) of both historical-cultural and naturalistic value, that member States are committed to identify, protect, preserve and valorize.

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[1] C. BARBATI, M. CAMMELLI, L. CASINI, G. PIPERATA, G. SCIULLO, *Diritto del patrimonio culturale*, il Mulino, Bologna, 2020, p. 25.

[2] A. BARTOLINI, *Beni Culturali*, in *Enciclopedia del diritto*, *Annali*, VI, Giuffrè, Milano, 2013, p. 107 ss., and *Il bene culturale e le sue plurime concezioni*, in *Diritto amministrativo*, 2019, p. 223 ss.; *La globalizzazione dei beni culturali*, edited by L. CASINI, il Mulino, Bologna, 2010; N. BASSI, *Il demanio planetario: una categoria in via di affermazione*, in *Rivista Trimestrale di diritto pubblico*, 2011, p. 619 ss.; R. CHIARELLI, *Profili costituzionali del patrimonio culturale*, Giappichelli, Torino, 2010.

[3] Among the many writings dedicated to the Convention, see *Protezione internazionale del patrimonio culturale: interessi nazionali e difesa del patrimonio comune della cultura*, edited by F. FRANCIONI, A. DEL VECCHIO, P. DE CATERINI, Giuffrè, Milano, 2000; *Le patrimoine culturel de l'humanité*, edited by J. NAFZIGER, T. SCOVAZZI, Martinus Nijhoff Publishers, Leiden-Boston, 2008; *The 1972 World Heritage Convention: A Commentary*, edited by F. FRANCIONI, Oxford University Press, Oxford, 2008; *La protezione internazionale ed europea dei beni culturali*, edited by A. CANNONE, Cacucci, Bari, 2014; *Tutela e valorizzazione del patrimonio culturale mondiale nel diritto internazionale*, edited by E. BARONCINI, BUP, Bologna, 2021; C. FORREST, *International Law and the Protection of Cultural Heritage*, Routledge, Abingdon, 2010.

This innovation has been fundamental for our internal law, traditionally anchored to an atomistic and circumscribed definition of the 'things' object of protection; equally innovative was, for our country, the qualification made by the Convention of Cultural heritage as a whole, in which artistic and natural assets coexist, thus anticipating by a long time the definition of Cultural heritage then adopted, internally, by the Code of culture and landscape of 2004.

On the other hand, the Convention itself recognized the sovereignty of the States in determining the internal policies and strategies for the implementation of its objectives, except for the commitment to abstain from deliberately adopting measures which could directly or indirectly damage the heritage of the humanity. The consequence of this 'State sovereignty' is that the qualification of an asset or complex of assets as 'World Cultural Heritage' does not change its legal status but obliges the adhering State to recognize that the asset thus identified constitutes a thing in whose protection the entire international community is called to cooperate (art. 6)[4]. On the other hand, it is up to the contracting States (art. 3) «to identify and delimit the different properties located on its territory and mentioned in articles 1 and 2», and from this delimitation both national and international obligations are imposed on them, in order to ensure the transmission of their cultural heritage to future generations; as enshrined in the Convention, it must in fact be the initiative of the State to ensure effective conservation and protection «by adopting a general policy that enhances the function of the cultural and natural heritage in collective life to integrate the protection of this heritage into general planning programs» (art. 5 letter a).

The second consequence of this acknowledged State sovereignty is that the international body primarily entrusted with the implementation of the Convention, i.e. the World Heritage Committee, doesn't have, at least formally, regulatory powers, being able only to adopt and update of so-called 'Operational Guidelines' for the

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[4] A.L. Tarasco, *Il patrimonio culturale*, Editoriale Scientifica, Napoli, 2019, p. 34.

regulation and management of the main application aspects of the Convention.

The result is a regulatory system in which, as it has been said, elements of international law and elements of domestic law are combined, forming the «multilevel statute of UNESCO assets». The requirements for the recognition as a property belonging to the World Heritage and the procedure for inclusion in the list belong to the first one; the definition of the objectives assigned to the signatory States; the powers of intervention of UNESCO and its bodies, while the forms of identification of Cultural Heritage remain to the latter, and, above all, the respective competences and powers of the national protection and enhancement administrations and the choice of suitable instruments for implementing the objectives of the Convention, including the organizational models[5].

These characteristics of the multilevel regulatory system for the protection of UNESCO sites have also been confirmed by Italian Constitutional Court which, called upon to verify the compatibility with the Convention of various provisions of the Code of Cultural Heritage and Landscape, ruled out that in our legal system UNESCO assets enjoy a separate protection, since, also due to their considerable typological diversity, they benefit from the differentiated forms of protection granted to cultural and landscape assets, according to their specific characteristics. Both the ultra-State interests, as well as the widespread interest of the entire world population in the conservation of the site, are concretely achievable only through the exercise of State legislative and administrative powers, and the free choice of the most appropriate measures (Constitutional Court, decision no. 22/2016)[6].

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[5] About the sovereignty of the State in choosing its administrative organization dedicated to the protection of UNESCO sites, see I.C. Macchia, *Il mantenimento dell'outstanding universal value dei siti Unesco: prassi internazionale ed italiana*, in *Tutela e valorizzazione del patrimonio culturale mondiale nel diritto internazionale*, cit., pp. 325-326.

[6] On the content of this decision, A. Guerrieri, *Corte Costituzionale e siti Unesco: quali tutele nel nostro ordinamento? Uno sguardo alla disciplina interna relativa ai beni patrimonio dell'Umanità,* in *Rivista Giuridica di Urbanistica*, 2016, 4, p.

On the basis of this model, therefore, the role of supranational institutions should be considered as merely subsidiary and complementary to that of the State, consisting in a monitoring activity, operational and financial support (through the World Heritage Fund) and in a moral suasion which does not allow direct actions on the assets included in the list, except for the extreme measure of the so-called 'delisting' (obviously conceived as a direct reputational sanction against the State, which however involves a withdrawal of the supranational institutions from intervening on those assets that it itself deems in greater danger)[7].

But in fact, it cannot be doubted that UNESCO's global action conditions the exercise of State prerogatives, just as, respectively, the same internal administrative activity affects the overall effectiveness of the protection planned at a global level, in a framework based precisely on the national application of standards and principles of global protection.

As it has been effectively underlined, «the supranational body that sets the standard, in the absence of its own structures, must necessarily resort to State and sub-State administrations to implement effective protection policies for individual sites and protect the interests of reference; the State and sub-State administrations that implement the individual measures exercise their powers within a framework of values and interests expressed at a supranational level, and adopt decisions characterized by a legal relevance that

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116 ss.; S. Mabellini, *La poliedrica natura dei siti Unesco sotto la lente della Corte Costituzionale*, in *Giurisprudenza Costistuzionale*, 2016, p. 146 ss.; M. Timo, *Il riconoscimento del centro storico di Napoli come patrimonio culturale mondiale non produce vincolo paesaggistico automatico*, in *Giustamm. Rivista di diritto pubblico*, 2018, 3.

[7] A broad debate has been developed about the intensity of UNESCO's powers, aimed at identifying possible ways to strengthen it. In particular, the Italian literature has supported the possibility of considering the violation of the UNESCO guidelines as an abuse of power, likewise the violation of guidelines adopted by the National Anti-Corruption Authority. On this point, see A. Guerrieri, *La tutela dei siti Unesco nell'ordinamento italiano, tra prospettiva interna e comparata,* in *Il diritto dell'economia*, 2019, p. 461 ss.

transcends the territorial area of reference and produces its effects on supranational law»[8].

It was, in particular, the concrete application of the Convention, and, specifically, the way in which the monitoring function has been interpreted and progressively implemented, which led to an increasingly stronger interpretation of the conservation obligations of the States, called on various occasions to modify, as a result of long and articulated consultations with the UNESCO bodies, decisions of particular importance as regards territorial planning or the development of infrastructures. In conclusion, «despite its limits and its variable and weak legal force, the UNESCO Convention places the signatory States in a system of individual and collective obligations, additional to those already assumed in the legal system to which they belong, vis-à-vis not only of the bodies of the Convention, but of the global community»[9].

2. *The perspective of domestic law: lights and shadows of the coordinated protection of UNESCO sites*

The direct conditioning powers by UNESCO on the choices of domestic law has undoubtedly been strengthened following the so-called Declaration of Budapest in 2002, with which the UNESCO World Heritage Committee has invited the Member States of the Organization to strengthen the initiatives for the protection of the World Cultural Heritage, encouraging the effective protection of the individual properties already registered (or whose registration is hoped for) in the World Heritage List, in order to ensure a balance of interests underlying the conservation and use of the various sites, relevant not only on a cultural level, but also on an economic and social level. In fact, it is from this Declaration that is a du-

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[8] A. Cassatella, *Tutela e conservazione dei beni culturali nei Piani di gestione Unesco: i casi di Vicenza e Verona*, in *Aedon*, 2011, 1.

[9] P. Chirulli, *Il governo multilivello del patrimonio culturale*, in *Diritto Amministrativo*, 2019, p. 706.

ty of each State the drafting of a management plan, the preparation of all the tools necessary for its implementation, as well as the commitment to publication of periodic reports on the degree of protection and implementation of the safeguards of the individual areas included in the UNESCO list. In practice, it has been established that periodic reports must contain, in addition to the description of the measures adopted, also a report on the 'state of conservation' of the property. After the presentation of the reports, the Committee analyzes the issues raised and can make recommendations to the States. The practice has then added to this ordinary control method also an extraordinary control (*Reactive Monitoring*) aimed at dealing with exceptional situations, and also inspection missions, in order to determine the conditions of the asset, the possibility of adopting corrective measures or to verify the effectiveness of those taken by the territorial State[10].

The provision was implemented in Italian legislation with the law n. 77/2006, entitled «Special measures for the protection and use of Italian sites of cultural, landscape and environmental interest, included in the list of world heritage, placed under the protection of UNESCO». With this law it has been envisaged that the elaboration of the Site Management Plan is not only necessary for the purpose of inscription in the World Heritage List, but also constitutes a mandatory endowment of the Sites that have already obtained this recognition from UNESCO, in order to guarantee a continuous protection and guardianship of these assets and raise the same standards of protection prescribed in the Budapest Declaration.

It is interesting to note how the law provides (art. 3, c. 3) that the «agreements between the public entities institutionally competent for the preparation of Management Plans and the implementation of the related interventions are reached with the forms and methods envisaged by the Code». The objective of the cooperation between different subjects (public and private, State, Regions and

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[10] On this point, see M. GESTRI, *Le grandi navi nella laguna di Venezia e la Convenzione Unesco del 1972*, in *Lo Stato*, 16, 2021, pp. 318-319.

local authorities) are therefore those of the realization of a necessarily 'integrated' management, where enhancement and protection are presented in an equal and mutually coordinated position in order to realize the common objective of the most efficient management of the site, in a perspective, therefore, almost reversed with respect to that assumed by the Code[11]. Moreover, the principles dictated by the Code concerning valorization are in favor of the cooperation between the various institutional levels, and for this scope provide consensual instruments between administrations (articles 102 and 112) mainly intended to achieve an integrated management of cultural assets, precisely searching for a real interaction between the activities carried out by the competent territorial bodies which can lead to the creation of unitary valorisation paths, to itineraries that can allow fruition to an ever wider public which, finally, favor a greater involvement of the subjects private both as potential operators and, also, as owners of goods to be used for public use (art. 104)[12].

Albeit in compliance with the principle of State sovereignty, it is therefore the need to provide each site with a 'management plan' that implies the necessary overcoming of the dichotomy between protection and enhancement, in order to create a program really oriented to the 'management', a term that evokes, in its literal sense, all those activities – such as within business contexts – necessary not only to keep all the assets in their state, but also to increase their production capacity[13]. Furthermore, this tool represents a reflection of the same broad meaning of Cultural Heritage adopted by the Convention: it is within the UNESCO sites that include entire portions of cities, historic centres, landscapes, where the need for a unitary management appears more evident, because it includes the

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[11] C. Vitale, *La fruizione dei beni culturali tra ordinamento internazionale ed europeo*, in *La globalizzazione dei beni culturali*, cit., pp. 177-178.

[12] C. Videtta, *Beni culturali nel diritto amministrativo*, in *Digesto. Discipline Pubblicistiche*, UTET, Torino, 2012.

[13] A. Guarnieri, *La tutela dei siti Unesco*, cit., p. 19.

need to protect the sites and to regulate the use of the territory and the daily life, social and commercial activities that take place there.

The same collaborative method, moreover, already appears to be a condition of the procedure for the recognition of the asset and its inclusion in the list: the presentation of the candidacy already calls into question all the subjects, public and private, who are then called to collaborate in the management plan.

Despite these undoubted positive elements, the weak juridical perceptivity of the Management Plan still constitutes the main limit of this instrument. In fact, the plans appear, as regulated by the aforementioned law 77/2006, and subsequently interpreted[14], mere programmatic acts intended to be implemented in subsequent conforming acts of the property. Article 3, paragraph 2, of Law no. 77 of 2006, in fact, on the one hand establishes that the strategic function of the Management Plans is to define the intervention priorities and the related implementation methods, as well as the actions that can be taken to find the necessary public and private resources, on the other side, outlines its coordination function to the extent that it defines the appropriate forms of connection with programs or regulatory instruments that have complementary purposes, including those governing local tourism systems and plans relating to protected areas. The Management Plans cannot therefore be considered as superordinate sources with respect to the other urban plans; the existence of a properly hierarchical relationship with respect to the urban and sectoral planning system must be excluded.

This nature of mere coordination of the management plan has also been confirmed by the administrative judge, who has on several occasions asked the national authorities to prescribe specific meth-

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[14] According to the Ministerial Guidelines (Ministero per i beni e le attività culturali, *Il modello del piano di gestione dei Beni Culturali iscritti alla lista del Patrimonio dell'Umanità: Linee guida*, 2004), the Management Plans are instead called upon to perform a mere coordination all other planning for a) maintaining the integrity of the values over time that have allowed the inscription to the World Heritage List; b) redefining and making compatible a local process shared by several subjects and authorities to combine protection and conservation with the integrated development of area resources.

ods of use to protect UNESCO sites, with the protection tools provided for by our legal system (such as the landscape plan)[15].

This application of the Management Plan in the internal legal system does not eliminate the fact that the obligation to adopt both for sites already registered in the World Heritage List, and for those heritages of exceptional value that are applying for registration, finds its source in a commitment that the Italian State has contractually assumed towards UNESCO. Therefore, the adoption of the Management Plan and the achievement of their objectives has a dual function, of fulfilling an international obligation and of protecting international interests on a local scale. If it is so, it is not clear why it was not definitely accepted the purpose, also advanced by the literature, of considering Management Plans like parameters of legitimacy interposed to be used by the judge called to review the legitimacy of the subsequent implementing acts[16]. In fact, the compliance with the management plan has allowed supranational institutions in some striking situations of endangerment of assets already included in the World Heritage List to carry out checks and to exert strong pressure on the States, effectively conditioning decision-making prerogatives formally reserved to national institutions and prompting them not to adopt urban planning and building solutions incompatible with the aforementioned plan[17].

Another characteristic of management plans is their atypical content, an inevitable reflection of the plurality of goods and actors

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[15] See for example TAR Lazio, Sez. II-quater, 29.5.2020, n. 5757.

[16] A. Cassatella, *Tutela e conservazione dei beni culturali nei piani di gestione dei siti Unesco*, cit.

[17] See the example of the historic center of Vicenza and the control actions undertaken by ICOMOS (International Council on Monuments and Sites), one of the three consultative bodies of UNESCO, which following a control visit suggested specific procedural requirements (such as the drafting of a 'Heritage impact assessment') completely new for the internal legal system (A. Cassatella, *Vicenza: un centro storico tra dimensione locale e sovranazionale*, in *I centri storici come parte del patrimonio culturale*, edited by M. Malo, il Mulino Bologna, 2019, p. 171 ss. On the central role assumed by the UNESCO consultative bodies, in particular with respect to the designation of sites, the control of compliance with the conservation and management of international assistance. see M. Gestri, *op. cit.*, p. 315.

that can be involved in them, but also a consequence of the lack of a complete legislative discipline and of the only broadly prescriptive nature of the Guidelines elaborated by UNESCO, which establish a merely list of possible contents of the plans[18]. The differentiation of contents primarily concerns the organizational structures set up for their implementation, their duration, and the effective periodicity of updating. The result is a variegated picture, which obviously leads to an equal variety in the effectiveness of the plans tested so far, also as regards the greater or lesser degree of involvement of citizens in their planning, monitoring and implementation[19]. Concerning this last profile, the different degree of development of the so-called 'shared administration of common goods', or 'co-administration' in the various territory of Italy seems to be determinant[20]. The provision of an office assigned to the collection, control and system verificabili of the management plans could certainly help to carry out an adequate comparison of experiences, implement the circulation of best practices and achieve better qualitative homogeneity of the plans.

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[18] G. Garzia, *Tutela e valorizzazione dei beni culturali nel sistema dei piani di gestione dei siti Unesco*, in *Aedon*, 2014, 2, which underlines that even the structure of the plan is not regulated, apart from the provision of any so-called 'buffer zones' necessary to connect the protected site with the area outside it, favoring the establishment of a protective framework for the site and which makes – under this specific aspect – the management plan similar to the planning system of protected natural areas.

[19] For the analysis of some management plans, see e.g. S. Marchetti, M. Orrei, *La gestione dei Siti Unesco di Villa Adriana e di Villa D'Este a Tivoli*, in *Aedon*, 2011, 1.

[20] About this theme see B. Accettura, *Politiche di valorizzazione e funzione sociale dei beni culturali. Pratiche di cittadinanza attiva*, in *Federalismi.it*, 2019, 16, p. 12 ss.; F. Donà, *Partecipazione e sussidiarietà nella valorizzazione dei beni culturali: strumenti disponibili e prospettive future, ivi,* 2020, 25, p. 57 ss.

3. *The influence of the distribution of competences in the field of cultural heritage on the protection of UNESCO sites: the need of a more coordination*

The reconstruction of the effectiveness of the system of protection of UNESCO sites in Italy must be completed without adding a few considerations on the current system of distribution of competencies in the field of cultural heritage in Italy, as well as deriving from the evolution of ordinary legislation and above all from the constitutional reform of 2001.

It has been seen that the very nature of UNESCO assets and the multiplicity of objectives that the Convention sets itself inevitably lead to a necessary coordination, first of all, between several administrations, as well as between public and private actors.

In the case of Italy, this need is even stronger as a consequence of the current constitutional division of competences which sees the State as holder of the exclusive legislative competence in matters of protection and the Regions in matters of valorisation. Added to this are the local authorities, which in relation to the assets they own have, on the basis of the consolidated orientation of the Constitutional Court, a duty of valorisation, just as the State continues to be assigned the task of valorising the assets it owns. Basically, after the Constitutional reform of 2001, a criterion based on types of goods was passed to a criterion based on types of functions (protection mostly as an exclusive State competence, enhancement as a regional concurrent competence), corrected on the basis of the ownership of the assets (enhancement to the State and local authorities for the assets included in its availability). For landscape goods, the significant regional and local role, combined with the State competence in matters of protection, still entails a necessary and complex co-management.

The Constitutional Court has underlined on several occasions the close and ontological interconnection between protection and enhancement due to the unitary nature of the needs they express (see, most recently, decision so. 140/2015), deriving from it the

necessary application of the principle of loyal collaboration between State and Regions.

The connection is not, moreover, only between protection and enhancement but also between these and other public policies, starting with those relating to the government of the territory and tourism. For the connection between the State and the territorial autonomies, at the moment, there are no dedicated organizational offices, other than the general ones represented by the so-called System of Conferences (State-Regions, State-City and Unified), which have now become the pivot of inter-institutional relations in our country and have long been the subject of proposals aimed at their reform [21]. From this point of view, we agree with those who have criticized the successful suppression of the Regional Commissions for cultural assets and activities, envisaged by articles 154 and 155 of Legislative Decree 11/1998 as consultative and propositional structures for the planning of valorisation and the failure to replace them with other organizational solutions suitable for ensuring the connection between State authorities structures and territorial autonomies[22].

This binary, if not tripartite system of competences (taking into account the important role of local administrations) has long been the subject of debate and proposals aimed at overcoming it, now in the direction of a more decisive recognition of regional and local competence, now in the sense of a re-centralization. In fact, two opposite dynamics collide: one of an ascending type (culture is increasingly global, the right to use cultural heritage is transformed, albeit with some difficulty, into a fundamental right unrelated to citizenship, with the relative primary competence of the State to protect it)), one of the descending type (for many cultural assets there is a strong rooting in the territory, with a consequent link with the community of reference, which founds and justifies the

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[21] About this point, see C. TUBERTINI, *Attualità e futuro del sistema delle Conferenze*, in *Diritto pubblico*, 2021, p. 650 ss.

[22] G. SCIULLO, *Patrimonio culturale e sviluppo delle istituzioni*, in *Declinazioni di patrimonio culturale*, edited by M. MALO, il Mulino, Bologna, 2021, p. 88 ss.

request for their local care and management; see the dynamics also underlying the already mentioned phenomenon of the so-called shared administration for the care of common goods)[23].

In the case of UNESCO assets, rather than the need to move towards a total centralization of the organizational structures – with a stroger public role in a organizational sense of the public interest underlying the Unesco protection – there is a need for effective coordination between the various local government bodies involved in management, in order to ensure full protection and balanced use of the site. Unfortunately, the fact that the lack of coordination can, if not prevent, at least delay the intervention of the State to protect the Unesco property has been evident on various occasions. The story of the passage of the so-called Grandi Navi in the Venice Lagoon, and the ban introduced by the State legislator only in 2021, after numerous and repeated invitations – and the threat of delisting – by the UNESCO Committee[24], have only made clear to the general public a problem that had already emerged in other, no less significant, situations.

According to their typological characteristics, UNESCO sites are cultural assets, landscape assets, environmental assets; sometimes they have only one of these characteristics, other times all three. The idea that binds UNESCO properties together – to which the level of protection provided for all humanity and future generations is common, as enshrined in the 1972 Convention – would instead require going beyond these distinctions. As a consequence of it, the system of protection and organization must be reformed in order to put them together[25].

On this point, an indication can be drawn directly from the Italian Constitution, which in front of the institutional pluralism outlined in the matter of cultural heritage (articles 117 and 118) and the dutifulness of the commitment required of all the articulations

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[23] This dual trajectory is highlighted by P. Chirulli, *op. cit.*, p. 701.

[24] On the reconstruction of this story, I refer again to M. Gestri, *op. cit.*, p. 322.

[25] A. Guerrieri, *op. cit.*, p. 30.

of the Republic (article 9), seems first of all to suggest the path of cooperation between public subjects, where it alludes (art. 118) to specific «forms of coordination between the State and the Regions» in the matter of the protection of cultural heritage. In fact, from this norm it is possible to obtain an indication of method, that is, collaboration as a necessary criterion of action in this sector, taking into account that in addition to the pluralism of competences there is the multiple belonging of cultural assets, the interweaving between cultural heritage policies and other public policies and the dislocation of these policies among various institutional actors. The fact that it is a requirement in practice that is still largely disregarded[26] does not exclude the need to proceed in this direction in any case. Moreover, the correct reading and interpretation of the obligations deriving from the UNESCO Convention should lead to a widespread application of the collaborative method in this, so essential, material sphere, as it is now believed in other spheres where constitutional rights are at stake[27].

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[26] G. Sciullo, *I beni culturali quali risorsa collettiva da tutelare - una spesa, un investimento*, in *Aedon*, 2017, 1.

[27] On the need to preserve our current articulated system of competences by strengthening the linkage mechanisms between the State, Regions and local authorities, allow me to refer to C. Tubertini, *Collaborazione necessaria e differenziazione responsabile: riflessioni sparse su emergenza pandemica e sistema plurilivello*, in *Istituz. Federalismo,* special issue 2020, p. 89 ss.

Chiara Notarangelo, Rebecca Rossetti

THE INCLUSION OF APULIAN OLIVE GROVES IN UNESCO AS GUARANTORS OF THE MEDITERRANEAN DIET*

Abstract: Humanity continues to show the need to preserve the results of its activities and the natural environment. Most of them have been collected in the so-called 'cultural heritage', which UNESCO recognizes as fundamental for the balanced interaction between humans and nature. The heritage is intended as universal and needs the commitment of State Parties, which will be responsible for their conservation. Especially the intangible ones, which undergo more risks, need a deeper analysis of a demanding commitment. One of these, the Mediterranean Diet (MD), strongly representing Italian culture, goes beyond the culinary concept and implies the conservation and respect of the primary products that compose it. Considering MD's staple food, Extra-Virgin-Olive-Oil (EVOO), our research focuses on the role of olive groves as guarantors of the intangible heritage, whose protection can be undertaken through the production of olive oil and the preservation of ancient olive groves. For a decade, olive trees have been facing a dramatic exsiccation due to the *Xylella fastidiosa*. In the long run, a decline in olive trees could undermine the uniqueness of EVOO and, consequently, negatively affect the MD. By using a holistic approach, we analyse the link between olive tree and MD by considering the Apulia region, which is well-known for its high-quality olive oil production and ancient olive groves. We conclude that Apulian olive trees are fundamental for the MD and, thus, could be an optimal instrumental tool for the preservation of the intangible heritage. Meanwhile, we deem it necessary to implement the quality of regional data, which are currently unrepresentative of the territory's variety heterogeneity.

1. *Introduction*

From the historical case of Abu Simbel temples until today, the safeguard of knowledge has always been the main objective of UNESCO. Indeed, in 1959 the international body launched a massive program of heritage protection which initially concerned Egypt,

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then involved other regions around the globe such as Venice (Italy), Moenjo-daro (Pakistan), and Borobudur (Indonesia), to raise awareness about the irreplaceable role of the natural and cultural heritage for humanity. November 16, 1972, marked a breakthrough for the global community: through the universal approval of the World Heritage Convention, the signatory states recognized the intrinsic value of the notion of 'heritage', hence guaranteeing its preservation over time[1].

The initial notion of world heritage included a range of tangible assets, namely natural sites, geological formations, urban agglomerations, and monuments. Their inestimable importance notwithstanding, these assets do not fully capture the concept of heritage. Indeed, a series of not-promptly-detectable factors exist, which rely on the cultural value assigned by the people, with the identification of the communities, related to the history, sense of community, knowledge of the territory, and traditions[2].

This context is always in mutation, mostly after the beginning of globalization, which exacerbated the gap between tangible and intangible goods, thus representing a serious threat to cultural identity[3]. Hence, at the beginning of the 21st century, the formal recognition of intangible assets became compulsory. On October 17, 2003, a further step forward was taken by UNESCO through the signature of the International Convention for the Safeguarding of the Intangible Cultural Heritage. Since the recognition of the 2003 Convention, UNESCO recognized more than 600 intangible heritages worldwide, from manual skills to popular activities.

In this sense, the Mediterranean Diet (MD), officially recognized by UNESCO since 2010, englobes a mix of values, traditions,

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[1] UNESCO, *Convention concerning the protection of the world cultural and natural heritage*, in *UNESCO (World Heritage Convention)*, 1972, Nov 16.

[2] B. KIRSHENBLATT-GIMBLETT, *Intangible heritage as metacultural production In M. International. Views and visions of the intangible*, in *Intangible heritage*, 56, 2004, pp. 52-65.

[3] J. SINGH, *Cultural Globalization and the Convention*, in *Globalization, Culture, and Development: the UNESCO convention on cultural diversity*, Palgrave Macmillan, London, 2015, pp. 29-42.

and culinary aspects. These elements culminate in knowledge and skills handed down from generation to generation by native people of the Mediterranean basin. MD reflects not only a culinary approach, but also a ritual of sharing, a moment of social exchange in which individuals gather at tables to enjoy simple, and uniquely tasting dishes[4]. In this regard, the first paper's evidence emphasizing the deep connection between oil and MD dates to the Renaissance. In 1614, Giacomo Castelvetro (1546-1616), a humanist from Modena who was forced to escape to England because of the Inquisition, noticed that the Anglo-Saxon diet was too rich in meat and poor in vegetables. He, therefore, decided to write a book on the roots, herbs and fruits that were typically used in Italian cuisine[5]. Indeed, MD is characterized by high consumption of vegetables, legumes, whole-grain flour-based ingredients, and modest portions of animal by-products[6]. All those ingredients are then agglomerated by the extra-virgin olive oil (EVOO), used as the main source of good fats.

EVOO is extracted from the fruits of the olive grove, a shrub that is present in Italy since the Roman Empire, and that can be found in its wild or cultivated form[7]. Within Italy, Apulia represents the region of the olive groves *par excellence*, not only in terms of olive oil production, being the first Italian region in terms of olive production, but also for cultural and historical purposes. Since the 19th century, the natives have developed a deep connection with such a tree, to the point of making it the undisputed symbol of re-

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[4] M. BONACCIO, L.IACOVIELLO, M.B. DONATI, G. DE GAETANO, *The tenth anniversary as a UNESCO world cultural heritage: an unmissable opportunity to get back to the cultural roots of the Mediterranean diet*, in *European Journal of Clinical Nutrition*, 76, 2022, 2, pp. 179-183.

[5] B. HABER, *The Mediterranean diet: a view from history*, in *The American Journal of Clinical Nutrition*, 66, 1997, 4, pp. 1053S-1957S.

[6] W.C. WILLET, F. SACKS, A. TRICHOPOULOU, *Mediterranean diet pyramid: a cultural model forhealthy eating*, in *The American Journal of Clinical Nutrition*, 61, 1995, pp. 1402S-1406S.

[7] P.S. GREEN, *A revision of Olea L. (Oleaceae)*, in *Kew Bulletin*, 57, 2002, pp. 91-140.

gional identity. Apulian olive groves thus encompasses two categories of heritage. On the one hand, a more tangible one being represented by the EVOO, and that generate economic prosperity in the rural areas and, therefore, within local communities; on the other hand, the cultural, historical, and environmental role behind ancient olive trees.

For more than a decade, the heritage embodied in the Apulian olive groves is however threatened by the *Xylella fastidiosa*, a pathogen coming from Central America *via* a coffee plant, and that rapidly managed to adapt to the olive groves plantations (and in particular Apulian ones)[8]. In a short time, the pathogens managed to pervade the region, hitting mostly the Southern part (the *Salento*), and withering olive trees to death. Consequently, EVOO production has shown a dramatic drop, which in turns led to a serious industry crisis: according to ISMEA, in 2019, the Apulian olive oil production has shown a decrease of 65%, and a rise in olive oil price by 40%[9]. The damage caused by *Xylella f.* has not only resulted in the closure of historic local oil mills, but also led to the death of centuries-old olive groves, thus threatening the intangible heritage embodied by the olive grove.

Considering the current state in Apulia, our work focuses on the cascading effect that a situation of such a kind could have on the uniqueness of the MD. In particular, we fear that a reduction in the number of olive groves, both centuries-old and for production purposes, will compromise olive oil production from a quantitative and qualitative point of view. In the long-run, MD could lose one of its fundamental features, thus risking its permanence on the UNESCO list of intangible heritage. Therefore, we suggest the inclusion of olive groves in the UNESCO list as an instrumental tool for safeguarding MD.

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[8] A. Sicard, M. Saponari, M. Vanhove, A.I. Castillo, A. Giampetruzzi, G. Loconsole, P. Saldarelli, D. Boscia, C. Neema, R.P.P. Almeida, *Introduction and adaptation of an emerging pathogen to olve trees in Italy*, in *Microbial Genomics*, 7, 2021, 12, p. 000735.

[9] Ismea, *Olio d'oliva - Scheda di Settore*, in *ISMEA Mercati*, 2019.

For the above-mentioned reason, our paper will focus on answering the following questions:

a. *What is the role of the olive grove in preserving the MD?*
b. *Why Apulian olive groves have a key role in preserving MD?*
c. *To what extent is Xylella threatening the preservation of MD?*

The paper will continue by giving a brief explanation of the site of interest, and the way in which olive groves' density distribution has witnessed changes after the arrival of *Xylella f.* Section two is dedicated at analyzing the value of Apulian olive groves, and the impact of the pathogen on the local communities and ecosystems. The final section is dedicated at emphasizing the role of the shrub on MD.

1.1. *Site of interest*

The area of interest is the Apulia region, which is located in the south-eastern part of Italy. Apulia is the main producer of oil at the national level[10] and it is entirely involved in oil production[11], as olive tree cultivations are spread all over the territory. The territory's morphological conformation, and in particular the karstification of the Apulian soil, allowed this species to easily fit into the local landscape[12]. As a result, every province is characterized by the presence of monumental olive trees[13].

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[10] Ismea, *Olio d'oliva - Scheda di Settore*, in *ISMEA Mercati*, 2021.
[11] It Olio, *La produzione di olio di oliva in Puglia*, in *ITOLIO, solo olio italiano*, 2022, *https://itolio.it/olio-pugliese/*.
[12] Puglia Sveva, *Di Puglia il cuore*, in *Puglia Sveva-Consorzio di tutela olio DOP terra di Bari*, *www.pugliasveva.it/images/allegati/Pubbl_tecnica_olio_IT_05_12.pdf.*
[13] L.R. n. 14/2007, *Tutela e valorizzazione del paesaggio degli ulivi monumentali della Puglia*, Art. 5 (*Approvazione definitiva e aggiornamento elenco ulivi monumentali anno 2017*).

The connection between the region with this natural element appears to be strong because of its value for the production, as ornamental resources, soil erosion regulation and the cultural heritage[14]. The evolution of agricultural economic activities always determined the characteristics of the landscape[15] and has strongly influenced the production of olive oil and in particular EVOO; indeed olive trees constitute the most symbolic component of the region[16] with over 60 million olive trees present in the area[17] (Figure 1). The differentiation between the just ornamental tree and the productive ones is not registered with accurate details because most of the trees of the first type are property of single farmers who do not trade the oil they produce. This shrub provides, on one hand, multiple environmental services and, on the other hand, the identity of the people living in this area[18] since the pre-Roman times[19]. Indeed, this landscape is the result of millenarian interaction between human and natural processes[20] in which olive trees are the protagonists, representing the heritage of the entire population at different levels. In

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[14] B. Ali, W. Van Der Werf, A. Oude Lansink, *Assessment of the environmental impacts of Xylella fastidiosa subsp. pauca in Puglia*, in *Crop Protection*, 2021, 142, p. 105519.

[15] T. Semeraro, E. Gatto, R. Buccolieri, V. Catanzaro, L. De Bellis, L. Cotrozzi, G. Lorenzini, M. Vergine, A. Luvisi, *How Ecosystem Services Can Strengthen the Regeneration Policies for Monumental Olive Groves Destroyed by Xylella fastidiosa Bacterium in a Peri-Urban Area*, in *Sustainability*, 13, 2021, 16, p. 8778.

[16] M. Saponari, A. Giampetruzzi, G. Loconsole, D. Boscia, P. Saldarelli, *Xylella fastidiosa in Olive in Apulia: Where We Stand*, in *Phytopathology*, 109, 2019, 2, pp. 175-186.

[17] A. Luvisi, E. Aprile, M. Sabella, F. Vergine, E. Nicolì, A. Nutricati, C. Miceli, L. Negro, L. De Bellis, *Xylella fastidiosa subsp.pauca (CoDiRO strain) infection in four olive (Olea europaea L.) cultivars: Profile of phenolic compounds in leaves and progression of leaf scorch symptoms*, in *Phytopathologia Mediterranea*, 56, 2017, pp. 259-273.

[18] B. Ali, W. Van Der Werf, A. Oude Lansink, *op.cit.*

[19] M. Primavera, C. D'Oronzo, L.M. Muntoni, F. Radina, G. Fiorentino, *Environment, crops and harvesting strategies during the II millennium BC: Resilience and adaptation in socio-economic systems of Bronze Age communities in Apulia*, in *Quaternary International*, 2017, 436, pp. 83-95.

[20] T. Semeraro, E. Gatto, R. Buccolieri, V. Catanzaro, L. De Bellis, L. Cotrozzi, G. Lorenzini, M. Vergine, A. Luvisi, *op.cit.*

more recent years, this aspect was recognized by the approval of the regional law No 14/2007 which protects and enhances the value of the monumental olive trees for the reasons listed above. The law promotes the olive grove landscape, their derivate products, and their meaning for the cultural life of the region[21].
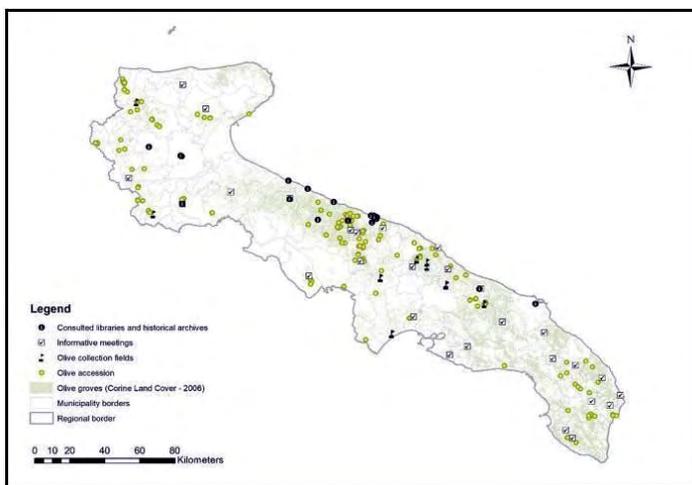

Figure 1 – Extension of olive groves in the southern Apulia region[22]

Regarding the monumental trees, they were extended for about 41% of the province of Lecce (southern Apulia) before the desiccation and death caused by *Xylella fastidiosa*, which appeared for the first time in the region 2013[23].

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[21] Puglia.Con, *Puglia.Con: la condivisione della conoscenza per il governo del territorio*, *http://sit.puglia.it/*.

[22] M.M. Miazzi, V. Di Rienzo, M. Isabella, C. Montemurro, S. Sion, W. Sabetta, G.A. Vivaldi Gaetano, S. Camposeo, F. Caponio, G. Squeo, G. Difonzo, G. Loconsole, G. Bottalico, P. Venerito, V. Montilon, A. Saponari, G. Altamura, G. Mita, A. Petrontino, V. Fucilli, F. Bozzo, *Re.Ger.O.P.: An Integrated Project for the Recovery of Ancient and Rare olive germplasm*, in *Frontiers in Plant Science*, 11, 2020, p. 73.

[23] T. Semeraro, E. Gatto, R. Buccolieri, M. Vergine, Z. Gao, L. De Bellis, A. Luvisi, *Changes in Olive Urban Forests Infected by Xylella fastidiosa: Impact on Microclimate and social health*, in *Sustainability*, 16, 2019, 15, p. 2642.

The *Xylella f.* is an invisible bacterium (only two millimeters long), highly infectious for more than 600 plant species and was first discovered in 1987 by US scientists on Californian grape-vines[24]. *Xylella f.* does not directly travel from one tree to another, but is transported by a cicada (four millimeters) (Figure 2), that sucks on the wood with its proboscis and carries the bacterium. Once a tree is infected, there is no solution for its life because water and nutrients can no longer be transported into the branches. The tips on the leaves are the first sign of an infected plant, but there are many cases of infected trees with no symptoms for a long time.
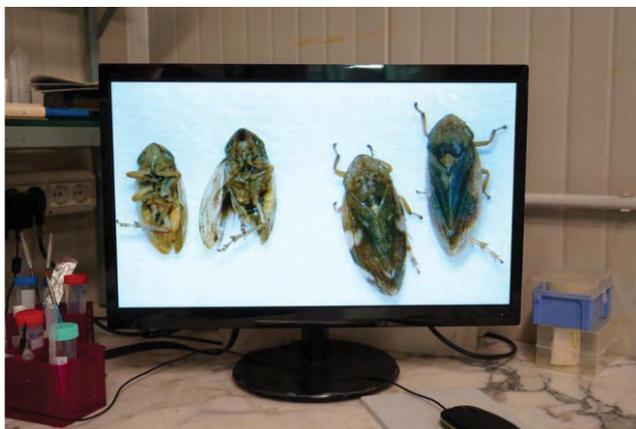
Figure 2 - © Cara Westerkamp / Claudio Rizzello

Xylella f. generates changes starting from the 2009 and has more or less constant behavior after 2010 without substantial variation[25]. This is a symptom of a static situation, no moving to the recover and restore the previous environment neither to transform the dy-

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[24] J.M. Wells, B.C. Raju, H. Hung, W.G. Weisburg, L.Mandelco-Paul, D.J. Brenner, *Xylella fastidiosa gen. nov., sp. nov.: gram-negative, xylem-limited, fastidious plant bacteria related to Xanthomonas spp.*, in *International Jorunal of Systematic and Evolutionary Microbiology*, 37, 1987, 2, pp. 136-143.

[25] T. Semeraro, E. Gatto, R. Buccolieri, M. Vergine, Z. Gao, L. De Bellis, A. Luvisi, *op.cit.*

ing olive groves. Slow progress and replacement of infected plants is started only in the last year with the support of local associations and individuals that attempt to save the historic aspect of the landscape. What can be derived from this event is that the social and ecological systems have to build more resilient landscapes, also more responsive to phytosanitary epidemics and adapt to ecological processes, sometimes uncontrolled[26].

The economic effects of this bacterium will be discussed further in the next paragraph, but it can be anticipated that the production of EVOO is in crisis and the loss of olive trees is resulting in a completely different economy which is driving a huge change in the previous landscape.

2. *The importance of olive groves in Apulia*

2.1. *Economic perspective of Apulian olive trees and olive oil production*

According to ISTAT, the context of the study is dominated by a strong relationship between the land use and the plant disease[27]. Until the year 2012, Apulia region still conserves the 43% of the half-century olive trees on the national level, covering a surface of 299,215 hectares, and corresponding to the 36% of olive production at national level, accounting for 11.332.400 quintals (Table 1). The olive oil production of Apulia embeds the 8.5% of the EU one and more than 10% of the EU organic olive surface[28].

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[26] T. Semeraro, E. Gatto, R. Buccolieri, V. Catanzaro, L. De Bellis, L. Cotrozzi, A. Luvisi, *op.cit.*

[27] M. Ciervo, *Le comunità locali e il processo di salvaguardia del territorio. Il caso del Salento durante e dopo la cosiddetta "emergenza Xylella"*, in *Placetelling. Collana di Studi Geografici sui luoghi e sulle loro rappresentazioni*, 2019, 2, pp. 139-154.

[28] R.S. Mohamad, M.R. Bteich, G. Cardone, A. Marchini, *Economic analysis in organic olive farms: the case of the ancient olive trees in the rural parkland in Apulia*, in *New Medit: Mediterranean Journal of Economics, Agriculture and Environment* (and *Revue Méditerranéenne d'Economie Agriculture et Environment*), 12, 2013, 4, p. 55.
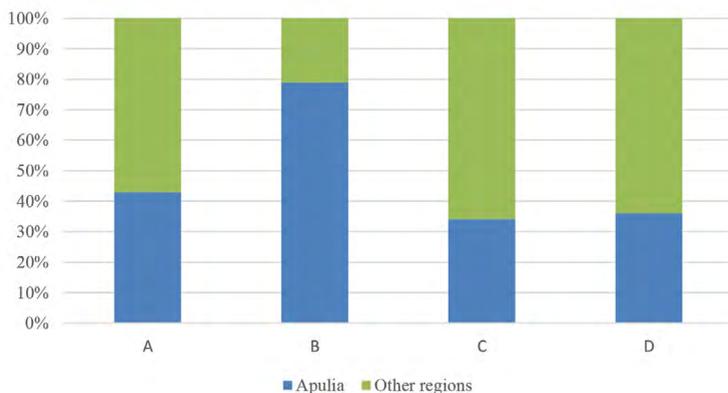
Table 1 - the surface (hectares) with half-century olive trees on the national level (A) and on the regional level (B); the surface (hectares) with the olive trees (C); the olive total production (quintal) on the national level (D). Source: (M. CIERVO, *op. cit.*)

This prosperous setting, related to the Apulian agricultural sector, and especially the southern provinces, is typified by a high degree of corporate fragmentation[29]. Such a characteristic is also found in the area of olive oil and EVOO production, which constitutes a problem for the consideration they assume outside the region. A significant part of olive crops and oil production is predominantly managed by small to medium-sized and they are associated with family-based agriculture activities and family-run enterprises[30], which induce extreme negative implications to the entire local economy (and not only to olive producers and olive industry) in case of emergencies such as economic crisis, natural vectors, or extreme climate conditions[31].

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[29] G. MAGGIORE, T. SEMERATO, R. ARETANO, L. DE BELLIS, A. LUVISI, *GIS Analysis of Land - Use Change in Threatened Landscapes by Xylella fastidiosa*, in *Sustainability*, 11, 2019, 1, p. 253.

[30] FRANTOI ONLINE, *Olio DOP zone di produzione Italia, 2022*, in *FrantoiOnline.it*: *www.frantoionline.it/dop-e-igp/olio-dop-zone-di-produzione.html.*

[31] M.SAPONARI, A. GIAMPETRUZZI, G. LOCONSOLE, D. BOSCIA, P. SALDARELLI, *op.cit.*

As a matter of fact, the monumental trees were extended for about 41% of the province of Lecce (southern Apulia) before the desiccation and death of 21 million trees and the devastation of 8000 square kilometers of olive groves[32], caused by *Xylella fastidiosa* starting in 2013. This provoked a sharp decrease in biodiversity components and cultural services as it is reported in Table 2.

Percentage reduction in biodiversity components and cultural services' provision due *Xylella fastidiosa* invasion		
Biodiversity components	Short-term	Long-term
Genetic diversity	31,1	46,2
Native habitats, communities, and ecosystem diversity	40,2	55,5
Habitats of high conservation value	45,7	70,6
Biodiversity components (overall)	37,7	54,2
Cultural services	Short-term	Long-term
Cultural heritage	50,9	75,5
Recreation and ecotourism	50,3	78,8
Aesthetic values	62,2	80,8
Cultural services (overall)	51,4	73,5

Table 2 - Percentage reduction in biodiversity components and cultural services caused by *Xylella fastidiosa* (Source: B. ALI, W. VAN DER WERF, A. OUDE LANSINK, *op.cit.*)

As the environmental services provided by olive trees and centenarian olive trees diminish by 34% and 30% in the short and long time[33], also, the production of EVOO is suffering. Indeed, many newspapers are alarming the serious condition for the local econo-

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[32] COLDIRETTI, *Xylella avanza di 2km al mese, strage di 21 mln di ulivi*, May, 15 2019, *www.coldiretti.it/economia/xylella-avanza-2km-al-mese-strage-21-mln-ulivi.*

[33] B. ALI, W. VAN DER WERF, A. OUDE LANSINK, *op.cit.*

my, in particular in the province of Lecce, where the oil campaign of the year 2019-2020 has endured a collapse of the 90% with respect to the years before, with the historical low of 5295 tons[34]. This happens also because the olive tree species named *Cellina* and *Ogliarola* have reset the production.

The second regional law No. 54/2013, in addition to the already cited one, was emanated also with the intention to propose the olive oil from ancient olive trees in the very competitive market of olive oil in the Mediterranean region, thus the southern province of Puglia accounts for about 40% of Italy's olive oil production and it is the major producer for the regional economy[35]. But the proliferation of vector-borne pathogens has affected the production which decreased exponentially 43% by 2020 with an estimated economic damage of 1.2 billion euros, and around 400 farms in bankruptcy.

In addition, the radical division among small producers has always not influenced stakeholders to collaborate and finance specific investments[36]. In fact, if on one hand, this aspect reveals the strong connection between product and producer from what concerns the traditional practices, on the other hand it slows the gain of market shares[37]. To compensate this gap, in May 2017 the regional government arranged between 188 and 261 euros per olive tree felled addressed to olive farmers[38].

The fragmented framework implies a lack in the collection of data and, in particular, disaggregated data for the typology of oil, which does not allow to have a full perspective of the Apulian context. Indeed, there exist no precise data collected at a local and regional lev-

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[34] *Xylella, allarme Coldiretti: 'A Lecce 90% di olio in meno, frantoi pronti a chiudere'*, in *La Gazzetta del Mezzogiorno*, September, 12 2019, *www.lagazzettadelmezzogiorno.it/news/lecce/1171911/xylella-allarme-coldiretti-a-lecce-90-di-olio-in-meno-frantoi-pronti-a-chiudere.html*.

[35] L.R. n. 12/2013, *Integrazioni alla legge regionale 4 giugno 2007, n. 14 (Tutela e valorizzazione del paesaggio degli ulivi monumentali)*, in *Bollettino Ufficiale della Regione Puglia*, n. 54 of April, 17 2013.

[36] ISMEA, 2021, *op.cit.*

[37] R.S. Mohamad, M.R. Bteich, G. Cardone, A. Marchini, *op.cit.*

[38] Coldiretti, *op.cit.*

el that permits conducting in-depth research. The official data comes exclusively from the ISTAT (the national statistical institution) but they are too general to provide which is the process ongoing in the region. The graph below demonstrates the decrease in the production of the olive oil in Puglia; however, it does not show which kind of oil it refers to because the data are not available (Table 3).
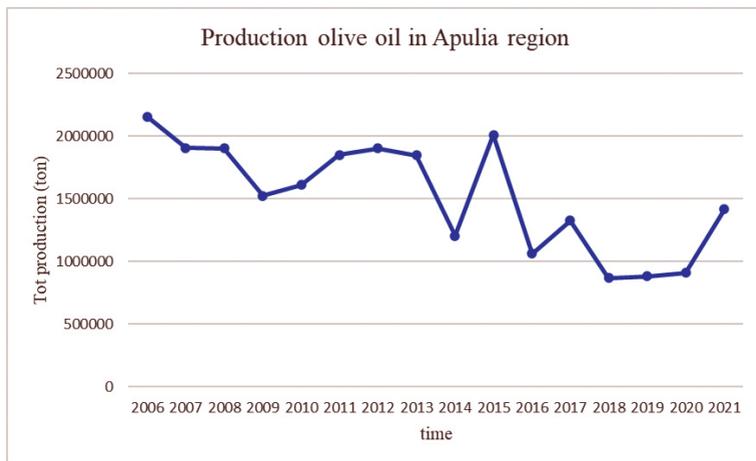

Table 3 - Production of Apulian oil 2006-2021 (Source: ISTAT, 2022)

Professor Alessandra Gentile, from the University of Catania, states that the context of olive growing at the national and regional level needs a harmonization of the information related to this sector, a delimitation of the PDOs and an integration of cartographic works. The cultivation system must be safeguarded to guarantee the oil production and its varieties; nonetheless, this sector endures the lack of knowledge based on reliable and univocal data which will be useful to implement the techniques and the results, as well as to organize and aggregate the supply chain[39].

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[39] F. BARTOLOZZI, *Olivemap, la crescita dell'olivicoltura passa dal digitale*, in *Olivo e Olio*, 2020, *https://olivoeolio.edagricole.it/oliveto-e-frantoio/olivemap-la-crescita-dellolivicoltura-passa-dal-digitale/#:~:text=Una%20base%20dell'olivicoltura%202.0,per%20qualsiasi%20politica%20di%20settore.*

Other vulnerabilities derive from a series of factors, such as the risk of the emergence of new and intensive olive growing models (dense presence of plants, irrigation, integral mechanization of harvesting and pruning), the fragmentation of the historical landscape due to widespread urbanization and road infrastructure, the recent transformation of traditional cultivation olive groves in other crops, even with the establishment of greenhouses.

As a consequence, the evident loss, in terms of production mounted for 117,477 tons of olive oil in Puglia until 2020 and, with the rising of the reasons aforementioned, dropped by 49%[40]. Nevertheless, the European Union recognized the quality of Puglia's oil by giving 40% of the total certification to Italian brands, mainly concentrated in Puglia. The EVOO PDO in the territory, which demonstrates the quality production connected to the historical landscape, is mentioned in the regional law No. 14/2017 as obtained 'from secular olive trees of Puglia'. To encourage this sector, EU co-financing in the phytosanitary field can be granted for the implementation of surveillance programs, eradication, and containment campaigns under Regulation (EU) N. 652/2014[41-42].

One more incentive from the regional government comes on the 7th of January 2021 that published a public notice for encouraging the adoption of damage prevention measures from *Xylella f.* towards the monumental olive trees surveyed and recognized by the Puglia Region on the basis of regional law No 14/2007[43]. Unfortunately, this incentive has some limits, for example the loss of income due to loss of production is not recognizable, nor it can be combined with other support instruments, and the available amount of 4,950,000

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[40] ISMEA, 2021, *op.cit*

[41] *Regolamento (UE) N. 652/2014 del Parlamento Europeo e del Consiglio del 15 maggio 2014*, in *Eur-Lex*, 2014.

[42] European Commission, *Cos'è la Xylella fastidiosa?*, in *EU Website*, https://food.ec.europa.eu/plants/plant-health-and-biosecurity/legislation/control-measures/xylella-fastidiosa-it_en.

[43] G.F. Sportelli, *Xylella, bando per interventi di salvaguardia degli olivi monumentali in Puglia*, in *OlivoeOlio*, 2021, https://olivoeolio.edagricole.it/normativa-2/xylella-bando-per-interventi-di-salvaguardia-olivi-monumentali-in-puglia/.

euros is enough for the intervention over only the 9-12% of the entire registered olive grove heritage[44].

Although the census of secular olive trees, fundamental to have full recognition of the natural element of the historical landscape, appears not thorough from the maps available and applicable in the QGIS program, thus it is impossible to describe the area with truthful information and precision. The failure could be solved thanks to more regulation and management at the local level but with the support of national and international structures already in charge of the protection of this kind of heritage.

To reduce this problem, a coordinated phytosanitary observatory, in collaboration with the European Food Safety Authority (EFSA), is monitoring the surveillance plan collecting annual and monthly data for inspected surface, sample of plants (analyzed, positive to *Xylella f.*, demolished), registered with accurate details[45]. This entity also provides training courses to face the vector disease since 2016 and information to respect the new regulations issued. One example of their analysis is the map below (Figure 3), about the monitoring of the infected area in October 2020:

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[44] G.F. Sportelli, *op.cit.*

[45] Regione Puglia, *Stemma regionale*, 2022, *www.regione.puglia.it/web/comunicazione-istituzionale/stemma-regionale#:~:text=Lo%20stemma%20della%20Regione%20Puglia,simbolo%20della%20pace%20e%20fratellanza.*
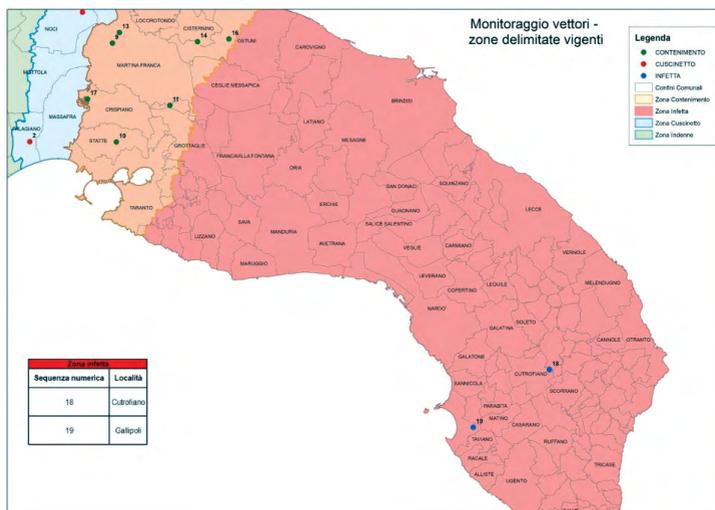
Figure 3 – Monitoring of the infected area. Powered by InnovaPuglia S.p.A. Source: Cartografie SIT Puglia

Another issue of reflection is the dissemination of oil mills in the area. The oil mills in the region are 819, the highest concentration at the national level, and they are preferred nationwide because of the proximity to the fields, which ensures timeliness and quality in processing the olives. The professional background of the farmers is principally formed by traditional knowledge which is transmitted to the new generation, and they are specialized in many different types of oil with different properties and attributes[46]. Particular attention is deemed necessary when considering the fragmentation of the oil mills' localization in Puglia, as well as in Italy, which makes the parcellation of the Italian production negatively affect the entire market because arises the costs of the production system and, consequently, of the final product.

The presence of *Xylella* since 2013 has repercussions not only from an economic point of view but also at the level of cultur-

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[46] ISMEA, 2021, *op.cit.*

al identity. Semeraro et al. emphasized how the issue has affected the sense of communities in Puglia that are very close to olive orchards[47], as it will be discussed in the next section.

2.2. *The historical and cultural interweaving between Olive groves and Apulia*

The connection between Apulians and the olive tree can be explained through the definition of 'landscape' *lato sensu,* whose concept goes far beyond the simple naturalistic asset but instead englobes the cultural and natural facets of the territory[48]. Landscape fits into the notion of 'cultural heritage', becoming a reflection of values, histories, and intergenerational traditions.

As regards olive oil, it is a basic and peculiar element of the MD not only for its peculiar characteristics but also for its history within the Mediterranean basin[49]. Although the production of oil has been handed down by the Phoenicians and the Greeks, it was the Roman Empire to spread the cultivable olive tree in the territories of the Mediterranean, as well as make known the process of cultivation and production[50]. Therefore, when olive groves began to be exported to all the Mediterranean basin, the olive oil started to be integrated into the diet of the Mediterranean civilizations. At this regard, it is interesting to observe how, despite some variations in dietary patterns, olive oil occupies a central position in all of them[51].

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[47] T. Semeraro, E. Gatto, R. Buccolieri, V. Catanzaro, L. De Bellis, L. Cotrozzi, A. Luvisi, *op.cit.*

[48] G. Giacovelli, *Il ruolo dell'ulivo (Olea europea L.) nello sviluppo economico e culturale del paesaggio della Puglia*, in *Dendronatura*, 34, 2013, 1, pp. 63-71.

[49] P.L. Trichopoulou, P. Lagiou, *Healthy Traditional Mediterranean Diet: An Expression of Culture, History, and Lifestyle*, in *Nutrition Reviews*, 55, 1997, 11, pp. 383-389.

[50] M. Noain, *L'olio d'oliva, la sostanza multiuso degli antichi romani*, in *National Geographic*, 2020, *www.storicang.it/a/lolio-doliva-sostanza-multiuso-degli-antichi-romani_14928*.

[51] P.L. Trichopoulou, P. Lagiou, *op. cit.*

After the fall of the Roman Empire, olive-growing decrease in importance, even though it continues to hold an important role in the economic and agricultural sector of Arab-dominated regions[52]. In this period the production of olive oil is no longer dominant; yet, as the centuries pass, the olive trees planted in the Roman era continue to grow, becoming a true oasis of biodiversity and, at a local level, a heritage that needs to be protected. Examples of ancient olive groves can indeed still be found in the South-West of Apulia, particularly in the section of the *Via Traiana*[53-54].

In Apulia, the production of olive oil regains its importance in the 1800s, when the subversive laws of feudalism involved the confiscation of plots of land from the lower classes and resale to the bourgeoisie and clergy. At the time, the labourers did not have sufficient economic means to purchase those lands and meet the production costs derived from oil production. It was not until the early 1900s that the replacement of wooden presses with mechanical ones led to a drop in costs, thus facilitating peasants' access to land. The possibility of buying plots of land and producing one's own oil allowed the agricultural activity to no longer be seen as a means of subsistence, but rather as an entrepreneurial project[55]. This need is perfectly made explicit to this day by local mills in the pursuit of producing a high-quality olive oil: Apulia boasts of five types of certified-PDO EVOO[56], more than 40 types of Apulian olive cultivars, as well as being the region with the largest number of mills nationwide[57].

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[52] G.J. Calabrese, N. Tartaglini, G. Ladisa, *Study on biodiversity in century-old olive groves*, in *CIHEAM-Mediterranean Agronomic Institute: Bari, Italy*, 2012.

[53] Millenari di Puglia, *Le escursioni di Millenari di Puglia*, *www.ulivisecolaridipuglia.com/it/escursioni-eventi/*.

[54] Puglia Sveva, *op.cit.*

[55] A. Mansi, *La tutela dei beni culturali e del paesaggio. Analisi e commento del Decreto legislativo 22 gennaio 2004, n. 42 'Codice dei beni culturali e del paesaggio'*, Cedam, Padova, 2004.

[56] Nowadays, the certified pdo evoo in apulia are the following: Dauno, Collina di Brindisi, Terra d'Otranto, Terra di Bari, Terre Tarentine (Frantoi Online, *op.cit.*).

[57] R. Sardaro, V. Fucilli, C. Acciani, F. Bozzo, A. Petrontino, S. Girone, *Agro-Biodiversity: An Economic Evaluation Of Benefits Provided To Region-*

On a cultural perspective, olive groves are the symbol of the region: the coat of arms of Apulia shows an olive tree on it, symbolising peace, and brotherhood between people[58]. Therefore, the olive grove is no longer just important for the mere economic return, but rather becomes a true ambassador of local identity. EVOO is thus transformed into a tool to make people aware of Apulian culture. It is no coincidence that various local initiatives promote a more sustainable and conscious tourism, aimed at attracting the so-called 'foodies', i.e. consumers particularly sensitive to the gastronomic and folkloric aspects of the territory[59-60].

Figure 4 - The Giant of Alliste after *Xylella f.*
(Source: La Gazzetta del mezzogiorno)

Spreading awareness towards the importance of olive groves in the Apulian context becomes more pressing after the negative re-

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al Community By The Apulian Olive Landraces, in *The Italian Journal of Economic, Demographic and Statistical Studies*, 70, 2016, 3, pp. 173-184.

[58] Regione Puglia, *Emergenza xylella, VIII° Comunicato per i vettori*, www.emergenzaxylella.it/portal/portale_gestione_agricoltura.

[59] R. Fox, *Reinventing the gastronomic identity of Croatian tourist destinations*, in *International journal of hospitality management*, 26, 2007, 3, pp. 546-559.

[60] Turismo Dell'olio, *www.turismodellolio.com/regione/puglia/*.

percussion of *Xylella f.* in the region. Several ancient olive groves, such as the 1500-years-old-Salento *Gigante di Alliste* (The Giant of Alliste – Figure 4)[61], have been heavily affected by the pathogen, to the point of desiccation and death. According to Coldiretti Puglia, one third of the Apulian ancient olive groves did not survive to *Xylella f.*, causing a heavy historical, environmental, and work-related loss[62]. The death of such shrubs surely affects the level of local biodiversity, but also the sense of identity of communities. Semeraro et al. state that the psycho-physical well-being of natives is directly influenced by the distance separating them from olive groves[63]. Consequently, the greater the percentage of olive grove deaths, the greater the likelihood that local communities will be affected. This connection can also be explained by the fact that oil production is predominantly managed by small to medium-sized, mostly family-run enterprises[64].

The sense of disquiet has also been the main theme of art projects aimed at raising awareness of issues related to olive trees. For instance, Ulderico Tamacere, an artist from Lecce, has more than once used the trunks of Salento's now-dead olive groves as art tools, giving them new life. He thus creates *La Terra dei Giganti* (The Field of Giants – Figure 5), which is an open-air museum dedicated entirely to the olive trees affected by *Xylella*[65].

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[61] M. Borrillo, *Xylella, addio all'ulivo simbolo: si arrende anche il gigante di Alliste*, in *Corriere della sera*, 2018, *www.corriere.it/economia/18_settembre_14/xylella-addio-all-ulivo-simbolo-si-arrende-anche-gigante-alliste-228979ba-b7f6-11e8-8fbd-39c98a543a2e.shtml*.

[62] Coldiretti, *Xylella: Scomparso 1/3 Degli Ulivi Monumentali; Subito Secondo Bando Innesti Con 2,2mln Euro Piano Rigenerazione*, 2022, May 26, *https://bari.coldiretti.it/news/xylella-scomparso-1-3-degli-ulivi-monumentali-subito-secondo-bando-innesti-con-22mln-euro-piano-rigenerazione/*.

[63] T. Semeraro, E. Gatto, R. Buccolieri, V. Catanzaro, L. De Bellis, L. Cotrozzi, G. Lorenzini, M.Vergine, A. Luvisi, *op.cit.*

[64] Frantoi Online, *op.cit.*

[65] C. Cipriani, *Il campo dei Giganti: In Puglia, gli ulivi diventano opera di Land Art*, in *Exibart*, 2022, *www.exibart.com/arte-contemporanea/il-campo-dei-giganti-in-puglia-gli-ulivi-diventano-opera-di-land-art/*.

There are also multiple cultural initiatives and associations stressing the paramount role of Apulian olive groves. 'Live Evo festival' organizes events aimed at promoting the olive tree and EVO oil[66]; 'Millenari di Puglia' takes tourists on excursions aimed at discovering centuries-old olive groves[67]; 'Save the olives' was established to deepen the developments of *Xylella*[68].

Figure 5 - Part of Il Campo dei Giganti © Ulderico Tamacere

3. *Discussion and conclusion*

The Mediterranean Diet (MD) fully represents the uniqueness of the Mediterranean civilization in cultural, historical, and gastronomic terms. Because of the peculiarity of its ingredients, MD became a source of study and one of the first intangible heritage rec-

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[66] LIVE EVO, *Evo festival*, from *www.evofestival.live/*.
[67] MILLENARI DI PUGLIA, *op.cit.*
[68] SAVE THE OLIVES, *www.savetheolives.com/*.

ognized by UNESCO. Among the elements that compose MD, extra-virgin olive oil (EVOO) represents MD's staple food for its health and organoleptic properties. In Italy, Apulia holds the record for being the region with the highest olive oil production. The morphology of the soil, the favourable climate, and the trade flow at the time of the Roman Empire certainly influenced the development of the holistic sector in the region. Over the centuries, olive trees have become more than just a means of economic sustenance, but rather part of the Apulian identity, and its undisputed symbol.

The presence of *Xylella f.* since 2013 has negatively affected the local economy and the psycho-physical well-being of individuals living in close contact with olive groves. Indeed, the spread of the pathogen indeed led to a decrease in the ecosystem services provided by olive groves, with disastrous consequences not only in terms of the resulting massive loss of biodiversity but also for olive oil production as a whole. The sudden contraction of the holistic sector brought the economy of local mills to its knees and the quality of the oil itself at risk. The subsidies from the regional government have certainly been a response to the rising requests for help coming from holistic firms. However, the fragmentation of the sector, coupled with the lack of data concerning the distribution of diseased olive groves, does not allow for a general overview of the problem and, consequently, an efficient action plan. Moreover, the problem is exacerbated by its effects on local communities, whose identities are slowly being lost as an increasing number of olive trees dry out. Even in such a case, there have been initiatives to make the difficulties caused by *Xylella f.* known outside the region; yet, while these initiatives attract a more aware segment of tourists, they are still too little impactful.

Given such a scenario, we fear that the inefficient preservation of Apulia's olive groves could affect the quality and preservation of the MD in the long run. Apulia, besides producing 40% of the national olive oil, is characterized by the presence of high-quality cultivars, which allow for the success of EVOO. The aggressiveness of the *Xylella f.* besides, having strong repercussions on the sector at a

national level, may also jeopardize the production of high-quality olive oils and, consequently, the uniqueness of the MD. It is therefore considered appropriate that the olive grove be included as an instrumental asset for the protection of the already-intangible heritage MD. The two elements are deemed complementary and, thus, both need equal protection.

Umberto Lavorata

CITIZENS' PARTICIPATION AND CULTURAL URBAN HERITAGE IN THE WORLD HERITAGE CONVENTION (1972): THE CASE OF BOLOGNA, IN ITALY*

Abstract: The notion of 'urban heritage' will be crucial to face the challenges linked to the protection and modification of urban areas, named «groups of buildings» in Article 1 of the World Heritage Convention (WHC, 1972). The city of Bologna can be considered a pioneer in participatory governance concerning heritage, and the European ROCK Project – Regeneration and Optimization of Cultural Heritage in Creative and Knowledge Cities constitutes a clear example of it. Nevertheless, the concept of citizens' participation, even if it is mentioned in Article 10 para. 2 of the WHC (1972), may have more relevance therein. In general, urban heritage has to deal with the contradictory paradox between local communities, engaged in the protection of place identity and societal heritage values, and economic interests, linked to the exploitation of the touristic potential which historical urban areas offer.

Nonetheless, there are a lot of ambiguities that impact directly on urban heritage and its fruition: Bologna's heritage is characterized by dynamic changes, for instance, in the fruition spaces which have a certain historical and social value such as the Porticoes (inscribed on the World Heritage List in 2021). According to the UNESCO Recommendation on the Historic Urban Landscape (2011), modern urban conservation policies must take into account all levels of government, including public and private stakeholders (Chapter III), to better deal with urban growth which assumes the role of transformer agent in the historic urban areas. The historic urban landscape (HUL) approach may have a positive impact in managing and mitigating such impacts (Chapter II), useful to rediscover the hidden treasures of a city through direct observation of spaces, to better understand perceptions and (new) urban practices.

It could provide an important example of a co-creative type of cultural heritage governance, characterized by a real contribution toward the implementation of the UNESCO Recommendation on the Historic Urban Landscape (2011), also in accordance with SDGs 8, 11, and 17.

In 2022, the WHC celebrates its 50th anniversary: therefore, the main aim is to demonstrate how WHC is still a fundamental international instrument useful to

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* Double-blind peer reviewed content.

activate and re-activate social, political, and environmental dynamics also at a local scale.

The paper states the opportunity that the ROCK Project represents by activating a bottom-up implementation of actions able to set off a virtuous cycle, and it gives its contribution to the World Heritage Convention (1972) on promoting urban regeneration and sustainable development in historic urban contexts.

Introduction

This paper focuses on citizens' participation in Bologna's urban cultural heritage, looking at the European ROCK Project – Regeneration and Optimization of Cultural Heritage in Creative and Knowledge Cities (grant agreement n. 730280)[1] that took place between 2018 (the European Year of Cultural Heritage) and 2020. The ROCK Project has followed three different phases during the three years: development of laboratories and community workshops (2018); co-design process with an expert team (2019); up-scaling of the experimentation area (2020).

The summarized analysis of the Project serves as a starting point to analyze some features of the Convention Concerning the Protection of the World Cultural and Natural Heritage, known also as the World Heritage Convention (WHC), adopted on November 17, 1972[2]. WHC formally has taken effect in 1975 upon ratification by the first 20 States Parties, while in 1978 the Operational Guidelines were established.

Before starting the discussion, and without delving deeper, it could be useful to get an overview of the UNESCO system, where the 'E' stands for Education, a pillar of humanity. The World Heritage Centre was established in 1992 to act as the Secretariat, ensur-

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[1] European Commission, (2017-2020) *Regeneration and Optimisation of Cultural heritage in creative and Knowledge cities*. Available at *https://cordis.europa.eu/project/id/730280*.

[2] UNESCO, *Convention Concerning the Protection of the World Cultural and Natural Heritage* (known as *World Heritage Convention*), Paris, 16 November 1972, Available at *https://whc.unesco.org/archive/convention-en.pdf*.

ing the day-to-day management of the 1972 World Heritage Convention (WHC), and organizing the annual sessions of the World Heritage Committee (the «Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value», Article 8, 1972 WHC), and its Bureau. Along with the Advisory Bodies (i.e. International Union for Conservation of Nature, IUCN; International Council on Monuments and Sites, ICOMOS; International Centre for the Study of the Preservation and Restoration of Cultural Property, ICCROM)[3], the World Heritage Centre organizes international assistance from the World Heritage Fund, coordinating the reporting on the condition of sites and the emergency action when a site is threatened. Its mission is also linked to the update of the World Heritage List and database. Following Article 8 of the WHC (1972), the Committee was made up of 21 States Parties, and nowadays it is the fundamental body for the implementation of the WHC self.

In 2022, the WHC celebrates 50 years: on that occasion, through the analysis of the ROCK Project, it could be worthwhile to analyze the relationships between the Italian city of Bologna and WHC, or the UNESCO Recommendation on the Historic Urban Landscape (2011), taking into account that Bologna has strengthened its importance into the urban cultural heritage management thanks to the inscription on the World Heritage List of the Porticoes in 2021.

The main aim is to demonstrate how World Heritage Convention (1972) is still a fundamental international instrument useful to activate and re-activate social, political, and environmental dynamics also at a local scale.

In this way, the contribution is structured by combining existing literature on citizens' participation and cultural heritage, considering the possible interactions with WHC (1972): in the first paragraph, a short analysis of the ROCK Project in Bologna will

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[3] *World Heritage Convention* (WHC), Article 8 (see also *https://whc.unesco.org/en/advisorybodies/*).

be presented, looking at the different stages and features of the project, given some characteristics of WHC (1972); the second paragraph will present some issues from the socio-ecological and practical point of view, by examining some peculiarities emerged from the Bologna's urban regeneration project (e.g. Green Office); in the third paragraph, the central role of the local communities in the protection/valorization of the cultural heritage will be analyzed, taking into consideration the WHC (1972) and some other international instruments (e.g. 2011 UNESCO Recommendation on the Historic Urban Landscape, 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage). The fourth paragraph will focus on the issue of sustainable development, by analyzing the idea of 'circularity', linked to the SDGs, in Bologna's experience as well. In the fifth paragraph, a reflection on the relationship between technology and cultural heritage will be proposed, and then, in the last paragraph, some conclusions will be summarized.

1. *The ROCK Project: analysis of the urban regeneration project in Bologna*

The ROCK Project – Regeneration and Optimization of Cultural Heritage in Creative and Knowledge Cities was a project funded by the European Union[4] to promote urban regeneration and sustainable development in the historical centers, promoting sustainable use of urban cultural heritage. However, the concept of urban regeneration is quite debated: for instance, Zinzani and Proto (2020) highlight the conflict between the notion of 'politics', related to a technocratic point of view, and the concept of 'political' in the context of the contemporary city. Through the analysis of

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[4] Under Horizon 2020 Funding Programme (see also *https://whc.unesco.org/en/canopy/bologna/*, or *https://ec.europa.eu/info/research-and-innovation/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-2020_en*).

two urban grassroots socio-political movements active in Bologna, i.e. the social-activist collective *Làbas,* and the socio-environmental movement *Rigenerazione NO Speculazione*, the geographers Zinzani and Proto bring out how the two political spaces have been able to define policies from a bottom-up scale, making also new participatory spaces[5].

Nevertheless, Article 1 of the WHC (1972) offers a definition of cultural heritage that can be read in terms of monuments (e.g. architectural works, sculptures, paintings, etc.), groups of buildings (e.g. urban areas), and sites (e.g. works of man or the combined works of nature and man, archeological sites).

The ROCK Project was developed under the Work Programme 2016-2017 Climate action, environment, resource efficiency and raw materials, Cultural heritage for sustainable growth, where cultural heritage was considered «as a driver for sustainable growth of urban and rural areas, as a factor of production and competitiveness and a means for introducing socially and environmentally innovative solutions»[6].

The Project essentially saw the historic city centers as living laboratories[7], where cultural heritage is capable to activate or re-activate the process of regeneration, sustainable development, and economic growth. Although the Preamble of WHC (1972) does not explicitly refer to regeneration and sustainability, it starts as follows: «*Noting* that the cultural heritage and the natural heritage are in-

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[5] A. Zinzani, M. Proto, *L'emergere del Political nei processi di rigenerazione urbana a Bologna: movimenti e spazi di dissenso*, in *Geotema,* 2020, Supplemento, p. 45 ss.

[6] European Commission, *Decision C(2017)2468 of 24 April 2017*, p. 73 ss. (available at the following link: *https://ec.europa.eu/research/participants/data/ref/h2020/wp/2016_2017/main/h2020-wp1617-climate_en.pdf*).

[7] A. Boeri, D. Longo, V. Gianfrate, B. Turillazzi, R. Roversi, M. Massari, *Centri storici inclusivi: l'esperienza del progetto europeo ROCK a Bologna = Inclusive Historical Centres: the Experience of the EU ROCK Project in Bologna*, in *L'accessibilità nel patrimonio architettonico: approcci ed esperienze tra tecnologia e restauro = Accessibility in architectural heritage: Approaches and experiences between technology and restoration*, Anteferma Edizioni srl*,* Conegliano (TV), 2021, p. 118 ss.

creasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction»[8]. Thus, it starts defining cultural and natural heritage united by the same critical scenario, but at the same time combining opportunities and changes due to a coordinated and integrated vision around this topic, which is crucial from the local, national or international scale («collective protection of the cultural and natural heritage of outstanding universal value[9], organized on a permanent basis and in accordance with modern scientific methods»)[10].

As will be seen in the next paragraphs, the life cycle of the WHC (1972) is characterized over the years by a constant revision of the Operational Guidelines for the Implementation of the World Heritage Convention (the last version is dated 2019). Thus, according to Article 8 (WHC, 1972), the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called the World Heritage Committee, is the intergovernmental body useful for dealing with changing technical and political needs of world heritage conservation and management.

The ROCK Project involved ten different cities across the EU, through a different focus of interest: Bologna, in the Emilia-Romagna Region, was one of the three «replicator cities»[11] (along with

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[8] WHC, *Preamble*.

[9] «Outstanding Universal Value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole. The Committee defines the criteria for the inscription of properties on the World Heritage List» (*Operational Guidelines for the Implementation of the World Heritage Convention*; Paragraph 49, WHC 19/01 – 10 July 2019).

[10] WHC, *Preamble*.

[11] At the beginning, seven cities have been involved in the ROCK Project («7 Role Model cities»), i.e. Athens, Cluj-Napoca, Eindhoven, Liverpool, Lyon, Turin, and Vilnius. Then, looking at the specific needs of the historic city centers,

Lisbon, and Skopje), where inclusiveness and accessibility in the public spaces of the city center and university area (Via Zamboni) constituted the main focus, within a shared view of environmental sustainability, social and economic processes.

The Project took place in Bologna between 2018, the European Year of Cultural Heritage, and 2020, carrying out a participatory approach, involving 57 local actors and five groups of disability experts.

Within this framework, Bologna's heritage is considered an essential tool in managing circular and holistic approaches to regeneration, and this is extremely important in dealing with some future issues.

The program was structured into three stages: 1) in 2018, the development of laboratories and community, or participative workshops (e.g. U-Lab) took place within the university area, involving different public spaces, with a distinctive focus on sustainability, accessibility, and, collaboration. The participative workshops created the conditions to implement the project, by identifying the requirements for a more accessible university heritage and looking for a shift from ideas to actions; 2) The second stage (2019) was characterized by a co-design process with an expert team, including participatory mapping and tests, and developing inclusive guidelines and paths in the university area (e.g. inclusive guided tours); 3) The last stage (2020) was based on the previous experiences, extending the model to the whole of Bologna's center, and following a participatory co-creation process (e.g. the app BOforAll was developed and spread).

In general, the actions were divided into local actions, transversal actions, and piloting actions. The local actions were related to organizational and technological innovation, looking at Bologna's hidden treasures, cultural heritage production (unconven-

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the approach has been tested in the three «replicator cities», i.e. Bologna, Lisbon, and Skopje.

See *https://rockproject.eu/about*.

tional use), the Sustainable District, and Bologna Living Lab. Concerning the last one, Living Lab approach was applied in U-Lab, which provided «an iterative process of research and action, which works on viable solutions based on community needs and on urban accessibility through the co-creation of shared services, both oriented towards changing behaviours and modifying space layout»[12].

The transversal actions referred to the environmental sustainability; as written above, one of the most important peculiarities of the ROCK Project was the circularity and the holistic approach to the cultural urban heritage, to improve citizens' well-being, involve citizens in co-designing solutions, and contribute to the resilience of local communities to climate change. In this sense, through the implementation of educational programs (e.g. Living Labs), site-specific and ethnography-based art interventions in public spaces have been launched. This kind of social innovation was accompanied by innovative training solutions, characterized by the direct participation of citizens, such as eco-innovation workshops, ROCK roadshows, and ROCK coffee talks[13].

Considering all these aspects, what were/are the benefits and advantages for Bologna's territory? First of all, the Project methodology has contributed to developing an integrated and interdisciplinary approach toward sustainable use of cultural heritage, assuming the interdependence between environmental, economic, and social issues. By engaging several stakeholders (e.g. university, and non-institutional actors), and reducing the distance between urban actors, the participatory process seems to have contributed to a mutual exchange of skills.

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[12] A. Boeri, D. Longo, S. Orlandi, R. Roversi, G. Turci, *Temporary transformations to access and experience sustainable city public spaces*, in *WIT Transactions on Ecology and the Environment*, 2020, 249, p. 44 ss.

[13] See *https://rockproject.eu/actions*.

2. *The Project and its socio-ecological dynamics*

According to the SDG 11 («Make cities and human settlements inclusive, safe, resilient and sustainable»)[14], 156 countries have developed national urban policies, but only half are in the implementation stage: in Europe and Northern America, but also in Latin America, Eastern and South-Eastern Asia, at least three-quarters of national urban policies are under implementation, while other geographical contexts such as Northern Africa are far behind.

Within this framework, the city of Bologna, and the other urban contexts involved, through the example of the ROCK Project, could provide a key model to achieve SDG 11, where citizens are the main protagonists of change. The EU H2020 ROCK Project followed a circular research-action-research, reaching

> «an activation that exploits the experimentation of small-scale, reversible, temporary and low-cost interventions, aimed at collectively redesigning quality urban spaces, exploring alternative forms of relationship between separate systems, as well as granting the opportunity for exchange of knowledge between a plurality of actors involved. Starting from the recognition of the potential of existing resources, these approaches aim to consolidate and enhance the value of disused places and to draw out new models of collaboration between administrators, citizens, the world of research, economic and cultural operators, while at the same time attracting new resources and partnerships»[15].

The ROCK approach was essentially a bottom-up approach, mainly characterized by the involvement of stakeholders and urban agents in the co-production of knowledge, with the aim of transforming the university area (Via Zamboni) into a Sustainable Cultural and Creative District (Zamboni SCCD), directly linked to

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[14] *https://sdgs.un.org/goals/goal11*.
[15] R. ROVERSI, D. LONGO, M. MASSARI, S. ORLANDI, B. TURILLAZZI, *Il patrimonio culturale come attivatore di dinamiche urbane circolari*, in *Techne*, 2021, 22, p. 222 ss.

the SDG 11, and where the sustainable initiatives (e.g. green mobility, living labs) should be read in relationship with the great cultural domain: in short, the central idea of this approach was to increase pedestrian flows and slow mobility, maybe with new cultural routes, and to enhance porticoes as a unique spatial feature of the urban area (e.g. the aim of Strade Aperte initiative, a deliberate and bottom-up approach, was to promote new forms and uses of public spaces by placing the persons at the center of such issues)[16].

In this respect, it is important to consider Leoni's point of view about cultural heritage: «we need to replace the idea of CH as a brake on city transformation with the idea that CH is an ongoing creative process extended to intangible values, an agent for the transformation of the cities. This can happen if we take remembrance and innovation not as conflicting actions but as a dual combined action of CH co-creation and co-production»[17]. According to Leoni (2020), cultural heritage must be placed at the core of urban policies «as the template for any political action in a logic of social economy that means consider culture as every city stakeholder's sustained action to create value and common good out of the ordinary affairs of a city»[18]. In this way, culture is not merely a policy among others, but a key to understanding the territorial processes of a certain city, such as Bologna.

Considering the Living Lab approach, through the presence of Fondazione Innovazione Urbana (FIU)[19], it allowed the regenera-

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[16] *https://stradeapertebologna.wordpress.com/#:~:text=%E2%80%9C-Strade%20Aperte%20a%20Bologna%E2%80%9D%20%C3%A8,cambiamen-to%20urbano%2C%20ambientale%20e%20sociale.*

[17] G. Leoni, *Cultural Heritage as a Common*, in *Cultural Heritage Leading Urban Futures. Actions and Innovations from ROCK PROJECT*, edited by G. Leoni, A. Boeri, D. Longo, V. Gianfrate, S.O.M. Boulanger, M. Massari, R. Roversi, TU Delft Open Faculty of Architecture and the Built Environment, Delft, 2020, p. 26.

[18] *Ibidem.*

[19] The Foundation for Urban Innovations (Fondazione Innovazione Urbana, in Italian) is a non-profit private legal entity founded by the City and University of Bologna. It is a lab for analysis, communication, development, and co-produc-

tion process of Piazza Scaravilli (co-design and self-building workshop, in June 2019) and Piazza Rossini (co-design and self-building workshop, in September 2019), in the heart of the university area (see Fig. 1).

Fig. 1: Points of interest in Bologna's historical center
Source: Autonomous processing of the author

Concerning Piazza Rossini, from an urban space characterized by cementation and heatwaves, thanks to the work of different stakeholders like associations, and institutions, but also thanks to the engagement of the students, it is now a permanent green space for sociality and events[20]. From the beginning of July 2020, Piazza Rossini's installation is open to the public, and the Municipality of Bologna, in collaboration with FIU, as part of the summer activities 2020, promoted a series of open and cultural activities (e.g. guided tours in the university area, theatre readings) named Take Care of U – Encounters and Stories on the meadow[21].

Nevertheless, in these two squares, two modular installations made of wood and plant elements had the goal of helping people to

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tion focused on urban transformations (see also *www.fondazioneinnovazioneurbana.it/en/*).

[20] *https://cultureincrisis.org/projects/from-a-parking-lot-to-a-green-space-for-sociality-a-new-life-for-piazza-rossini*.

[21] *https://bologna.rockproject.eu/take-care-of-u/*.

reflect and re-think urban cultural spaces, more sustainably. Thanks to the actions developed in the university area (after BOforAll and inclusive guidebooks), three accessible maps were installed in Piazza della Mercanzia, close to the Bologna's towers: these maps are characterized by the description of cultural urban heritage in Braille, using the Incisoria Vicentina technique, creating maps with antibacterial, antiviral and self-cleaning treatment[22]. This is another device that increases the accessibility and inclusiveness in the historical center of Bologna, resulting from the U-Lab and the collaboration between several stakeholders, such as the University and Municipality of Bologna, the Istituto dei Ciechi Francesco Cavazza, Fondazione Gualandi a Favore dei Sordi, etc.

Furthermore, the Project took into account the enhancement of both tangible (e.g. open spaces like squares) and intangible (e.g. community, social and cultural elements) heritage as resources of Bologna's context, «to trigger new relationships between territory, citizens, stakeholders and creative processes»[23], where the main objective was «the acknowledgment of the place's potential by proposing concrete, operational actions, easily achievable in the short time, but capable of triggering imaginaries and strategies of opening, transformation and re-appropriation of the spaces, even in the long term»[24]. Finally, a sense of re-appropriation, responsibility, and care of cultural heritage and public spaces seems to have emerged, and a proof of this could be seen, for instance, in the Piazza Rossini's permanent installation, without which there would have been an antiseptic parking for cars.

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[22] *https://bologna.rockproject.eu/tre-nuove-mappe-tattili-installate-nel-centro-a-bologna/*.

[23] *Il patrimonio culturale come attivatore di dinamiche urbane circolari*, cit.

[24] *Ibidem*.

2.1. *The Green Office in the ROCK Project*

The first Green Office was established at Maastricht University in 2010, with the students placed at the core of participation processes for the transition toward sustainability, intending to work on different sustainability initiatives and projects[25], promoting for instance low carbon initiatives.

In the case of Bologna, it looks like a sustainability hub managed by the students at the University of Bologna and its citizens, and this is crucial for developing co-projected culture and sustainable initiatives, in the ROCK context as well. Furthermore, Bologna's Green Office is characterized by an innovative nature due to the desire to get out of the core university context (e.g. Piazza della Mercanzia), with the figure of the student as a 'connector' between different actors, and using a bottom-up process for starting a transition toward sustainable use of cultural heritage, and creating also a better dialogue between people and the whole territory.

The Green Office model is based on collaborative governance, with the mission to institutionalize sustainability in higher education, by integrating sustainability within the following domains: 1) education, which empowers global citizens to lead for sustainability; 2) research, that contributes to sustainability transitions; 3) community, that engages students and staff to act toward sustainability; 4) operations, to achieve a positive social and environmental footprint. The strategy is articulated following an operational framework of actions: research (sustainability report, academic papers, etc.); programs (e.g. Living Lab); projects (e.g. business cases, project proposals); events (workshops and public events, networking).

Anyway, the main protagonist of Bologna's Green Office is the student[26] who can help directly to spread good practices within

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[25] *https://www.greenofficemovement.org/vision/*.
[26] The University of Bologna's Green Office is conceived as a space for discussion and project design, characterized by the meeting between students, profes-

Bologna's area, through research, traineeship, and actions on the ground. This concept was realized in the above-mentioned Living Lab of sustainability (e.g. Terracini in Transizione)[27], a multidisciplinary and transdisciplinary team based on the 'transition thinking' approach[28], related to the adaptation and mitigation processes. Compared to Northern European universities, the University of Bologna shows a multi-campus structure, with several departments spread across the city, and in other cities of the Emilia-Romagna region (i.e. Rimini, Ravenna, Forlì, Cesena), even though the main core is placed in the historical center of Bologna. Thus, within this framework, the Green Office could be seen as an interlinking way, able to activate co-created and co-managed sustainability actions, making a wide university sphere of action, while respecting the general Green Office indications (e.g. facilitate exchange and cooperation, create a critical mass with other students, academics, and with actors beyond the campus).

In short, the mission sees the sustainability following a bottom-up approach, with a university vision toward 2030, starting from an investigation process (Bologna and ROCK Project), elaborating a pilot model (i.e. Green Office ROCK) and a model definition (i.e. Green Office Bologna model), reaching dissemination (Green Office in Italy and the whole Southern Europe).

The interdisciplinary and transdisciplinary ways of dealing with such challenges can create a 'contamination' process of the territory, thanks to the collaboration with associations and companies, creating 'symbiotic' paths, and improving the sustainability of the University of Bologna, through both internal and external policies.

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sors, and University administrative technicians (see *https://site.unibo.it/multicampus-sostenibile/en/green-office*).

   [27] A site of the Department of Civil, Chemical, Environmental, and Materials Engineering is located in Via Terracini (Bologna, Italy); see also *https://site.unibo.it/multicampus-sostenibile/en/promoting-sustainability/terracini-in-transition*.

   [28] F. Cappellaro, A. Landi, C. Bottone, *Verso una transizione socio-tecnica: esperienze di contaminazione tra il movimento Transition Towns e la Scuola di Ingegneria e Architettura dell'Università di Bologna*, in *La città e le sfide ambientali globali*, edited by M. Castrignanò, A. Landi, Franco Angeli, Milano, 2016.

According to A. Bonoli (2020), «the great mobility and dispersal of the members of university community, whether they are students or staff, could be a way to create a knowhow that people involved will replicate in non-university communities. In short, it is a capillary diffusion of sustainability purposes, which is an innovative University-city integrated model»[29]. Through the analysis of the ROCK Project, and the related Green Office tool, there is the awareness that cultural urban heritage must be understood sustainably, and the program mentioned is indeed containing several sustainable topics such as the waste management, air quality improvement, greenhouse gases reduction, sustainable mobility promotion, and so forth[30].

All the elements mentioned up to now should be considered obviously in a long-term vision (the French word of sustainability, *durable*, is more significative in this sense), strengthening the engagement of alumni as change-makers in companies, NGOs, municipalities, and civil society, ensuring continuity to useful contents of shared governance to tackle future and present challenges.

3. *Local communities: beyond World Heritage Convention (1972)?*

Considering environmental, social, and cultural challenges that States have to face in the foreseeable future, local communities, both from rural and urban areas, play a key role in the protection of place identity and cultural heritage.

As written in the second paragraph, Bologna's local community is not only composed of inhabitants, but by the whole users (e.g. students, professors, university staff, etc.), making it a living environment, multidisciplinary, distinguished by interchange and con-

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[29] R. Falanga, A. Bonoli, *Sustainability and Cultural Heritage*, in *Cultural Heritage Leading Urban Futures. Actions and Innovations from ROCK PROJECT*, cit., p. 89.

[30] *Ibidem.*

tamination. The first international document dedicated to historic urban areas and their conservation is the Charter for the Conservation of Historic Towns and Urban Areas (1987), known as the Washington Charter, where «cities are seen in relation to their surrounding environment, and attention is given to social values and participation»[31]. At the same time, promoting a multidisciplinary approach to conservation of the historic urban cities and considering environmental issues, the Washington Charter focuses on citizen participation («In order to encourage their participation and involvement, a general information programme should be set up for all residents, beginning with children of school age»[32] – Article 15).

Nonetheless, the local community is the core element of the Historic Urban Landscape (HUL) approach (UNESCO Recommendation on the Historic Urban Landscapes, 2011), taking into account that territory is a highly complex living subject[33]. The HUL Recommendation (2011), already in the *Introduction*, recognizes the urban heritage as a fundamental resource linked to the liveability of urban areas, looking at its intangible components as well:

> «Urban heritage, including its tangible and intangible components, constitutes a key resource in enhancing the liveability of urban areas, and fosters economic development and social cohesion in a changing global environment. As the future of humanity hinges on the effective planning and management of resources, conservation has become a strategy to achieve a balance between urban growth and quality of life on a sustainable basis»[34].

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[31] F. Bandarin, R. Van Oers, The Historic Urban Landscape: Managing Heritage in an Urban Century, Wiley-Blackwell, Chichester, 2012, p. 48.

[32] International Council on Monuments and Sites, *Charter for the Conservation of Historic Towns and Urban Areas*, Washington, DC, October 1987. Available at *www.icomos.org/charters/towns_e.pdf*.

[33] A. Magnaghi, *Il progetto locale. Verso la coscienza di luogo*, Bollati Boringhieri Editore, Torino, 2000.

[34] UNESCO, *Recommendation on the Historic Urban Landscapes*, Paris, 10 November 2011, available at *https://whc.unesco.org/uploads/activities/documents/activity-638-98.pdf*.

Although the importance of community participation in cultural heritage dynamics is present in both WHC (1972) and HUL Recommendation (2011), the broad theme of sustainability does not appear in the WHC (1972)[35]. Before facing this issue, let's see how the topic of participation, obviously not only from a local scale, is tackled in the two international documents.

In the *Preamble* of WHC (1972), there is the reference to the international community «as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance».

At the same time, Article 5 of the WHC (1972) proposes an integrated vision of cultural heritage, according to which each State has «to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes» (a), and «to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions» (b). Furthermore, the scientific research for managing cultural heritage is mentioned in Article 5 of the WHC (1972). Therefore, also Article 6, para. 1 (WHC, 1972) mentions the international community «as a whole to co-operate».

It is important to remark that on the 30th Anniversary of WHC, the five 'Cs' were adopted: Credibility, Conservation, Capacity Building, Communication, and Communities[36]. According to L. Meskell (2013), «these five issues continue to be both imperative and unresolved a decade on»[37].

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[35] The very concept of sustainability has been developed from 1972 on, with a worldwide recognized definition only in 1987 (*Brundtland Report*)

[36] In the *Budapest Declaration on World Heritage* (2002) there were originally 4 key Strategic Objectives (4 'Cs'): the issue of Communities was added later, in 2007 (*https://whc.unesco.org/en/next50/*).

[37] L. MESKELL, *UNESCO's World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation*, in *Current Anthropology*, 54, 2013, 4, p. 492

In this context, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003)[38] plays a crucial role in relation to the issue of participation and local communities[39]. If the World Heritage List was criticized to be 'Eurocentric', because of the dominance of European sites, new programmes and conventions emerged over the years to bridge the gap. In the 2003 Convention, «intangible cultural heritage, as clearly evident in the Convention, should foster the development of the identity of the people who represent this heritage. The aim was to enable sustainable development and, more important, to empower local and regional populations to assume responsibility for their own developmental processes»[40]. The 2003 Convention became very popular across countries, and the «Eurocentrism» mentioned about WHC (1972) was gradually replaced by a certain «Asiacentrism»[41], and this is evident looking at the UNESCO data: between 2008 and 2013, in 98 countries, 327 expressions of intangible cultural heritage were inscribed in the three lists (Representative List of the Intangible Cultural Heritage of Humanity, List of Intangible Cultural Heritage in Need of Urgent Safe guarding and Register for programmes, projects, and activities that best reflect the principles and objectives of the Convention), with 46 elements attributed to Africa, 132 to Asia (including Australia), 48 to Latin America, and 109 to Europe and the United States[42]. As M.-T. Albert and B. Ringbeck (2015) note,

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[38] UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris, 17 October 2003, available *at https://ich.unesco.org/doc/src/01852-EN. pdf*.

[39] «The 'intangible cultural heritage' 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 cultural heritage [...] » (Article 2, *Convention for the Safeguarding of the Intangible Cultural Heritage*, 2003). Among 195 UNESCO Member States, 160 have signed the Convention and 129 have ratified it.

[40] M.-T. Albert, B. Ringbeck, *40 Years World Heritage Convention: Popularizing the Protection of Cultural and Natural Heritage*, De Gruyter, Inc., Berlin/ Boston, 2015, p. 154.

[41] *Ibidem*.

[42] *Ibidem*.

«It is remarkable that when compared with the World Heritage Convention, the very countries seeking to safeguard intangible cultural heritage are those that are still under-represented on the World Heritage List, except for China, France, India, Japan and Spain. The question can thus be asked whether the Eurocentric nature of the World Heritage Convention is being replaced by a certain Asiacentrism in terms of intangible heritage (China 38 elements, Japan 22, Republic of Korea 16, India 10)»[43].

However, the discourse of participation is at the base of intangible cultural heritage, and it is clearly stated in the 2003 Convention as well: «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»[44].

Among these international instruments, like HUL Recommendation (2011) and the 2003 Convention, the World Heritage Convention (1972) primacy must be considered, and it is pointed out in the 2003 Convention, as well, in Article 3:

«Nothing in this Convention may be interpreted as: (a) altering the status or diminishing the level of protection under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage of World Heritage properties with which an item of the intangible cultural heritage is directly associated; or (b) affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties»[45].

Going back to the HUL approach, the 2011 UNESCO Recommendation recognizes the importance of a systemic approach,

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[43] *Ibidem.*

[44] *Convention for the Safeguarding of the Intangible Cultural Heritage*, Article 15, Participation of communities, groups and individuals.

[45] *Ivi*, Article 3.

in which urban and peri-urban areas, along with rural areas, are integrated into an «urban rural continuum»[46], and this is achievable through a series of tools that ensure the implementation of such dynamics. Chapter IV of the 2011 UNESCO Recommendation identifies four different types of these tools: 1) civic engagement tools (that «should involve a diverse cross-section of stakeholders», facilitating the intercultural dialogue by learning from communities); 2) knowledge and planning tools («these tools would include documentation and mapping of cultural and natural characteristics. Heritage, social and environmental impact assessments should be used to support and facilitate decision-making processes within a framework of sustainable development»); 3) regulatory systems (reflecting local conditions and including legislative and regulatory measures for the conservation and management of tangible and intangible urban heritage); 4) financial tools (government and global funds from international agencies, but also those employed to foster private investment at the local level, looking also at non-traditional channels, e.g. micro-credit)[47].

The Bologna's ROCK Project approach seemed to be in line with the HUL approach because of its way of interpreting urban (or rural) areas as 'laboratories', stimulating local creativity toward an innovative way of taking advantage of the tangible and intangible heritage, of discovering the true soul of the territory taking into account sustainability in its whole significance. In this context, the Paragraph 17 of the 2011 UNESCO Recommendation deserves to be mentioned:

> «Urban growth is transforming the essence of many historic urban areas. Global processes have a deep impact on the values attributed by

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[46] M. Angrisano, P. Franco Biancamano, M. Bosone, P. Carone, G. Daldanise, F. De Rosa, A. Franciosa, A. Gravagnuolo, S. Iodice, F. Nocca, A. Onesti, S. Panaro, S. Ragozino, V. Sannicandro, L. Fusco Girard, *Towards operationalizing UNESCO Recommendations on "Historic Urban Landscape": a position paper*, in *Aestimum*, 2016, 69, p. 167 ss.

[47] *https://whc.unesco.org/uploads/activities/documents/activity-638-98.pdf*.

communities to urban areas and their settings, and on the perceptions and realities of their inhabitants and users. On the one hand, urbanization provides economic, social and cultural opportunities that can enhance the quality of life and traditional character of urban areas; on the other hand, the unmanaged changes in urban density and growth can undermine the sense of place, the integrity of the urban fabric, and the identity of communities. Some historic urban areas are losing their functionality, traditional role and populations. The historic urban landscape approach may assist in managing and mitigating such impacts»[48].

Citizens' participation in such challenges brings into play the notion of creativity, emphasized in the 2011 Recommendation. According to M. Angrisano *et al.* (2016), creativity is characterized by two meanings, since it identifies both the capacity to create new ideas (useful for society) and the capacity to combine existing ideas in a new way[49]. Then again, Bologna ROCK seemed to have contributed to the implementation of the HUL approach in four different ways: 1) establishing a methodology for the urban regeneration of historic centers; 2) recognizing culture and creativity as key resources in enhancing the liveability of urban areas and fostering sustainable social and economic development; 3) seeking to establish a methodology based on research, peer-to-peer learning, and experimentation, as well as extensive community engagement and mapping; 4) aiming to develop a comprehensive and integrated approach for the management of historic urban centers[50].

This issue calls into question Faro Convention (2005)[51], as well: in particular, Article 12 (Access to cultural heritage and democratic

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[48] *Recommendation on the Historic Urban Landscapes*, Paragraph 17.

[49] *Towards operationalizing UNESCO Recommendations on "Historic Urban Landscape": a position paper*, cit.

[50] *https://whc.unesco.org/en/canopy/bologna/*.

[51] COUNCIL OF EUROPE, *Council of Europe Framework Convention on the Value of Cultural Heritage for Society*, Faro, 27.X.2005. Available at *https://rm.coe.int/1680083746*.

participation) can be seen as something very close to the Bologna's ROCK Project and its peculiarities aforementioned.

Indeed, the so-called «heritage community»[52] could be considered as a «relational dimension to stimulate creativity and to activate a consensual regenerative process. In fact, the heritage community is built on the ability to self-organize in an original way their resources/capacity in the management of the landscape»[53]. Faro Convention (2005), Article 12, encourages citizen participation, starting from the process of identification of cultural heritage, to its study, interpretation, protection, conservation, and presentation. On the other side, the same Article encourages public reflection and debate on the opportunities and challenges offered by cultural heritage, recognizing the role of voluntary organizations as partners in activities and as constructive critics of cultural heritage policies.

Considering these assumptions, cultural heritage, both tangible and intangible, could be seen as a driver of sustainable growth[54], capable to promote circular processes, as will be seen in the next paragraph.

Nonetheless, the international instruments mentioned up to now are just some of the instruments available to manage, promote, and protect cultural heritage, but at this time, all these instruments must be considered as a whole (obviously starting from WHC, 1972), as required by contemporary challenges.

4. *Circular processes concerning cultural heritage: the experience of Bologna*

The *Basic Texts of the 1972 World Heritage Convention* (2021) state that «since the adoption of the Convention in 1972, the inter-

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[52] *Ibidem.*

[53] *Towards operationalizing UNESCO Recommendations on "Historic Urban Landscape": a position paper*, cit.

[54] *Ibidem.*

national community has embraced the concept of "sustainable development"»[55]. Although the word 'sustainability' is not explicitly present in the WHC (1972), States Parties are encouraged to follow the WHC principles and the relevant policies adopted by the World Heritage Committee, the General Assembly of States Parties to the Convention, and the UNESCO Governing Bodies, such as the Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the WHC and the UNESCO policy on engaging with indigenous peoples, or the 2030 Agenda for Sustainable Development[56].

> «World Heritage properties may sustain biological and cultural diversity and provide ecosystem services and other benefits, which may contribute to environmental and cultural sustainability. Properties may support a variety of ongoing and proposed uses that are ecologically and culturally sustainable and which may enhance the quality of life and well-being of communities concerned. The State Party and its partners must ensure their use is equitable and fully respects the Outstanding Universal Value of the property. For some properties, human use would not be appropriate. Legislation, policies and strategies affecting World Heritage properties should ensure the protection of the Outstanding Universal Value, support the wider conservation of natural and cultural heritage, and promote and encourage the effective, inclusive and equitable participation of the communities, indigenous peoples and other stakeholders concerned with the property as necessary conditions to its sustainable protection, conservation, management and presentation»[57].

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[55] UNESCO, *Basic Texts of the 1972 World Heritage Convention*, UNESCO World Heritage Centre, Paris, December 2021, available at *https://whc.unesco.org/en/basictexts/*.

[56] UNESCO, *Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention*, Paris, 2015. Available at *https://whc.unesco.org/en/sustainabledevelopment/*.

[57] *Operational Guidelines for the Implementation of the World Heritage Convention, Decision 43 COM 11A.*

The Bologna's regenerative process, as shortly demonstrated, has probably created a circular virtuous process, requiring a collaborative and cooperative behavior, allowing «synergies, symbiosis and hybridization processes between different components / institutions / actors», still mentioning M. Angrisano *et al.* (2016)[58]. The idea of circularity was contained in the Bologna's example under the form of a participative multi-level partnership governance: in this case, the results obtained with ROCK Project were supported by specialized and innovative skills, intercepting all the cultures of the city, and redefining themselves «by supporting processes of empowerment in a circular process»[59], ultimately generating a circular virtuous cycle, a veritable mutual exchange between the specialized knowledge and the «ordinary» citizens' skills[60].

As already mentioned in the second paragraph, the ROCK Project followed a circular research-action-research that, as G. Leoni *et al.* (2020) argue, «represents a dynamic way to create new paths of knowledge to rethink the evolution of historical centers and prepare them for future challenges»[61]. A circular process like this is able to enhance both the capacity of citizens in activating bottom-up territorial processes and the resilience of the involved communities to respond to future challenges.

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[58] *Towards operationalizing UNESCO Recommendations on "Historic Urban Landscape": a position paper*, cit.

[59] G. Leoni, A. Boeri, D. Longo, S.O.M. Boulanger, V. Gianfrate, M. Massari, R. Roversi, *Introduction*, in *Cultural Heritage Leading Urban Futures. Actions and Innovations from ROCK PROJECT*, cit., p. 12.

[60] *Ibidem.*

[61] *Ibidem.*

4.1. *Contribution of the ROCK Project toward the implementation of the SDGs*[62]

Looking at Bologna ROCK, the circularity notion could be seen in relationship with the UN Sustainable Development Goals (SDGs). The Project seems to have concretely contributed to the enhancing of some specific SDGs: 1) the above-mentioned SDG 11 («Make cities and human settlements inclusive, safe, resilient and sustainable») could be considered in relation to the targets 11.3 («enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management»), and 11.4 («Strengthen efforts to protect and safeguard the world's cultural and natural heritage»); 2) SDG 8 («Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all»), promoting development-oriented policies that support productive activities, looking at culture and creativity as key resources for social and economic development (target 8.3); SDG 17 («Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development»), promoting public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships (target 17.17).

Thus, Sustainable Development Goals (SDGs) should be read in relation to the uppermost World Heritage Convention (1972). As Richard Engelhardt (retired Regional Advisor for Culture in Asia and the Pacific) argued, the WHC «carries in itself the spirit and promise of sustainability, […] in its insistence that culture and nature from a single, closed continuum of the planet's resources, the integrated stewardship of which is essential to successful long-term sustainable development – and indeed to the future of life on the Earth as we know it»[63]. This statement is particularly eloquent

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[62] Please note: such impacts were potential and indicative, and based on the available information and data (see *https://whc.unesco.org/en/canopy/bologna/*).

[63] *https://whc.unesco.org/en/sustainabledevelopment/*.

and encloses the real holistic nature for which World Heritage Convention (1972) was originally conceived.

Moreover, the Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention (adopted by the General Assembly of States Parties to the World Heritage Convention at its 20th session, UNESCO 2015), starts as follows:

> «Recognising that the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage is an integral part of UNESCO's overarching mandate to foster equitable sustainable development and to promote peace and security, and with a view to ensuring policy coherence with the UN sustainable development agenda as enshrined in the document "Transforming our world: the 2030 Agenda for Sustainable Development", existing international humanitarian standards and other multilateral environmental agreements (MEAs), States Parties should «ensure an appropriate and equitable balance between conservation, sustainability and development, so that World Heritage properties can be protected through appropriate activities contributing to the social and economic development and the quality of life of our communities»»[64].

The adoption of this Policy Document on World Heritage and Sustainable Development provides an important shift in the implementation of the WHC (1972), with effective integration of sustainable development. Within the Chapter II (General Provisions) of the Policy Document, sustainability is conceived in its original view, i.e. through a long-term perspective:

> «Sustainability, broadly defined, is inherent to the spirit of the World Heritage Convention. It should serve as a fundamental principle for

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[64] *Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention*, Chapter I, para. 1 (see also UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, Available at *www.refworld.org/docid/57b6e3e44.html*).

all aspects of development and for all societies. In the context of the World Heritage Convention, this means applying a long-term perspective to all processes of decision-making within World Heritage properties, with a view to fostering intergenerational equity, justice, and a world fit for present and future generations»[65].

Furthermore, the Policy Document (UNESCO, 2015) takes up Article 5 of the WHC (1972), remarking the importance of inclusive social development, characterized by «full inclusion, respect and equity of all stakeholders, including local and concerned communities and indigenous peoples»[66].

Nevertheless, the concept of sustainability, which entered the Operational Guidelines in 1994 regarding the «sustainable use» of cultural landscapes (Para. 38)[67], is now a principal notion that should be at the base of the protection of cultural (urban) heritage.

The ROCK Project in Bologna allowed to point out a new way of dealing with cultural urban heritage, developing topics such as sustainability, access, and innovative territorial processes, linked to SDGs and other international instruments available. About Bologna, according to C. Cullen and C. Sabbioni (2020), «participative access and innovative partnerships contribute to showing how cultural heritage can be a driving force to achieving urban sustainability and act as an enabler of urban transformation»[68].

Then, the relationship between UN SDGs and cultural heritage (considering WHC 1972, as well) represents a real key for local and global development, for the protection of an Earth which is under threat.

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[65] *Ivi*, Chapter II, Para. 7.

[66] *Ivi*, Chapter III, Para. 17.

[67] UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, Paris, February 1994. Available at *https://whc.unesco.org/en/guidelines/*, and *https://whc.unesco.org/archive/opguide94.pdf*.

[68] C. Cullen, C. Sabbioni, *The Role of Cultural Heritage in Urban Sustainability*, in *Cultural Heritage Leading Urban Futures. Actions and Innovations from ROCK PROJECT*, cit., p. 237.

5. *Technology vs Cultural Heritage: which combination?*

Nowadays technologies (e.g. smartphones, computers) represent a key driver for producing relationships and linkages between people and other topics like cultural heritage, often enhancing the creation of new cultural and social values[69]. The 2011 UNESCO Recommendation states the fundamental role of technology in such patterns, as something linked to communication and citizens' participation:

> «Encourage the use of information and communication technology to document, understand and present the complex layering of urban areas and their constituent components. The collection and analysis of this data is an essential part of the knowledge of urban areas. To communicate with all sectors of society, it is particularly important to reach out to youth and all under-represented groups in order to encourage their participation»[70].

Technology is very present in the HUL approach under different forms: e.g. connecting knowledge and values, which are local and, at the same time, global; supporting the interventions of landscape transformation, becoming the mean for integration, which values diversity and catalyzes them into opportunities; reconnecting new and old assets; transforming intangible capital into tangible one; supporting the symbiosis between conservation and economic development[71].

In general, the success of the ROCK Project, not only in Bologna's case, was directly linked to the use of technology, conceived as «a mediator and enabler of these new experiences by redefining the

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[69] *Towards operationalizing UNESCO Recommendations on "Historic Urban Landscape": a position paper*, cit.

[70] *Recommendation on the Historic Urban Landscapes*, Chapter V, Para. 27.

[71] *Towards operationalizing UNESCO Recommendations on "Historic Urban Landscape": a position paper*, cit.

ways in which citizens experience spaces and life in cities, contributing so to strengthen the sense of belonging»[72].

However, concerning Bologna's case, the research-action-research approach was also based on the use of the Internet (e.g. BOforAll), mapping and understanding the context (e.g. digital cartographies)[73], engaging the local key player in the participated experience, testing co-designed solutions and monitoring, analyzing the outcomes and impacts. For instance, the monitoring phase was not merely based on a quantitative method, but it also considered other components such as behaviors, with people that became maybe the most important part of the action research method. In short, the monitoring part of ROCK was based on real-time sensors (used in several 'smart cities'), combined with a set of technologies[74]. Thus, among its actions, ROCK Bologna included several devices, i.e. a multiparameter tool detecting environmental data (e.g. wind speed, air pollution), a large crowd monitoring tool, that allowed to measure the presence and movements of people within the involved area, an indoor monitoring tool in the university library, detecting environmental data, software-based simulation of outdoor comfort[75]. All these elements allowed a multilevel monitoring approach, to confirm the ever-increasing importance gained by technologies within an urban cultural heritage. As well as testing the efficiency of greening strategies implemented by the ROCK Project in Piazza Scaravilli (already mentioned in the second paragraph), the University of Bologna analyzed the effects of the interventions through

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[72] I. Maciejewska, A. Roja, *ROCK Innovation: a brief overview*, in *Cultural Heritage Leading Urban Futures*, cit., p. 156.

[73] Using geolocation technology, the stakeholders involved have collected a set of data on both the physical and cultural accessibility of the university area (see the video *www.youtube.com/watch?v=U52bXCH-u2s*).

[74] E. Antonini, J. Gaspari, S.O.M. Boulanger, *Technologies in the Research-Action-Research Perspective*, in *Cultural Heritage Leading Urban Futures. Actions and Innovations from ROCK PROJECT*, cit.

[75] *Ibidem*.

simulations performed with ENVI-met software[76], and through data collection from environmental sensors placed in the same area: the analysis of data demonstrated how even a small greening intervention can contribute significantly to the heat island mitigation[77].

On the other side, social media, blogs, and social networks represented a good tool for reaching citizens, but also other stakeholders, to involve them in such issues. For instance, Piazza Rossini's installation was supported by several citizens, local associations, and social entrepreneurial activities (e.g. Kilowatt, Dynamo), and it was widely commented on social networks[78].

The prominence of technologies and digital platforms was confirmed by the COVID-19 pandemic: indeed, the ROCK Open Knowledge Week Cultural Heritage leading urban futures (27-30 October 2020)[79] was the conference that marked the closure of the ROCK Project, and it was online only, engaging policymakers, urban researchers, cultural actors, and so forth, across Europe.

The online meeting offered a program of 20 sessions, engaging more than 50 speakers, and hundreds of participants over the four days. As stated by C. Garzillo *et al.* (2020), it was in line with the ROCK objectives, providing a logical conference structure focusing on Accessibility (the sign language interpretation throughout the entire online meeting was in line with the European Disability Strategy 2010-2020, providing the framework for empowering people with disabilities to fully participate in leisure and cultural fruition), Sustainability (linked, as well, to the digital format of the conference, reducing CO2 emissions and helping to reduce waste),

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[76] With the support of interactive modules, it is possible to specify surface types and building materials, as well as vegetation on walls and roofs, to scientifically analyze the impacts of design measures on the local environment and help mitigate factors such as urban heat stress (*www.envi-met.com/*).

[77] A. Boeri, D. Longo, S. Orlandi, R. Roversi, G. Turci, *Temporary transformations to access and experience sustainable city public spaces*, cit.

[78] *Ibidem*.

[79] *https://rockproject.eu/ROCK-open-knowledge-week*.

and Collaborations (the meeting organizers introduced multiple participation options, e.g. ROCKnROLL Networking)[80].

Moreover, the digital platform for the ROCK Open Knowledge Week was set up by engaging several actors (e.g. ICLEI – *Local Governments for Sustainability*), creating also a micro-site, used to disseminate the Conference Programme and much more.

The correct use of technologies helps to have positive impacts on society, also from a sustainability point of view: indeed, the metrics of the ROCK Open Knowledge Week marked a successful event (794 registrations from 66 countries), with 458 active participants; moreover, the ROCK event significantly contributed to reducing air travel, by saving 169.268,89 kg CO2, which is equivalent to planting 208.97 trees[81].

Looking at the ROCK Project, technologies and digital platforms can play a greater role in disseminating experiences of culture and new ways of fruition: thanks to digitalization each citizen can actively participate in cultural heritage management and protection, considering the potential environmental impacts linked to the in-person visit or the carelessness of the institutions.

Assuming that the WHC (1972) does not mention technological and digital issues linked to cultural heritage, because of the historical moment (e.g. the World Wide Web system – WWW – was developed in the first '90s)[82], the importance of digital instruments for the promotion and protection of cultural heritage is remarked in subsequent international documents, that must be read in relationship with the WHC (1972), which is ultimately the fundamental international instrument related to cultural heritage.

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[80] C. Garzillo, S. Xydia, A. Izulain Alejos, *Shifting from a physical event to a virtual conference: The ROCK Open Knowledge Week*, in *Cultural Heritage Leading Urban Futures. Actions and Innovations from ROCK PROJECT*, cit.

[81] *Ibidem*.

[82] *https://www.treccani.it/enciclopedia/innovazione-tecnologica_%28Enciclopedia-del-Novecento%29/*.

6. *Conclusions*

The exponential growth of urbanization has several impacts on the protection of cultural heritage, both tangible (monuments, objects, buildings) and intangible, such as social practices, festive events, and oral traditions. Within this framework, the World Heritage Convention (1972) has currently a predominant role in leading cities toward a real sense of responsibility and sustainability, involving at the same time local communities. Obviously, in the current era, WHC (1972) must be read in relationship with the other international instruments mentioned in this paper, notwithstanding it is conceived to do some considerations about this topic, without claiming to be exhaustive. Indeed, through the analysis, though not exhaustive, of the European ROCK Project – Regeneration and Optimization of Cultural Heritage in Creative and Knowledge Cities, particularly considering the city of Bologna, the relationship between citizen and cultural heritage emerges, taking into account just some international instruments, starting from the WHC (1972).

Local communities, composed of inhabitants and city users, are able to take care of urban cultural heritage: according to the SDG 11, the ROCK Project in Bologna has designed new forms of interactions between citizens, making a positive contribution toward sustainable development, with the capacity to make (and raise awareness in this regard) urban city center as an inclusive, participative, and resilient space. At the same time, the protagonism of the local communities, like the Bolognese one, is strengthened through a real process of citizen empowerment.

The Bologna example stands against the processes of deterritorialization, decontextualization, and degradation, encouraging the build-up of aware and informed local communities, which are able to tackle the carelessness of local spaces.

In this way, the first five decades of the World Heritage Convention must lead us to reflect on a new way of fruition of cultural urban heritage, helping us to re-think cultural urban heritage in a more inclusive and sustainable way.

Francesco Massarenti

THE INVOLVEMENT OF CITIZENS
IN THE PROTECTION OF UNESCO SITES
AND THE EXPERIENCE OF THE PORTICOES
OF BOLOGNA*

Abstract: Although the protection of UNESCO sites is a specific task for the States Party to the 1972 World Heritage Convention, nowadays it looks rather clear that the commitment of public authorities alone is not enough, in order to assure a proper level of protection and conservation to such sites. In fact, the role of local communities and active citizens in taking care of cultural and natural heritage in becoming increasingly important, especially at the municipal dimension. The fundamental principle upon this issue is the horizontal subsidiarity, which is defined by article 118, last comma of the Italian Constitution. According to this principle, all the levels of government are required to encourage the autonomous initiative of citizens aimed at pursuing a general interest. Since it enacts a mandatory discipline, the municipal authorities have soon implemented the horizontal subsidiarity through peculiar local regulations, involving the civic collaboration between public authorities and private citizens (both individuals and associations or even informal groups). These regulations are specifically aimed at taking care of the so-called 'urban common goods', which are functional to the wellbeing of the community as a whole, no matter who is their owner (whether a public or a private subject). The legal tool provided by the regulations is the pact of collaboration, signed by the citizens who spontaneously draft a proposal involving common goods and the local administration, which provides a legal and financial support to the proponents. Bologna was the very first city which adopted this kind of regulation, in 2014, and then has been followed by many other Italian municipalities (nowadays, more than 260). Although many differences can be found among each local regulation (for example, about the possible supports granted by public authorities), most of them reproduce the main features of the model adopted in Bologna. Of course, the civic collaboration represents a significant opportunity for the protection of cultural and natural heritage. Many local regulations provide a specific discipline for such a kind of common goods. At about, a peculiar example of collaboration can be found with regard to the Porticoes of Bologna. Since 2016, many citizens have signed some pacts of collaboration with the municipal authorities, in order to clean the walls of Porticoes from tags and to keep them clean during a long time

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* Double-blind peer reviewed content.

(from 1 to 3 years). These proponents have played a relevant role within the activities which then contributed to the recognition of Porticoes as UNESCO world heritage. At the same time, they will play an important role as well in keeping this heritage at the right level of conservation.

1. *Introduction and purpose of the paper*

The protection of and respect for UNESCO sites is an essential task for all the 194 States Party to the 1972 World Heritage Convention. According to WHC rules, each State is required to adopt proper national regulations / guidelines / procedures to guarantee adequate protection of those sites which have been recognized as of Outstanding Universal Value. At the same time, the Convention suggests that the States should make every effort «to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes» (according to article 5, letter a). Such regulations, therefore, should not be seen as a harsh complex of norms whose implementation is assured only by mandatory rules and strict prescriptions adopted by national authorities for an important role in the protection of UNESCO sites needs to be played by local communities, which are directly involved in the identification, protection, conservation, and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11, through a direct commitment of all its component parts of these, Municipalities are the institutions which mostly promote such commitment, by establishing task forces composed of qualified experts and elaborating accurate plans, with significant implications both for the inclusion of new properties within the World Heritage List and for their subsequent protection. This can be explained by the fact that Municipalities are directly linked to the heritage, and so they are the best level of government to enact its protection and evaluation, according to the general principle of proximity.

Moreover, local communities are also the level at which a closer synergy between public institutions, individuals, and associations, can be developed to implement the provisions established by the 1972 World Heritage Convention concerning the involvement of the private sector in supporting the protection and enhancement of UNESCO sites. Such a private dimension must be considered *lato sensu*, that is, by considering the role of individual citizens, committees, and associations. We are not simply referring to private subjects financing the various steps of the inclusion and protection of local heritage. In fact, most of these subjects are personally involved in the elaboration and the subsequent implementation of projects aimed at enhancing the properties of their own land, both before and after they have been included in the World Heritage List. Of course, this kind of engagement by private subjects can be ascribed to the general principle of subsidiarity, which finds a significant implementation precisely at the local levels of government, through local regulations and other specific tools.

Therefore, the objective of this paper is to focus on the role of collaborative tools and active citizens within the Italian legal system in identifying and protecting local sites before they are included in the World Heritage List, as well as their engagement in their proper conservation soon after they are recognized as UNESCO sites. This issue is becoming increasingly important nowadays, since public institutions are asked to satisfy more and more needs as well as to pursue a considerable number of public interests, although they do not have enough financial resources or equipment in order to succeed. That is why the cooperation of private subjects together with local authorities could be an important solution to deal with such a problem. At the same time, there are significant implications for the involvement of citizens within the process of decision making, which is usually the responsibility of the relevant representative organs. Nevertheless, if citizens usually limit their public engagement to choosing their own representatives (when, given the increasing levels of abstention, they actually do so), the typical mechanisms of representative democracy appear to be no more adequate to the

complexity of current challenges, as shown by the increasing number of public interests to deal with. As a result, the forms of civic collaboration we are going to describe propose a different model of decision making, which can justly be called a «participatory democracy» so as to aid and empower – not to substitute – the work of the representative democracy. Such a model is generally related to the care of the so-called common goods, and among them we can of course include the properties of Outstanding Universal Value, which the WHC refers to.

The paper will start from an analysis of the notions of cultural and natural heritage and of the role of subsidiarity – the legal basis for all the institutions of civic cooperation – in the Italian legal system. It will then focus on the adoption in 2014 of the local regulation concerning civic collaboration by the Municipality of Bologna, which introduced pacts of collaboration as a special administrative tool. In so doing the paper will emphasise the connection between this instrument and the common goods related to cultural heritage, by looking at its implementation; as an example, it will analyse how civic collaboration has contributed and is still contributing to the care of a specific heritage, recently included within the World Heritage List: the Porticoes of Bologna. In conclusion, it will show how this model can be applied elsewhere and what implications it has both for the promotion and protection of UNESCO sites, and the application of modern processes of decision making[1].

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[1] Among the multiple essays which inspired the content of this paper, the main ones are E. Ostrom, *Governing the Commons*, Cambridge University Press, 1990; G. Arena, *Il principio di sussidiarietà nell'art. 118, u.c. della Costituzione*, in *Studi in onore di Giorgio Berti*, vol. I, Rome, 2005, p. 179 ss.; M. Bombardelli, *Prendersi cura dei beni comuni per uscire dalla crisi*, University of Trento, 2016; F. Giglioni, *I regolamenti comunali per la gestione dei beni comuni urbani come laboratorio per un nuovo diritto delle città*, in *Munus. Rivista giuridica dei servizi pubblici*, 2016, 2; P. Michiara, *I patti di collaborazione e il regolamento e la cura dei beni comuni urbani. L'esperienza di Bologna*, in *Aedon*, 2016, 2; P. Chirulli, *Sussidiarietà e collaborazione «amministrata» nei beni comuni urbani*, in *La co-città. Diritto urbano e politiche pubbliche per i beni comuni e la rigenerazione urbana*, edited by P. Chirulli, C. Iaione, Jovene, Naples, 2018, p. 55 ss.; D. Donati, *Le città collaborative: forme, garanzie e limiti delle relazioni orizzontali*, in *Istituzioni del Fed-*

2. *The cultural and natural heritage, related to the principle of subsidiarity*

According to article 1 of the WHC, we can consider as cultural heritage a large number of properties, referring to «monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view». The Italian cultural heritage code (adopted by legislative decree n. 42 of 22 January 2004) provides a detailed definition of cultural properties as «chattels and real properties […] having an artistic, historical, archaeological, ethnoanthropological, archivistical and bibliographical interest, together with other properties identified by the law as witnessing a value of civilization» (article 2, paragraph 2).

Similarly, article 2 of the WHC defines natural heritage as «natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or con-

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eralismo, 2019, spec. p. 964 ss.; C. Tubertini, *Sviluppare l'amministrazione condivisa attraverso i principi di sussidiarietà (verticale) e leale collaborazione: riflessioni e proposte*, in *Istituzioni del Federalismo*, 2019, p. 971 ss.; R.A. Albanese, E. Michelazzo, *Manuale di diritto dei beni comuni urbani*, Celid, Turin, 2020; G. Arena, *I custodi della bellezza*, Touring Club Italiano, Milan, 2020. See L. Vandelli, *Il sistema delle autonomie locali*, il Mulino, Bologna, 2021.

servation; natural sites or precisely delineated natural areas of out-standing universal value from the point of view of science, conservation or natural beauty». These can be included in the notion of landscape properties, defined by the Italian cultural heritage code as «properties expressing historical, cultural, natural, morphological and aesthetic values of the territory, together with other properties identified by the law» (article 2, paragraph 3).

Each of these categories refer equally to public and private belongings, with the general duty of protecting and valorising them given to the public authorities. According to article 117, paragraph 2 of the Italian Constitution, the legislative authority for the protection of cultural and landscape properties is exclusively assigned to the State, while the legislative authority on the matter of valorisation is shared by the State and the Regions. This arrangement of competences appears to be quite rigid and has given rise to a great deal of litigation before the Constitutional court.

On the other hand, the articulation of administrative functions is far more flexible and is based on the fundamental principle of subsidiarity. This principle comes directly from the law of the European Union: according to article 5 of the Treaty on European Union, «in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level». After a constitutional amendment in 2001, the current formulation of article 118, paragraph 1 of the Italian Constitution affirms that the administrative functions are generally held by Municipalities (according to the principle of proximity), unless they are conferred to Provinces, Metropolitan Cities, Regions or else the State in order to assure the unitary exercise of them all. As a result, any single administrative function can be exercised by the highest levels of territorial government only if the low-

est ones are not able to do it properly, so expressing a general principle of subsidiarity in a vertical meaning[2].

As far as the protection of cultural heritage is concerned, article 4 of the Italian cultural heritage code states that this function shall be guaranteed by the State, and more precisely by the Ministry for Cultural Heritage, so as to ensure the unitary exercise of such protection (either directly on its own or by delegating such a competence to the Regions, through specific agreements). The valorisation of cultural heritage, however, does not follow the same concentration criterium and depends on the different criterium of availability of the properties: according to article 112 of the Italian cultural heritage code, without a specific agreement each public authority is required to guarantee a full valorisation of those properties at its own disposal.

This said, the engagement of public authorities is not sufficient to ensure the best protection and valorisation of national heritage, which is why the commitment of private citizens has become more and more important. Article 1, paragraph 5 of the Italian cultural heritage code requires the private owners of cultural heritage to ensure their protection, while article 6, paragraph 3 underlines a general preference for the commitment of privates in the valorisation of cultural heritage. Such a regulation finds its roots in article 118, paragraph 4 of the Italian Constitution, which defines the principle of subsidiarity in a horizontal way. According to this latter norm, all the levels of government are asked to encourage the autonomous action of private citizens, either as individuals or within associations, for the implementation of activities pertaining to the general interest. Given the relevance of the norm within the Italian legal system, it deserves a detailed focus.

First of all, article 118, paragraph 4 does not simply allow room for private subjects: the public authorities are clearly required to promote their participation, actively and not only passively (i.e. through ad hoc disciplines). It states that private initiative must

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[2] See L. VANDELLI, *Il sistema delle autonomie locali*, cit., p. 55.

be autonomous, spontaneous and without any conditioning on the part of other subjects. Moreover, the activities should be carried out both by individual citizens (outside any legally recognized group) and by associations, so as to broaden the field of private initiative as much as possible. In conclusion, such activities cannot be ascribed to the notion of horizontal subsidiarity unless they pursue an objective of general interest, that is, something which is aimed at improving the well being of the community as a whole[3]. The entitlement to enact subsidiary interventions is particularly widespread, in comparison with other institutes involving private citizens, where the commitment is usually limited to associations. In this case, no formal exclusion is contemplated by the norm, so that even companies could be involved. What really matters is the absence of profit as an aim such that the result of these initiatives can always satisfy a general interest, enjoyed by the whole community and not only particular individuals.

Many implications are connected to this principle. According to the traditional models of public administration, private individuals are usually seen as the counterpart of public authorities, they are entangled by the exercise of public powers and eventually receive a protection from the legal system, either within the administrative proceeding or through the legitimacy to go before the administrative judge. At the same time, according to the model of representative democracy, citizens usually exhaust most of their civic commitment by choosing somebody who will represent them and then by assessing his job, through the electoral process. On the contrary, the principle of horizontal subsidiarity gives rise to a different kind of public commitment, where the passive counterparts of the administrative proceeding become active citizens and the main characters of a renewed approach, in which both private and public subjects are involved in the pursuit of general interests. As a result, many more interests could then be satisfied and the involvement

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[3] A detailed analysis of this principle is developed by Daniele Donati in D. Donati, *Il paradigma sussidiario*, il Mulino, Bologna, 2013.

of private citizens could help in the management of an increasing number of new public needs, due to the complexity of post-modern society and its related troubles, while public sources are becoming fewer and fewer, because of public debt restrictions and subsequent financial crises[4].

The introduction of this principle represents a significant milestone in the Italian legal system. Many national laws quickly implemented the constitutional disposition, like article 1, paragraph 5 and article 6, paragraph 3 of the Italian cultural heritage code as well as other different sectional rules. An increasing number of judgements by the Constitutional Court has established that the duty to favour the autonomous private initiative aimed at a general interest is strictly mandatory for public institutions and cannot be ignored anymore. Nevertheless, the most significant application of the principle of horizontal subsidiarity has been at the local levels of government, especially Municipalities, given that article 118, paragraph 4 enables them to enact such disciplines without needing any further legislative intervention. Of course, this aspect is challenging for the legal framework, with a constant increase of towns adopting regulations on civic collaboration, as we will see later. However, before taking into account these types of rules, we need to keep the focus on the specific subject under examination, that is, cultural and natural heritage. As we saw earlier, the administrative functions pertaining to such properties inevitably involve the national level of government to a significant degree, especially as regards cultural heritage. Therefore, when the autonomous initiative of private citizens refers to these goods, there needs to be a structural confrontation with the national institutions required by law to pursue these functions (namely, the Ministry of Cultural heritage and its territorial articulation, the Superintendence Office), also through the intermediation of local governments.

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[4] See C. Tubertini, *Sviluppare l'amministrazione condivisa attraverso i principi di sussidiarietà (verticale) e leale collaborazione: riflessioni e proposte*, cit.

3. *The local regulations on civic collaboration and the pacts of collaboration as legal instruments*

The adoption of local regulations on civic collaboration has represented the main implementation of the principle of horizontal subsidiarity within the Italian legal system since its introduction by the constitutional reform of 2001. This discipline is unusual because it not only encourages the autonomous initiative of private citizens, but also introduces a specific legal tool aimed at defining the reciprocal commitments and responsibilities of private proponents and the local administrations, namely, the pacts of collaboration. Through these pacts, some private subjects submit a purpose of civic collaboration to the municipal administration, involving either the protection or the shared management or else the restoration of urban common goods. They draft the exact activity they are going to undertake, together with the duration of the intervention and what they need from the public administration, in terms of materials and of facilities (and anything else). Then, the municipal administration examines the purpose, by involving all the different public offices sharing authority on the subject and who would be affected by the intervention; unless there are some reviews according to the characteristics of the purposed activity, the purpose is translated into a pact of collaboration by a specific municipal office and is finally signed by both the subjects involved (namely, by the private proponents and by the municipal office). After the signature, the private proponents are, after a short period, allowed to begin implementing the content of the pact, while the Municipality is required to support them according to what has been previously defined, that is, for example, by giving them materials and other facilities for free. Of course, every single activity implying the use of public sources must be carefully reported, through a recurrent account which will then be checked by the municipal offices holding authority in that specific subject.

The exact juridical nature of such a legal instrument is still unclear and is object of an open debate among researchers. Some of them stress that they are «pacts» and so consider them as contractual acts, with a consequent application of civil law according to article 1, paragraph 1bis of the fundamental law on administrative proceedings (law n. 241 of 1990). On the other hand, others stress the lack of mutual economic commitment (what is called *synallagma* in Italian civil law) and the pursuit of general interests as a sufficient reason to qualify the pacts of collaboration as instruments submitted to administrative law. Each of these different views has significant implications for the judicial regulation of these pacts and on the powers conferred to the administration and each of them draws on relevant argumentation[5]. It is, however, quite clear that the involvement of general interests and the total lack of any economic gain qualifies the private commitment as something different from those usually implied by contractual acts. Moreover, the role of public authorities is not simply limited to a check of the legality of the drafted purpose of the collaboration; they need to apply a well-defined administrative proceeding to identify the activity, to share the efforts and the sources together with private citizens and eventually to follow up on the implementation of the pact. Therefore, in this way they concretely pursue a public function to exercise a public power, although they follow a completely renewed standard, where citizens are no longer the counterpart of the public administration but become active participants in the drafting (and the subsequent enacting) of interventions, on behalf of an increased well being of their own communities: that is precisely the meaning of the word collaboration, which comes from the latin *cum-labor*, implying a shared effort to reach a common goal.

Another significant aspect of these pacts is represented by their object, namely urban common goods. It is very difficult to provide an unambiguous definition of such a complex issue. From a legal

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⁵ See F. Giglioni, *I regolamenti comunali per la gestione dei beni comuni urbani come laboratorio per un nuovo diritto delle città*, cit.

perspective, since the adoption of the first local regulations, the notion of common goods has been defined as referring to «those material, non-material and digital goods, which are recognized by the citizens and the administration, through participatory procedures, as aimed at the individual and common well-being, so as to deserve a consequent commitment according to article 118, paragraph 4 of the Constitution, in order to share the responsibility of their protection and regeneration and to improve their collective usage»[6]. Among these goods, we can find both physical elements (like walls, gardens, buildings and so on) as well as non-physical ones (such as social inclusion or the fight against digital divide). No reference is made to the qualification of common goods as being either of public or of private property; which, in effect, is not important. What is relevant is their impact on the individual and collective well-being, to justify a subsidiary collaboration between citizens and the administration. At the same time, we should take into account the economic notion of common goods (usually known as *commons*), as those economic goods whose use cannot be denied to anyone, but when used in common can affect the participants'. As a result, many economists have stressed the so-called tragedy of the commons, because their irregularities prevent private subjects from producing them according to general market rules. Of course, we are talking about two different notions, but it is important to consider also the latter, as relevant studies suggest a shared management of these commons, following well-detailed rules and preferably at a local level[7].

The introduction of the pacts of collaboration within the Italian legal system was due to the adoption of specific disciplines directly by the local levels of government, namely the Municipalities. No primary source of law was required as the legal ground of these regulations, thanks to the widespread provision enunciated by article

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[6] According to article 2, paragraph 1, letter a of the Municipal regulation of Bologna on civic collaboration.

[7] See E. OSTROM, *Governing the Commons*, cit.

118, paragraph 4 of the Italian Constitution. As a result, the Italian Municipalities can find a full legitimacy directly by referring to the general principle of horizontal subsidiarity, with no need to wait for a legislative assessment or else for some coverage norm coming from a higher level of government. Of course, this can be identified as one reason explaining the remarkable success of pacts of collaboration all over the Italian territory, with an increasing number of local regulations on civic collaboration being adopted by Municipalities, from north to south, as we will see later. At the same time, the central role played by local government in implementing these rules has brought out a marked difference in the ways this legal institution can be applied around the country. To be clear, if a town is characterized by an ingrained sense of civic commitment, a well-prepared team of public administrators and sufficient financial sources, it can naturally adopt a «braver» regulation, through which it can ensure full administrative help for every individual practice, a unique subject or office, while taking into account the purposes of collaboration and finding also enough money to buy the facilities needed (when the public administration is not able to provide them directly to the proponents). If the same town has to face a different social or financial situation, it may be more «prudent» while adopting these regulations, for example by limiting the affordable kinds of support and by assessing more strictly the skills of private proponents before signing the pacts, or else by submitting the drafted purposes of collaboration to the existing public offices, without creating a specific one due to its limited capabilities.

The first experience of that kind can be found in the city of Bologna, where the municipal administration adopted the very first local regulation on civic collaboration in 2014. The draft of the regulation had been previously elaborated by a highly qualified team led by Labsus, an association whose main goal is precisely to valorise the full potential of the principle of horizontal subsidiarity. The text was then submitted to a check by both the experts of the local administrative machine (that is, those who would be called to implement it later) and the main public stakeholders (namely, the asso-

ciations and organized groups who would then use the new rules to achieve social goals by advancing purposes of collaboration). Finally, the municipal council collected the favourable checks made by neighbourhood councils and approved the regulation, establishing a two-year experimental period. After more than eight years from the introduction of the regulation, there is plenty of evidence of its success, noticeably by the many hundreds of pacts of collaboration signed by the Municipality and private citizens and subsequently implemented, as well as by the immediate emulation of a large number of Italian Municipalities. In order to understand the exact reasons for its achievement, we shall analyse the main characteristics of this discipline.

The abovementioned act adopted by the Municipality of Bologna is entitled «Regulation on the collaboration between citizens and administration for the protection and the regeneration of common goods». Its first part enunciates a list of general dispositions, where many Constitutional norms are recalled as ground-norms (such as articles 114, 117 par. 6, 118 par. 4), as well as many descriptions about the essential aspects of the collaboration (starting from the already mentioned notion of common goods) and of general principles (such as reciprocal faith, transparency and accountability, inclusiveness and so on). Active citizens are identified in article 4 as the main characters of civic collaboration: no further title is required when they send a purpose of collaboration; they could be either individual subjects or members of an informal collective group (besides being members of an association). Moreover, once a purpose has been sent and published, any citizen other than the proponents could ask to join them and to implement that specific purpose of collaboration. Further details are provided about the content of each pact of collaboration, where the parties identify the objectives to pursue, the activities and their duration, how people will be able to enjoy the involved common goods, as well as who has accountability and which responsibilities belong to the proponents and the administration. A specific mention is made of the activities involving public space and buildings, where we can find different

graduations of collaboration (from an occasional care to a continuous protection, a regeneration and a subsequent shared management), with the objective of improving both the standards followed by the municipal services and the collective fruition of these goods.

The second part of the regulation disciplines the procedures to be followed by the administration, to identify the civic collaboration as a new public function. These purposes may either be urged by the Municipality itself or come from a spontaneous private initiative. In the first case, the municipal administration publishes a specific announcement where it enlists a series of urban common goods which deserve a subsidiary intervention and details the procedural requirements (and this usually happens at the beginning of each administrative mandate, after local elections). In the second case (when further common goods are involved), the timing and the competent structures will depend on the complexity and the content of the intervention. A dedicated municipal office has been created to manage all the purposes and to define the draft of each pact, namely the active citizenship office, so that the citizens can have a unique counterpart on the administrative side, with a positive impact in terms of simplification. A relevant role is played as well by the city neighbourhoods, where most of the purposes are sent and finally signed, to keep the collaboration at the nearest level to the citizen.

After analysing many specific kinds of pacts with a detailed discipline, the regulation then offers a wide range of supports the Municipality is entitled to assure to active citizens while implementing the pacts of collaboration. Starting from the provision of an adequate training, the regulation enlists a large number of different solutions the local administration can opt for, such as the exemptions from local taxes, the free access to municipal spaces, the delivery of consumables and individual protection instruments, the refund of most of the costs paid by the citizens through financial sources, the self-financing, the public recognition of the implemented actions and finally the administrative support granted by municipal employees. Of course, the delivery of consumables

appears to be the best option for both the active citizens and the administration, when they sign a pact involving material common goods; in fact, it allows the former not to afford any significant expense and the latter to tap into its assets. Another relevant solution is the request for administrative support, which is very common and is coherent with the nature of civic collaboration; it can consist in a simplification of many formal requirements while implementing the activities, or else in a direct dialogue with third public institutions assured by the Municipality itself. A controversial form of support is represented by the financial refund of the costs incurred by citizens, which may give rise to some concerns about the conformity with other public rules. As a result, the most recently adopted regulations on civic collaboration do not include this disposition. However, both the regulation of Bologna and the subsequent public announcements significantly reduce its range, while allowing it only when the municipal administration has no adequate goods among its own assets, so as to draft it as a residual provision. Moreover, the refunds cannot cover the whole private expense, but only a limited rate of 80%, which should be given only after a detailed account of the incurred costs (although nowadays it is possible to ask for an anticipation). In addition, the refund can also cover the expenses for professional expertise, but these must refer to third subjects (other than the proponents) and can refer only to 50% of the total amount.

Then, the regulation disciplines some communication requirements as well as the accountability of the results attained. Each account shall refer to the general principles of clarity, comparability, periodicity and verifiability. There are further dispositions concerning the responsibility belonging to the proponents, which shall be detailed in every single pact and is consistent with the discipline on civil responsibility (according to article 2043 of the civil code). In conclusion, some final and transitional norms identify a one-year experimental period after the adoption of the regulation, as well as a general favouring of active citizens in case of doubt when interpreting these rules.

As mentioned before, the introduction of this regulation in Bologna has been followed by many other Municipalities, showing a relevant success in the implementation of the pacts of collaboration. Nowadays, at least 252 regulations on civic collaboration have been adopted[8], including towns of different sizes, with a larger concentration in the northern part of the country. The latest report on the shared administration, which has been recently edited by Labsus, assessed a considerable number of current pacts of collaboration (more than one thousand in 2021); most of them refer to the cities of Genoa, Bologna, Pistoia and Turin. Almost 80% of these pacts have been drafted in cities with more than 60,000 inhabitants. As regards the proposers, 40% of them are associations, while 22% are individual citizens and 13% are informal groups (with a significant presence of subjects outside any formal structure). Most of these pacts have been signed by a municipal officer, according to a notion of collaboration, which is gradually becoming an institutional function pursued by the Municipality, although the political components maintain an important position. As for the object of the collaboration, most of the involved common goods refer to the environment and urban decorum, with an absolute majority of pacts involving material common goods (at least 63%), even though we see an increasing number of pacts aimed at valorising both material and non-material goods (more than 24%). Most of these pacts last for more than 1 year, with a decrease of occasional interventions. Finally, the main supports required by citizens are the delivery of materials for free (up to 23%), the promotion of the activities (19%), the exemption or reduction of taxes (10%) and the refund of accounted expenses by financial sources (9%)[9].

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[8] According to the latest check by Labsus, which can be found at the current link: *www.labsus.org/i-regolamenti-per-lamministrazione-condivisa-dei-beni-comuni/*.

[9] For further details, see also the latest Report on shared administration edited by Labsus: *www.labsus.org/2022/03/1001-esercizi-di-pace-alla-base-del-rapporto-labsus-2021/*.

4. *The peculiar experience of civic collaboration involving the Porticoes of Bologna*

The involvement of cultural and natural heritage in civic collaboration between active citizens and the administration is a significant aspect which deserves separate examination. These kinds of interventions are accurately disciplined by the local regulation adopted in Bologna, in article 15, paragraph 6: «The regeneration interventions related to cultural and landscape heritage, which are subject to protection pursuant to Legislative Decree no. 42 of 22 January 2004, are previously submitted to the Superintendence competent in relation to the type of intervention, in order to obtain the authorizations, clearances or acts of assent, however named, provided for by the regulations in force, in order to ensure that the interventions are compatible with the artistic or historical character, appearance and decorum of the property. The procedures relating to these authorizations are borne by the Municipality». The essential role played by the Superintendence, as an articulation of the Ministry of Cultural heritage, is justified by the peculiarities of these specific goods and by the administrative competence in the protection of the national level of government; which is why any intervention involving cultural and natural heritage cannot help but ask for assent from the Superintendence. Such a mandatory passage potentially complicates the procedures required for the approval of citizens' purposes. In fact, the administrative terms up to this institution are far longer than those usually prescribed and the language is not easy to interpret; a situation that could t eventually discourage many active citizens from submitting any purposes of this kind. However, most regulations try to deal with this issue by absolving citizens from any further bureaucratic passage. As shown by the abovementioned article 15, every procedure involving the request of authorizations and other similar assents by the Superintendence is the responsibility of the Municipality itself, thus simplifying the task of private citizens in a significant way. Moreover, the Municipalities often reach an overall agreement with the Superintendence

on the correct ways for protecting and regenerating specific categories of cultural and natural properties, so as not to repeat the assent requirement for every single purpose sent by citizens.

An important example of civic commitment in the protection and regeneration of cultural heritage is of course represented by the pacts of collaboration involving the Porticoes of Bologna, which are the focus of the current paragraph. The Porticoes have been the main identifying element of the urban fabric in the city of Bologna since the 12th century, as a result of urban regulation systems which encouraged their development for many centuries, covering different architectonic styles from the ancient structures in the city centre until the most recent extensions in the outskirts. After long and arduous preparation by the Municipal offices together with national institutions, the city of Bologna officially proposed the candidacy for its Porticoes to the UNESCO world heritage sites list in 2019. A choice was made to include only twelve components as the most representative ones, as they had a high degree of authenticity and integrity, were of historical and architectural importance, in an excellent state of conservation and with excellent conditions of accessibility and public fruition. For each of them, the original and substantial contribution to the Outstanding Universal Value of the overall series, as required by the World Heritage Convention, is summarised by a list of five attributes: long span of time, permeating element, functional variety, typological variety, social urban use[10].

After a detailed assessment headed by the ICOMOS (International Council of Monuments and Sites), according to the current UNESCO procedures, the Porticoes of Bologna were finally included on the UNESCO world heritage list during the extended 44th session of the World Heritage Committee held online and chaired from Fuzhou (China), which examined nominations from both 2020 and 2021. This is the complete description which is

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[10] A report of the candidacy and of the peculiarities of each component can be found on the official website *www.comune.bologna.it/portici/en/news/porticoes-unesco-world-heritage-list*.

currently reported on the UNESCO official website: «The serial property comprises twelve component parts consisting of ensembles of porticoes and their surrounding built areas, located within the Municipality of Bologna from the 12th century to the present. These portico ensembles are considered to be the most representative among the city's porticoes, which cover a total stretch of 62 km. Some of the porticoes are built of wood, others of stone or brick, as well as reinforced concrete, covering roads, squares, paths and walkways, either on one or both sides of a street. The property includes porticoed buildings that do not form a structural continuum with other buildings and therefore are not part of a comprehensive covered walkway or passage. The porticoes are appreciated as sheltered walkways and prime locations for merchant activities. In the 20th century, the use of concrete allowed the replacement of the traditional vaulted arcades with new building possibilities and a new architectural language for the porticoes emerged, as exemplified in the Barca district. Together, the selected porticoes reflect different typologies, urban and social functions and chronological phases. Defined as private property for public use, the porticoes have become an expression and element of Bologna's urban identity»[11].

From the beginning of the work on preparing for the UNESCO candidacy, the Municipality of Bologna significantly stressed the importance of a widespread private commitment in the protection and valorisation of the Porticoes. A first relevant issue is linked to the ownership of this unique heritage. In fact, most of these Porticoes are private properties for public use, as clearly reported within the definition adopted by UNESCO official website. This is why an involvement of private sources and energies is often needed, and sometimes even mandatory, according to many provisions held by local regulations on the urban landscape (without forgetting the extreme – and rarely applied – disposition about the possibility to expropriate those goods whose wasting could severely affect the ur-

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[11] See *https://whc.unesco.org/en/news/2320/*.

ban landscape in article 838 of the Civil code). Another significant aspect may be found in a sadly common problem affecting many western cities, namely the so-called graphic vandalism, which seriously defaces the urban environment. A small group of people, considering themselves 'artists', can cover a considerable surface in the space of a few minutes, by putting some tags on walls with coloured spray. These tags are a sort of signature, identifying their author by a stylized drawing and witnessing his presence in that place. This is not the right occasion to analyse the origin and the deep reasons for such a complex phenomenon. What matters here is its deep impact on the urban landscape, especially concerning those properties having a universally recognized cultural value. The Italian criminal law explicitly punishes this kind of conduct in article 639 of the Criminal code, which inflicts financial penalties on those defacing others' properties, as well as a prison penalty in the worst cases (including the defacement of cultural and historical heritage). Nevertheless, such harsh dispositions can do very little to ensure a substantial prevention from graphic vandalism, because it is very hard to catch those responsible in the act. Of course, the only effective strategy to eradicate this phenomenon would require a constant presidium of the territory by law enforcement, as well as a widespread educational investment in young people and urban communities. At the same time, an immediate cleaning intervention is the only way to preserve the value of urban spaces, and eventually to discourage the authors from going on; on the other hand, leaving the walls full of tags contributes to a general perception of dirtiness and disregard, and even encourages more and more of such daubers to do the same.

Unfortunately, tags on the walls of the Porticoes are very often found in Bologna, and this considerably affects the level of protection such a heritage deserves In response to this, the municipal administration has started to take care of this troubled situation and to look for ways to mitigate its effects. Since 2010, many protocols have been signed between the Municipality of Bologna and the local Superintendence, on how to clean the walls of Porticoes from tags in a correct way, that is, by using the right paints and the

right technique. At first, the municipal administration decided to arrange some cleaning interventions in the hardest hit areas directly on its own, by involving one of its investee companies, Hera S.p.a., and then selecting private enterprises through public procedures. In 2015, the need to expand the catchment area and to look for a wider public commitment pushed the Municipality to shift from a direct intervention to an open call to volunteers, in order to arrange some groups in each neighbourhood and then to clean the walls of some selected streets, by using the materials offered by the local administration for free and under the constant direction of the private enterprises which had been previously chosen for realizing the work. This was the birth of the so-called 'No Tag' project in Bologna. The extraordinary answer coming from the citizenship quickly led to the creation of a large number of groups, usually composed of people living in a specific street and concerned about to keep it clean. Of course, all these groups needed to be given some training, usually arranged by the abovementioned enterprises, before taking up the paintbrush and the roller. Since most of the streets to be cleaned were in the city-centre (where many buildings are covered by specific bonds as cultural heritage), ad hoc protocols were followed, for example by removing the tags with some chemical gel, waiting for a while and only then painting the wall again.

Nevertheless, while most of these spontaneous groups were closely linked to a specific street and often stopped working after the first complete cleaning of the walls, some of them started enlarging their field of activity, by taking care of a wider area, and by benefiting from more and more people joining them. The most relevant and interesting case concerns the group of volunteers taking care of the streets around the College of Spain, called 'No Tag Saragozza'. In close coordination with the neighbourhood of Porto-Saragozza, this group covered many streets of the central area named 'Malpighi'. In the space of a few months, from April until December 2015, it involved a considerable number of people. Its main task was not simply to cover a wide area, but also to keep it clean over a longer period, considering the recurrence of tags in

these places even after they had been cleaned. A long training period was required since most of the interested buildings were under the authority of the Superintendence. Then, in 2016 this group collectively decided to focus on a new, specific target, namely the Saragozza Portico. It is so called after the name of Saragozza street, beginning in the city centre at the College of Spain and finishing in the nearest outskirts, at the Arc of Meloncello, where the San Luca Portico starts to link the city to the Basilica of San Luca. This Portico is divided by ring boulevards into two sides, the former within the city-centre and the latter in the outskirts; this second side can be considered as a *unicum* together with the San Luca Portico, and both of them formally belong to the Sanctuary of the Holy Virgin of San Luca (although any routine maintenance charge is the responsibility of the owners of the houses built upon the Portico over the centuries). Of course, the Saragozza Porticoes are a distinguishing place of Bologna, due to their long history and their architectural beauty. Moreover, they were one of the main sites nominated for UNESCO World Heritage. This explains why the need to keep them cleaned was taken seriously by the volunteers, who firstly removed all the tags in the space of a few months.

Later, they realized such a significant place deserved further commitment to protect and valorise it in the best way. Therefore, they sent a purpose of collaboration to the neighbourhood, requesting full authorisation to intervene in this place by painting the walls, following the requirements dictated by the above mentioned protocols. In 2017, a pact of collaboration was signed by the Municipality of Bologna together with the 'No Tag Saragozza' group, involving also other subjects such as LIONS Club Bologna San Luca, the Sanctuary of San Luca, the local Order of the Architects and the Parish of San Giuseppe Sposo. According to this pact, the volunteers were allowed to clean the walls of Saragozza street and other areas in the neighbourhood, with the materials given for free by the Municipality and without any further burden; the Municipality had the duty to supply the supply of all the material needed (to a maximum expense of 1,500 euro), as well as full technical sup-

port by a private enterprise having the required expertise in restoration; the LIONS Club would finance the group with further money (considering the current rules we have analysed before, whereby only 80% of the accounted costs could be refunded); the committee representing the Sanctuary of San Luca would have allowed the intervention on its own; finally, the order of the Architects and the Parish of San Giuseppe Sposo were to leave enough room to the volunteers as a store where to keep all the materials. Thanks to this pact, in 2019 the whole Saragozza Portico was completely cleaned from tags and painted. This pact has been confirmed year after year, notwithstanding a forced stop during the pandemic period, and is currently working[12]. In the meanwhile, the 'No Tag Saragozza' group promoted another different pact of collaboration, together with LIONS Club Bologna San Luca and many high schools of the neighbourhood, according to which, the volunteers held some lessons about graphic vandalism and urban landscape, then arranged some cleaning interventions involving the students, and also the realization of some murals under the guidance of an Art teacher. The pact was renewed from 2015 to 2018 and saw the participation of hundreds of students. Similarly, the cited LIONS Club arranged a special project together with a local high school, namely a photographic survey of the whole Saragozza Portico: some students created a rendering of the whole heritage, by deleting all the damage to the structure and rescuing a picture of how the Porticoes could look like after an effective restoration[13].

Alongside this experience, a large number of further pacts were subsequently signed, involving many groups related to single streets; some of them are still working, and many other purposes are being discussed nowadays. Thanks to such a substantial private commitment, more and more sides of the Porticoes are now completely

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[12] See the current pact at *http://partecipa.comune.bologna.it/no-tag-2020-rimozione-del-vandalismo-grafico-dalle-zone-saffi-costa-e-saragozza-quartiere-porto*.
[13] The content of the whole pact can be consulted at the following website: *http://partecipa.comune.bologna.it/sites/comunita/files/pdf_patto_collaborazione/patto_di_collaborazione_sottoportico_di_san_luca.pdf_1.pdf*.

clean. At the same time, the municipal administration has arranged many direct interventions for assuring a structural restoration of the most damaged arcades. All this joint work fulfilled the recommendations submitted by the ICOMOS committee when it visited the city after the candidacy of the Porticoes had been officially bestowed. In fact, the shared commitment for the protection and the valorisation of many streets eventually improved the level of care assured to this cultural heritage. Anyway, the recognition of the Porticoes as UNESCO World Heritage cannot be seen as a permanent situation; on the contrary, it implies a constant work to keep them at the right level of requalification. Civic collaboration will need to last for a long time, especially regarding those issues which involve private properties, and should not be simply resolved by public intervention, such as the cleaning of walls from tags. Of course, the adherence to the pacts of collaboration is not the only solution in terms of mutual commitment. Many relevant protocols have been signed between the municipal administration and the class associations representing house owners. Moreover, a «creative yard» is to be promoted by the Municipality, by financing two specific contests for activities aimed at cultural inclusion. These contests will be open to the participation of non-profit subjects and will eventually lead to the launch of the first 'International festival of Porticoes' in the Spring of 2023.

5. *Conclusion and perspectives of civic collaboration*

At the end of this broad analysis, we can notice that the commitment of private citizens for the care of common goods is no longer at an experimental stage. Nowadays, it has been translated into an original model involving the relationship between individuals and the administration with a completely renewed approach. The so-called shared administration is by now a reality in a large number of cities, which have adopted local regulations similar to that elab-

orated in Bologna in 2014. The quick spread of this model clearly shows that its success is not due only to the peculiarities of this or that context, but because it has many characteristics which make it concretely effective. For example, it is not reserved for associations, but includes individuals and other subjects who would not be engaged otherwise. It is not a comfortable way for public administrations to elude their duties, because such a private commitment is conceived as complementary rather than alternative to public commitment; moreover, the administrations actually spend the money to make this model work, needing also to invest significantly in the proper training of their officers. Nevertheless, all these features are as nothing without a strong, explicit link with a higher general interest to be pursued.

Of course, as we have seen before, civic collaboration plays a significant role in the protection and promotion of UNESCO World Heritage sites, since public commitment has been proven to be inadequate. Constant care of these properties requires joint action, so as to create a common sense of belonging around them and to assure a long-lasting effect. Indeed, we are not talking about a simple intervention, as might be the protection of a small garden or similar intervention. On the contrary, the shared protection of cultural and natural heritage implies the involvement of further institutions, starting from the Superintendence, whose assent cannot be ignored. However, it is the Municipalities duty to prevent proponents from having to deal with any bureaucratic burden, by submitting ad hoc protocols and bearing every procedure of that kind on its own.

Furthermore, the shared administration, as implemented through the pacts of collaboration and other similar institutions, can be seen as something more than an administrative model. In fact, it calls for a new level of private commitment, which can be compared directly with the traditional standards of representative democracy and defined as an innovative formula of «participatory democracy». In this case, citizens do not simply choose their representatives (who take political decisions and are responsible for them) but participate in the process of drawing up decisions of gen-

eral interest (and share such a responsibility). Participatory democracy emerges in the face of an exponential growth of complexity in post-modern societies, which entails the emergence of new needs to be met, compared with an ever-diminishing number of resources with which to meet them. Similarly, this model promotes an increase of positive participation as a value in itself, while intermediate bodies and representative mechanisms are getting weaker and weaker. Nonetheless, participatory democracy, in its many facets (whether it concerns the formulation of decisions or their implementation), cannot be configured as an alternative to the representative model, but is aimed at strengthening it and reshaping it according to the new dynamics that have emerged.

Dan Kisilewicz, Ileana Kisilewicz

ASPECTS OF THE IMPLEMENTATION OF WORLD HERITAGE CONVENTION IN ROMANIA[*]

Abstract: Romania joined UNESCO in 1956 and acceded to World Heritage Convention only in 1990. As a result, the Romanian Ministry of Culture has begun the researches for the nomination of the objectives in order to bring in operation the World Heritage Convention and inscriptions of some objectives with universal significance on the World Heritage List (WHL). For bringing to operation of World Heritage Convention, the Romanian administration has issued specific norms: government decisions on the organization of Management Committees related on each objectives included in the WHL. The established Management Committees tried to gather together specialists, beneficiaries, representatives of the local administration who cooperated to take specific practical measures in order to insure proper conservation of each WHL site.

After the Convention adoption's, the interest of the local NGOs increased for the heritage protection but also the attempt to use the universal quality of WHL not only for cultural matters. However, specific restoration and valorisation activities, as well as the adoption of urban regulations, for each site continue and are improving. The quality of WHL has been recognized, as the main opportunity, for attracting funding from the European Community, in order to support the restoration of the WHL cultural sites that becomes examples of best practice.

1. *Acknowledgements*

This study, motivated also by three decades passed since Romania put the World Heritage Convention into operation, it presents a brief historical overview on main moments regarding the preservation of architectural heritage and its public administration charged to this purpose. Some aspects on Convention implementation in reality, respectively the difficulties of the management of WHL sites which faced the temptations of contemporary realities,

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[*] Double-blind peer reviewed content.

produce the need for other theoretical or normative perspectives continuous adaptations to contemporary reality of these site in order to preserve their universal values, which can be seen as a shift from the enthusiasm of inscription in the WHL to the diligence of the management of preserving the authenticity of the listed sites.

2. *Early practice and preservation of ancient buildings in Romania*

«The need to preserve the old constructions as testimonies and documents of the past civilizations is due to the importance that was given to the scientific method used in the 19th century in the historical studies. Ceasing to make a simple chronological sequence of past facts and events, historians and people of culture, embracing in their studies the culture and all the aspirations of a nation, have seen in the ancient monuments the materialization of history itself»[1].

«The crystallization of the process of awareness of preserving the cultural heritage, which at first sight, today, is a matter of common sense, has travelled an interesting road through the historical time being sprinkled with many stops»[2].

These methods of marking the intervention of the restorer, when resorting to the reintegration of a monument, will become a principle that will strongly influence the further evolution of the concepts of restoration[3].

In Romania, the romantic stage of the restorations corresponds to the interventions carried out under the guidance of the architect André Lecomte du Noüy (1844-1914), pupil of Viollet le Duc 1814-1879 at several churches (St. Nicolas in Iasi, St. Demetrius in

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[1] G. Ionescu, *Arhitectura Românească. Tipologii, Creaţii, Creatori*, Editura Tehnică, Bucureşti, 1986, p. 130.

[2] I. Opriş, *Ocrotirea patrimoniului cultural-tradiţie, destin, valoare*, Editura Meridiane, Bucureşti, 1986, p. 26.

[3] Gh. Curinschi, *Restaurarea monumentelor*, Editura Tehnică, Bucureşti, 1968, p. 78.

Craiova and the Old Metropolis of Târgovişte) demolished and re-constituted sustainably according to ideal plans. Lecomte du Nouy is also owed the fact that he noticed the historical significance of the Princely Church in Curtea de Arges proposing its restoration, when he carried out works for the restoration (since 1875-1886) and arranged its transformation into a mausoleum at the command of King Carol I.

On the territory of the Romanian Principalities[4], from the Middle Ages until the end of the 19th century, the repair works of some churches, castles or fortresses contributed to their transmission to the generations that succeeded, but it cannot be said that the purpose of those interventions was determined by the will to preserve the cultural and historical values of the buildings. The motivations seem rather religious, restorations in the glory of the Lord, the need of the ruler to keep the 'country', a gesture of thanks giving of the boyars for the fulfilment of some victories, of parents' commemoration or of the sign of prestige and mercy in relation to the Christian people[5].

Towards the end of the 19th century, in the Romanian Principalities, under the European external influences, it penetrates the current of accepting the importance and adopting the ideas regarding the preservation of the historical and artistic values. Regarding the monasteries and hermitages and their state of conservation, are fragmentary documents from the past. In a document found at the state archives in Iaşi are gathered reports drawn up by the abbots, based on their empirical knowledge, regarding the history and state of numerous monasteries and hermitages belonging to the Metropolitan of Moldavia[6].

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[4] Principalities of Moldavia and Wallachia

[5] A. DOBJANSCHI, V. SIMION, *Arta în epoca lui Vasile Lupu*, Bucureşti, 1979, p. 24. There is an observation based on historian Nicolae Iorga regarding the actions of the ruler Vasile Lupu (1595-1661) who was the founder for 15 churches and repaired, another, 40.

[6] V. CĂDERE, in *Mitropolia Moldovei şi Sucevei*, XL, 1964, nr. 9-10, pp. 504-522.

3. *First laws on conservation in modern times*

In Romania, inspired by the French example, a Law for the conservation and restoration of public monuments was voted in 1892. This was a basic legal document related system of cultural heritage protection and which established Commission of Public Monuments as an advisory body of the Ministry of Public Instruction.

Following the WW1 and the achievement of national unity on December 1st, 1918, the preservation system of cultural goods in the Romanian Kingdom, also, adapts to the new geographical, social and political realities through the new Law for the conservation and restoration of historical monuments published in 1919 and which establishes the Administration of the Church House[7].

In the same approach the Commission of Historical Monuments was organized under the authority of the Ministry of Cults and Public Instruction and from 1923 its presidency is taken by the minister Nicolae Iorga, around whom gathered important cultural personalities of the time. The Commission allowed an active presence of their members in the field, for a permanent and dynamic control over the cultural heritage. At the end of the third decade, the conservation intervention was theoretically defined as the involvement of the knowledge and sense of «the artist in charge of this service before the most difficult problem, to get rid of his own personality and originality, proclaiming a subordination under the conception of a creator long extinct without imitating or amplifying his originality» so that the results nevertheless bear «the stamp of our time; in no case» the result of the intervention does not make us believe that it «exists from the time of the erection of the monument»[8].

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[7] By article 6 it was stipulated that «until the publication of the inventory of monuments, all churches and monasteries built until 1834 are provisionally classified as historical monuments, with all their odes» and this provision had to be glued on a cardboard and displayed in the porch of all churches built until 1834, declared a historical monument. *Monitorul Oficial*, no. 82, July 28, 1919.

[8] I. Opriş, *Ocrotirea patrimoniului cultural-tradiţie, destin, valoare*, cit., p. 112.

4. *New perspective on conservation and on values of the past*

After the WW2 realities imposed the revision of the internationally recognized principles, in the field of restoration, of the *Charter of Athens* in 1931, in fact of the *Italian Charter of the Restoration* of 1931, which were rediscussed at the International Congress of Architects and Technicians of Historical Monuments in Venice, Italy, 1964[9].

In Romania, after the turbulent events that followed the armed conflict of the WW2, there were built a new system of aspirations and new representations of the society. It was instituted the principle of labelling the old classes as groups with negative influences (on the grounds of holding wealth, power and competence) and the only 'healthy' social categories were those who had not had access to power, wealth or competence recognition[10]. The change of society values, also, had repercussions on the buildings belonging, to the forefathers who represented the dominating of previous classes[11].

During that period, a new public space was built, functioning according to new rules, with a network of appropriate organizations, with new codes of conduct, social and professional norms, new ceremonials of socialization and social integration were created.

On this social background appears the Decree of the Romanian People's Republic nr. 2223/1947 by which the activity of the Commission of Historical Monuments ceases and 4 years later by other decision, the Scientific Commission of Museums and Monuments is established at the Academy of Romanian People's Republic (RPR Academy), which had the role of proposing to the Council of Min-

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[9] The Romanian version of the Venice Charter is published in *Historical Monuments studies and restoration works* of the State Committee for Constructions and Systematization - Directorate of Historical Monuments, 1967.

[10] A. NECULAI, *Viața cotidiană în comunism*, Editura Polirom, 2004, p. 17.

[11] There were introduced other repressive measures (compulsory domiciles, impossibility of access to the big cities, compulsory presentation to the post of graduates of higher education, etc.) similar in harmfulness to the effects that served to ensure the victory of the proletariat in the terrible 'class struggle' (*ivi*, p. 258).

isters the new administrative organization that would deal with the protection of historical monuments. Then, in 1952 the Directorate of Architectural Monuments is established, as part of the State Committee for Constructions, Architecture and Town Planning (CSCAS), and later in 1953, the Commission for the Inventory of Historical Monuments is established at the R.P.R. Academy. In the same year, for the elaboration of the technical documentations necessary for the restoration works financed by the state, a design workshop is established within the Institute for Constructions and Town planning (ICSOR). Here worked architects and engineers who were the core of competence of the future Directorate of Historical Monuments (DMI).

5. *Inventory of historical monuments*

The lists of objectives that were declared to be protected, elaborated before the WW2, included, mainly, religious edifices, ruins of fortresses and archaeological sites. The commission created in 1953 initiates a systematization of goods by categories: monuments and archaeological sites, monuments and architectural ensembles, memorial buildings, monuments and ensembles of fine art and historical urban and rural areas[12]. The list of 3417 objectives was the first document invested with the force of law, recognized in court and with public notification. In it there are objectives that support the history of the new ruling class that needs legitimation, also, through history as material testimonies of their aspiration.

The importance of cultural activities as a component part of the socialist education for creating the 'new man' leads to administrative reorganizations and in 1969 the DMI subordinate CSCAS which pass under order the State Council for Culture and Art.

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[12] The list of historical monuments from 1955 includes the following categories: monuments and archaeological sites, monuments and architectural ensembles, memorial buildings, monuments and ensembles of fine art, urban and rural historical areas (reservation).

The social realities, the economic development and the systematization actions and modernization of the territory were motivations for the achievements of systematic research of the territory in order to make inventory the cultural goods that deserve to be transmitted to the future. The research activity in DMI was materialized by the elaboration of the Historical Monument Sheet for all objectives from the List of Historical Monuments.

In these decades of positive development Romania joined IC-CROM in 1969 on which there were developed programmes focused on mural paintings conservation, 15th century churches in Moldavia. We would like to mention that the authors of the article become ICCROM alumni based on courses attended in Rome.

6. *Natural disaster on the preservation matters*

A turning point for the Romanian life was the effect of a devastating event. The earthquake of March 4th, 1977, which had dramatic repercussions on the built fund and which demonstrated the fragility of many ancient buildings. Many churches have suffered, but also civil constructions listed as historical monuments. The consequences of this natural disaster were seen even in the centre of Bucharest, the capital of Romania, and the reconstruction works were carried out, at a fast pace, without taking into account the possibility of saving some historical monuments in the same area. The protests against arbitrary demolitions, from those who worked at DMI, led to dissolution of that institution and the activities of protecting the historical monuments regarding the inventory, approval and control specific interventions were assigned to local Offices of the National Cultural Heritage at the level of each county.

The activities aimed to develop the territory, changing the land-use for increasing the agricultural area by reducing the built area, the systematization of villages had a favourable impact on the inventory of rural architectural specificity in the historical regions. It should be remembered, that by the repeated implantation of some

constructions' typologies, between 1955 and 1970, which ensured a rapid and economic execution responded to the housing social needs of people, due of urban environment uniformization, it resulted a loss of identity of built environment not only inside the towns but in rural settlement, too

7. *The 20ᵗʰ century as important moment in the development of conservation administrative polices*

The historical events of December 1989, in Romania and Eastern Europe, produced once again, changes in the institutional structure in the field of heritage preservation, which led to the establishment of the Directorate of Monuments, Ensembles and Historical Sites attached to the Ministry of Culture and the recreation of National Commission for Monuments, Ensembles and Historical Sites with the chairman Prof Arch. Grigore Ionescu (1904-1992), the author of the first History of Architecture in Romania in 1937.

In the new economic social context of the country, the implementation of the List of historical monuments in 1991 was not without difficulties due to the lack of knowledge of the mechanisms of administrative action in a democratic society, based on the power's separation and when the guarantee of private property is a fundamental component.

The list of historical monuments become the instrument with the power of opposability in justice once published in *Monitorul Oficial*/Official Gazette 646 bis/2004. The list had up of three categories-monument, ensemble, site including objects of immovable heritage divided into two value groups: A of national/international importance and B of local importance.

Through the content of Law 422/2001 for the protection of historical monuments, the procedure of registration / deregistration from the List of historical monuments was established too. By protecting a building, in fact, a regime of public easement is established

as a result of a public interest, established by the procedure of closure, over a property.

The difficulties, arising from the restriction of a fundamental right (recognized by social organizations in which private property has a fundamental value) by declaring the public interest in a private property, also, has a historical connotation with a rich casuistry illustrated by the variety of ways of complaining or expressing opposition to administrative action. This situation had unfavourable repercussions on the preservation of buildings.

The list of missing monuments is a novelty in the field of inventory. Through inventory, through documentation, the preservation of the memory of a building is ensured and it is very useful to the comparative study of the history of architecture.

8. *Research on heritage values, the role of Direction of Historical Monuments (DMI)*

The consequences of the WW2, the presence of Soviet troops within the borders of the country, the economic enslavement for the payment of the war damages, the persecutions suffered by the population in affirming the continuity of the Christian faith, had consequences also on the objectives subject to conservation and restoration, especially on the religious ones.

In this context there was an exceptional involvement in the ancient churches' preservation of the Metropolitan of Moldavia, between 1957 and 1977, who, then, became Patriarch of Romania: PhD. Iustin Moisescu (1910-1986). No one had suspected that in the Metropolitan scholar Iustin Moisescu was hiding a skilled restorer and a true householder. He loved Moldavia and its church monuments[13]. The Metropolitan Church of Iasi witnessed the debates or conversations held by the archbishop with architects involved in the worksites (seldom, Nicolae Diaconu and Ioana Grigo-

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[13] *Teologie și Viață*, 2006, 1-6, p. 99.

rescu), with specialists on the historical topics, medieval art and ancient culture. Often, the metropolitan survey the sites together with them and had lively, sometimes even heated discussions regarding the suitable solutions that would be executed in order to preserve the authentic peculiarities of the historical site or to protect the mural painting.

The dissemination of the knowledge regarding the historical and cultural values of monasteries or churches from Eastern part of country (Moldova) was facilitated by the metropolitan's support to print, in chosen graphic conditions, several brochures[14].

In 1959, Direction of Historical Monuments (DMI) was established as a state conservation central institution. «The establishment of an institution of that kind existing in many European countries specialized in the restoration of historical monuments, with services of study, approval, design and execution» – recalls, a former director, arch. Cristian Moisescu[15] – is due, in part, to the dialogues of Metropolitan Iustin Moisescu with Mihail Sadoveanu (this writer argued for the usefulness of this institution in front of the political leaders). The involvement of the DMI in the field of monuments has become a very important landmark and has effectively contributed to the conservation worksites on the most significant historical monuments as well as of the researches in order to substantiate the inventory of the immovable cultural heritage. The organization of DMI proves that the institution has brought together all the components of the activities concerning protection of historical monuments by:
- elaboration of technical documentation for the restoration works with a group of enthusiastic architects and engineers who have proved to have been talented,
- execution of restoration works through companies distributed by region that had centralized warehouses of specific materials

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[14] S. Porcescu, *Vrednicia, strădaniile şi înfăptuirile Prea Fericitului Patriarh Iustin în scaunul mitropolitan de la Iaşi*, in: *Mitropolia Moldovei şi a Sucevei*, LIII, iulie-sept. 1977, nr. 7-9, pp. 536-542.

[15] *Ivi*, p. 128.

for restoration works and supplied and coordinated the working groups acting on the worksites for interventions on historical monuments,

- the activity of approving all the interventions on the historical monuments or in their buffer zones through the Commission of Museums and Art Monuments established in 1951, which passes from the R.P.R. Academy to the DMI.

9. *Discovery of the architectural heritage value in the Moldavia region - Eastern Romanian. Premise for first inscription in WHL*

With the development of industrial society, in the 18th century, it was no longer so simple to agree on what was useful when human communities contained thousands or hundreds of thousands of individuals organized in various social structures. Consumerism, once firmly discouraged by primitive economies and medieval laws, has been a growing force for new trade, often becoming more profitable to give up than to keep, and even better, to demolish than to give up, regardless of the general interest[16].

The political evolutions after the Revolution of 1848, the Union of the Romanian Principalities, had consequences in the field of architectural heritage protection; thus, inventory researches are initiated, especially on those belonging to the Orthodox Church and also museum organizations begin[17].

In those moments, in Bucovina (the Northern area of Moldavia[18] under Habsburg Empire, separated from the Romanian Principalities), Alois Riegel's conservation concept was transposed

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[16] D. Bell, *Guide to International Conservation Charters*, Historic Scotland, Edinburgh, 1997, p. 6.

[17] I. Opriş, *Comisia Monumentelor Istorice*, Editura Enciclopedică, Bucureşti, 1994, p. 49.

[18] M. Chopin, A. Ubicini, *Provinces Danubiennes et Roumaines*, Editura Apollonia, Iaşi, 1993.

through the studies and works done by Karl. A. Romstorfer[19] who has the merit of being the first to work effectively, systematically, for the preservation of the architectural values contained in the important churches from that region.

During the first half of the 19th century, under several cultural influences, the ancient and historical constructions were taken into account, which was expressed by numerous edicts in Habsburg Empire, with the aim of protecting, and in particular prohibiting the exports of works of art and ancient objects, so that the removal of ancient objects from the castles and their ruination were forbidden in 1802[20].

Therefore, in 1850, in Habsburg Empire was established the Imperial Royal Central Commission for the Study and Conservation of Monuments. That Central Commission worked mainly on a voluntary basis and coordinated the activities of the Honorary Conservatives appointed in the various parts of the Habsburg Empire and encouraged the search for financial support to available private resources, including history societies. The competent authorities in the building field were invited to cooperate on the provision of technical assistance and the carrying out of surveys.

Restoration, in general, had to be limited to regular maintenance, repointing masonry, cleaning and measures to prevent further degradations. In rare cases, additions considered vital for the preservation of the original were accepted, but not the stylistic elements, even if those additions could have been made, only, in the spirit of the ruins.

Although the conservators were honorary and diligently active, they were dilettantes in restoration matters, relying only on what

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[19] Karl A. Romstorfer, (1854-1916). He elaborated writings of art history, about the Moldavian 'Byzantine' architecture. As an architect he was involved in the execution of works of schools, chapels, churches and especially in the 'Byzantine' Moldovan constructions. Only at the end of Franz Joseph's reign, Romstorfer restored some of the churches of Stephen the Great in Suceava.

[20] I. Opriş, *Comisia Monumentelor Istorice*, cit., p. 49.

they intuited as respect for the historical character being greatly enlivened by a romantic attitude to the forms of the past.

Appointed conservator for the Duchy of Bucovina, member of the Central Commission, with an honorary position, K.A. Romstorfer[21] began by researching to know the art of building in Moldavia. For this purpose, being attentive to the stylistic influences, he carried out in 1887, a mission in Romania with the agreement of the Ministry of Cults and Public Instruction. Byzantine lineage (on the area of Constantinople - Southern Russia), also circulated by religious means, was the connection point of his researches that led him to write the book: *The Art of Byzantine-Moldavian Constructions*[22]. The work is amply illustrated with numerous general drawings of some churches as well as details or plans-surveys[23].

At the beginning of the 20th century, the members of the Romanian Commission for Historical Monuments, carried out a research activity on historical monuments, focusing especially, according to their vision, on religious architecture. The researches carried out by the engineer Gheorghe Balş try to establish stylistic evolutions of the Moldavian churches.

L'Architecture religieuse moldave was published in French same as Nicolae Iorga's work *Histoire de l'art roumaine ancient* in Paris 1922, presenting a special importance that offers an analysis on the values of Romanian architecture.

The values of the art of monuments in northern Moldavia, from the origins to the end of the 15th century, are presented, in 1930, in France, in the book *Les églises de la Moldavie du Nord, des origines à la fin du XVI siècle*, as a result of the French historian Paul Henry[24] who elaborated, for the first time outside of Romanian territo-

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[21] *Ibidem.*

[22] *Die Moldausche-Byzantinische Baukunst*, Wien, 1896.

[23] V. Polizu, *Memoria Arhitecturii*, Editura Universitatea „Ion Mincu", Bucureşti, 2006.

[24] Paul Henry (1896-1967) - Former Rector of the Academy of Rennes, son of a professor, was a brilliant student of the Normal School in Paris and worked in Chernivtsi within the University, and then came to Bucharest to occupy the position of director of the French Institute.

ry, a complex synthesis, on an ensemble of Romanian monuments viewed both from the perspective of the history of architecture and from the richness of their mural paintings decorations[25].

In the preface to the Romanian edition, Jean Delumeau states that Paul Henry's work proves that «the peak of Moldavian art is in the second half of the 15th century and the first half of the 17th century» contemporary with «the completion in Italy, France, Spain, England and Germany of the most beautiful works of the Renaissance» and the «parallelism between these works and the cultural momentum» medieval time is very important for the historiography of the Romanian culture «establishing two-way interferences»[26]. The premiere of the work consists in «the morphological investigation on architecture and painting, taken as a whole. Paul Henry filled a loophole and did so with such rigour and competence that his work remains a landmark of the genre and a base of reference on the subject»[27].

Paul Henry always presents architecture and painting in the context of important historical events of the time, in relation to the evolution of the state of Moldavia but also with references to cultural currents «which have crossed coming from Armenia, Byzantium, Bulgaria, Serbia, Poland, Hungary and the West».

In the foreword of the original edition, Charles Diehl, pointed out that the craftsmen of Stephen the Great (Moldavian ruler, 1457-1504) used the polychromies of the ceramic material – enamelled discs and bricks – of Byzantine tradition «used to decorate the facades of the edifices». The 16th century covered with frescoes all «facades of the churches: Voroneţ, Humor, Vatra - Moldoviţei, Suceviţa; those present the most interesting examples of this new form, which is perhaps all that the Moldavian painting offers more picturesque and more original, both by introducing in this mural

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[25] H. Paul, *Monumentele din Moldavia de Nord, de la origini pînă la sfîrşitul secolului al XVI-lea, contribuţie la studiul civilizaţiei moldave*, Editura Meridiane, Bucureşti, 1984.

[26] *Ivi*, p. 7.

[27] *Ivi*, p. 7.

decoration some folklore topics, as well as by remarkable qualities of the colour»[28].

The conclusions reveal that the Moldavian architecture «occupies a special place in the Byzantine world» with a roof of «a characteristic rugged shape coming from the fact that each architectural element, the apse of the altar, the lateral apses, the spire, the narthex, is each covered separately»[29]. As for the mural decoration «Moldavian churches of the 16th century make up a group of a remarkable unity»[30]. It is noted, however, the numerical poverty of the ancient stone churches, before the 14th century, and the ruins of the very ancient ones have «features borrowed from Western art». The feature of the 16th century is the fresco in the decoration of the facades. «The exterior painting is the one that produced Moldavia more personally and originally; not only the iconographic ordering of the painting, but the interpretation of the usual motifs and the introduction of some local topics which reveal a thinking of its own, a real local school having its specific traditions and conceptions»[31].

The usefulness of the international importance of Paul Henry's volume proved, especially, in 1992, at the motivation of supporting the application for registration in the World Heritage List - UNESCO of the 7 churches with exterior paintings from Moldavia.

10. *The beginnings of the restoration sites activities in Romania*

In Bucovina, Romstorfer's activity of practical interventions began with researches, for the first time in Romania, of systematic archaeology to bring to light the ruins of the Fortress of Suceava, between 1895 and 1904. These works can be considered to really open the book of modern restorations, carried out on the Romanian territories in order to bring to light historical values. Thus, at

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[28] *Ivi*, p. 11.
[29] *Ivi*, p. 255.
[30] *Ivi*, p. 256. Iconographic discourse remains the same everywhere.
[31] *Ivi*, p. 258.

St. George's Church in St. John's Monastery in Suceava, decorated with exterior frescoes, the roof made with decorative elements of polychrome enamelled tile, made after the works finished in 1910, is easy to notice today.

The period, the last decades of the 19th century until the dissolution of the Commission of Historical Monuments in 1948, has known an activity focused mainly on the preservation-restoration of religious buildings recognized as historical monuments built before 1837, with an incontestable value. The interventions, some mentioned above, were animated by a lot of enthusiasm and constituted a field of experiments for the crystallization of some methodologies of approaching and creating the craft of intervention. For the most part, the works were led by architects for whom the exercise of researching the buildings is a side of their professional training. The role of the Historical Monuments Commission was decisive, many works were financially supported by it and led by its employees.

Works, such as those made by architect Băicoianu at Cetăţuia, Hârlău, Popăuţi, Dorohoi, or architect Gabrielescu at Golia and St. Nicholas in Iaşi, are examples of foreign doctrinal application, of rebuilding some historical edifices that were then disproved by the established principles of The Charter of Athens, in 1931.

Other architects looked more reluctantly at how to intervene in order to convey the historical message. Among them are distinguished the architects Nicolae Ghika –Budeşti, Ştefan Balş and Horia Teodoru whose prodigious work we owe to the transmission to us of numerous Moldavian church monuments.

Restoration interventions had to overcome the inherently limited financial difficulties of reduced technical possibilities as well as retrograde opinions. The fact is, however, that without them, without the stages in which they occurred, the national cultural dowry would have been seriously damaged and the restorations of the post-1950s – many exceptional – would not have been possible[32].

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[32] I. Opriş, *Monumentele Istorice din România, 1850-1950*, Editura Vremea, 2001, p. 281.

The need to restore with priority the historical constructions affected by the destructions of the last world conflagration, as well as the persistence in time of some schemes of architectural purism is an explanation of the fact that the attention of the restorers was directed especially on the architecture, sometimes forgetting about the quality of the historical document of the historical monument as well as its artistic load that forms the mural decoration. The situation was also due to the lack of qualified persons to organize the activity of restoration of mural paintings. In 1968, based on a statistic regarding the reserve of specialized personnel, the State Committee for Culture and Art (CSCA) asked the Faculty of Arts in Bucharest to organize restoration-school sites. As a result of the formative role of the construction sites, CSCA admitted the financing of the systematic restoration works of the mural painting and the first objective was the Strei St George Church, Hunedoara County. In 1970, a group of foreign specialists[33] participated in a mission to be aware of the conservation status of murals following the request made by the Romanian side to ICCROM in Italy. And based on their recommendations, a pilot worksite was organized the following year at 3 sites: Humor Monastery church, Moldoviţa Monastery church and Black Church from Braşov town. These formed impulses for paying increased attention to the training of the restorers of mural painting and at the Faculty of Arts in Bucharest where there were students recruited from the Monumental Art Department participated in a practice program regarding the restoration of the mural painting on sites in Bucharest and the church of Humor monastery. All these were the premises for organizing the «Colloquium on the conservation and restoration of mural paintings as it took place in Suceava» in 1977 and the works of the colloquium were published in 1980, in French, under coordination of Romani-

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[33] This mission was attended by Prof. Raymond Lemaire, Paul Philippot, Paolo Mora and Gary Thomson.

an Council of Culture and the Romanian Committee ICOMOS[34]. Restoration works were carried out at monasteries[35] and churches[36].

The values of the Moldavia area have stimulated and motivated the development of the restoration sites in which specialists of international reputation participated and which had a favourable impact on improving professional competences of the Romanian specialists. Thus, in the '70s of the 20th century, under the coordination of ICCROM, Rome, a workshop was organized on the restoration of the exterior frescoes of the churches attended by young restorers who today have become trainers, restorers and professors at the Faculties of Fine Arts in Bucharest, Iaşi, Cluj, Timişoara.

11. *International conventions*

In the last three decades of the last century and in the first decade of the 20th century, several international norms have been elaborated in Europe, which have methodologically and legally substantiated the outlining of the specificity of the cultural heritage field. The Council of Europe is the main institution that patronises scientific meetings where conventions summarising European trends in the protection of cultural heritage are adopted.

The Convention for the Protection of the Architectural Heritage of Europe adopted in 1986 by the Council of Europe and ratified by Romania in 1996 specifies the definition of architectural heritage that includes the following categories: monument[37], groups of buildings[38] and sites[39].

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[34] *Colloque sur la conservation et la restauration des peintures murales, Suceava Roumanie, juillet 1977*, Bucarest, 1980.

[35] Neamţ, Secu, Sihăstria, Bistriţa, Dragomirna, Moldovita, Suceviţa, Putna, Slatina, Râşca, Cetăţuia.

[36] Voroneţ, Humor, Bogdan - Vodă, Rădăuţi, St. Demeter Hârlău, St. John Piatra Neamţ, Galata, Golia.

[37] Isolated building or structure.

[38] Construction assemblies.

[39] Creations of man's wrath combined with a natural setting.

During the new legislative framework after 1989 in Romania, the elaborated Law 422/2001 on the protection of historical monuments, the above concepts are resumed so that the following categories of historical monuments, real estate located above ground, underground and underwater are established, identified as: monument[40], ensemble[41], site[42].

As can be noticed, emphasizing the value of an asset is the supreme argument that determines the actions of keeping any patrimonial asset. The value depends especially on subjective factors, presented either from a person or group of people who express opinions or judgments based on certain norm's criteria and who try through them to attribute an objective aura to the process. Once the opinion established and appropriated by a community, the good becomes a representative object, recognized, admired, researched and as much as possible protected. It is worth mentioning that the cultural heritage is not a given, finite and immutable, but it is gradually enriched with the passage of time depending on the evolution of the human society.

In recent decades, the market economy has spread to the East of European continent. In this economic system, the management of resources occupies an important role in the development of the society. The increase of the contribution to the annual national in-

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[40] Construction or part of construction, together with the installations, artistic components, interior or exterior furnishing elements that are an integral part of them, as well as commemorative artistic works, funerary, public forum, together with the afferent topographically delimited land, which constitute culturally and historically significant testimonies from the architectural, archaeological, historical, artistic, ethnographic, religious, social, scientific or technical point of view.

[41] Coherent group from the cultural, historical, architectural, urbanistic or museum point of view of urban or rural constructions which together with the afferent land forms a topographically delimited unit that constitutes a cultural-historical testimony significant from the architectural, urbanistic, archaeological, historical, artistic, ethnographic, religious, social, scientific or technical point of view.

[42] Topographically delimited land comprising those human creations in a natural setting that are culturally and historically significant testimonies from the architectural, urbanistic, archaeological, historical, artistic, ethnographic, religious, social, scientific, technical or cultural landscape point of view.

come from the internal and external tourism activity occasioned by the increase of the interest for historical monuments as well as for the cultural goods and activities industry have highlighted the potential of the cultural heritage as an economic resource.

From this perspective, the Council of Europe has drawn up the Framework Convention on the Value of Cultural Heritage for Society, drawn up by a committee of government experts and adopted by the Committee of Ministers on October 13th 2005 and opened for signature by the Member States on October 27th of the same year in Faro, Portugal.

The objective of the convention is not only to protect objects lacking in function in order to preserve them, or as has been said for decades, in order to pass them on, to future generations, but it brings into focus the beneficiary: society and each individual, who use heritage as a resource for their own development without, of course, ruining the very wealth-generating resource, cultural heritage[43].

12. *World Heritage Convention - World Heritage List (WHL)*

The list of historical monuments was meant to include objectives with historical value in order to protect them. In 1894, just over 100 churches appear on the first list, as a result of the research carried out by the members of the Historical Monuments Commission.

After 1991, by signing the World Heritage Convention, the Ministry of Culture together with the Directorate of Monuments of Historical Ensembles and Sites elaborated the necessary documentations for the recognition of the universal values of some Romanian historical monuments. On this occasion, for the group of churches with exterior frescoes in Moldavia was elaborated a documentation that substantiated the universal value in accordance with

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[43] V. Nițulescu, in *Știința și patrimoniul*, 2009, no. 5-6.

the requirements of UNESCO criteria. World Heritage Committee meeting in session no. 17 admitted on December 11th 1993 the registration of the seven churches (located in villages: Arbore, Humor, Moldoviţa, Pătrăuţi, Probota, Voroneţ and St. George - inside the town Suceava) under the title Churches of Moldavia, (site name, Title: Churches of Moldavia): from Romania (state party: Author: Romania).

Coordinated by UNESCO, the restoration site of St. Nicholas Church of Probota Monastery, in Suceava County, took place between 1994 and 2001 as a subject of international and Romanian funding. On the worksite were involved Romanian specialists and foreign specialists based on international assistance provided by article 19 from World Heritage Convention[44].

The success of the achievements of the Probota international worksite stimulated the Japanese side to continue the cooperation with Romanian specialists regarding the research and restoration of the historical and artistic values of the church decoration in Bălineşti, Suceava County, between 2002 and 2005.

13. *Suceviţa - The up great of WHL position: Churches of Moldova*

Due to a regrettable attitude due to some opinions of some members of the National Commission for Monuments of Historical Ensembles (CNMASI), the best-preserved monument with exterior mural paintings was not sent to the UNESCO Committee[45].

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[44] The program for the restoration of Probota Monastery was financed by the Ministry of Culture - Romanian part and by UNESCO Paris as administrator of the Japanese Fund for the Restoration of Historical Monuments. The worksite was coordinated by arch. Dan Kisilewicz from DMI, Romanian Ministry of Culture and Ignazio Valente from UNESCO.

[45] In the meeting of analysis of the first proposals regarding the composition of the group of church with exterior frescoes from Moldavia arch. Eugenia Greceanu, member of the CNMASI imposed the age criterion, limiting the group of monuments components to the 16th century and thus the Suceviţa church being painted in 1601, according to the dating of Sorin Ulea, was excluded. The opin-

The steps for the extension of the existing position – the group of churches with exterior frescoes from Moldavia – with the church of the Ascension of the Lord of Suceviţa monastery lasted longer and consumed more effort than the first inclusion of some Romanian objectives on the World Heritage List.

The Minister of Culture and Cults, Acad. Răzvan Theodorescu, in 2004, invited the Deputy Director General of UNESCO, Mounir Bouchenaki to pay a visit to Romania for the subjects of Roşia Montană, Sibiu and Probota Monastery, Suceava county. On this occasion, there were discussions regarding the extension of the existing position from the World Heritage List, with the church of Suceviţa monastery. M. Bouchenaki's visit took place between September 6-11, when he appreciated the reason why the Romanian authorities demanded the extension of the existing position «churches with exterior paintings from the North of Moldavia» with the Church of the Suceviţa Monastery[46].

The analysis, on the exceptional universal value, reveals that from the point of view of architecture and painted decoration, the protected church belongs to the same group of churches with mural paintings on the inside and, in particular, on the outside (from the pedestal to the tower inclusive) located in the North of Moldavia, already inscribed in the UNESCO World Heritage List, at position 598.

In the documentation elaborated under the scientific coordination of art historian Tereza Sinigalia, from the point of view of evaluation can be recognized according to the first (I), third (III) and fourth (IV) criteria, the same as in those already registered[47].

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ion of the arch. Greceanu was part of the public attitude of vehement criticism, denigrating, over the restoration works carried out by DMI on the ensemble of the Suceviţa Monastery.

[46] N. Stoicescu, *Repertoriul bibliografic al localităţilor şi monumentelor medievale din Moldavia*, Direcţia Patrimoniului Cultural Naţional, Biblioteca monumentelor istorice din România, Bucureşti, 1974, ediţie îngrijită de Vasile Drăguţ.

[47] Criterion I the church represents a masterpiece of human creative genius. Criterion III the church presents a unique testimony about the cultural tradition extinct in time but significant to human civilization, as a point of transition from

The support for the motivation of the extension of the existing position with the Church of Suceviţa, whose exterior fresco is the best preserved, (according to the «Registration Proposal» submitted by the Ministry of Culture and Cults on January 25ᵗʰ 2005 to Ambassador Andrei Magheru, at the Permanent Delegation of Romania to UNESCO - Paris) is based on the arguments:

- the similarity of the theological and aesthetic vision of the pictorial decoration, the iconographic program is specific to the entire group, appeared in 1530,
- the technique of applying the fresco is of good quality, partly with the application of 'a secco' but with an enrichment of the colour palette specific to Suceviţa,
- appreciation of the erudite of the Frenchman Paul Henry; Suceviţa «le testament de l'art Moldave»[48] representing the final point of the evolution of churches decorated with frescoes on the outside,
- the personality of the church from Suceviţa confessed through stylistic differences from the group called 'Petru Rareş' demonstrates the evolution of an artistic phenomenon begun in the 16ᵗʰ century on the basis of the same fundamental values (the Movileşti family who gave a metropolitan and two voivodes were sons of Petru Rareş's daughter - ruler in Moldavia 1527-1538, 1541-1545). The phenomenon of decoration with exterior frescoes begins in Moldavia with St. Nicholas Church of Probota monastery, Rareş necropolis, many other churches producing a diversity in unity. Each monument itself is a unique what gives Suceviţa's this 'unicum',
- from the point of view of conservation, Suceviţa is the only one that preserves the complete north façade (due to the site located on the Suceviţa valley oriented east-west, which can be an explanation of the lack of decoration on the western façade and after some authors it would never have been decorated!) and the restoration

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the Middle Ages to modern times. Criterion IV the church presents an eminent example of the type of construction significant for the history of humanity.

[48] The testament of Moldavian art.

works, carried out, ensure a satisfactory readability for the recognition of artistic qualities as well as of the theological program.

- from the point of view of architecture, Sucevița is part of the typology of Moldavian structure of the 15th century, a Byzantine, Eastern Orthodox and Gothic synthesis. The composition of the interior space follows the previous achievements (Putna, Neamț, Probota, Moldovița) of the necropolis churches and has between the nave and the narthex a room for the tombs of the founders,
- the fortification walls that form the precincts of the monastery are well preserved, (following the restoration of the arch. Ioana Grigorescu) ensures a sufficient protection of the façade frescoes against the winds,
- in museum spaces of the monastery are presented unique medieval exhibits of great value: liturgical embroidery, *dvere*/shrape of altar, chalices, liturgical objects and manuscripts with miniatures,
- from authenticity point of view, the church has not undergone changes throughout the ages and preserves the original architectural conformation of the end of the 16th century, the structure consolidation was completed in 1983. The painting retains authenticity, minor interventions were made but the frescoes were not covered with whitewash in the 18th century or with paintings 'a secco' as the Probota church. The restoration of the exterior painting began in 1989 and was completed in 1998 and since 1999 the restoration of interior frescoes continued. Thus, it can be stated that the degree of authenticity is very high, and can be appreciated at about 98%.

The World Heritage Committee analysed at the session of August 1-3, 2010, which took place in Brasilia, Brazil, and accepted the registration of the Church of Sucevița Monastery among the churches with exterior frescoes in the north of Moldavia that appear on the UNESCO WHL[49].

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[49] In September 2008 art historian Tereza Sinigalia and arch. Dan Kisilewicz accompanied Dr. Eva Bacalova, sent by ICOMOS, to prepare the on-site evalu-

14. *Financing conservation worksites*

The provision of financial means for the restoration works of the architectural heritage has been at all times a determined factor and a difficult matter.

In the 20th century, following the recognition of the public interest on the necessity of preserving historical testimonies for the general benefit, restoration works began to be supported from public funds. One of the purposes of the constitution of the heritage Commission was also to ensure a competent spending of public funds intended for the purpose of preserving churches of value to the Romanian people.

The public funding was the main source of support for restoration-conservation works after the establishment of the democratic-popular regime and the change of the economic-social system. During this period, and for ideological reasons, restoration works of historical monuments were supported at the most valuable sites.

After the changes of the social economic system in 1989, the public financing of the restoration works became one of the possible sources, but to which most of private owners of protected constructions appealed. In the collective mind, the idea persists that the state, when it recognizing the protection of a site, it would have the duty to finance conservation and even maintenance works for those objectives.

15. *Retrospective on Romanian sites of WHL*

Romania joined UNESCO in 1956 and acceded by decree to the World Heritage e Convention only in 1990. Then, the Romanian Ministry of Culture has begun the steps / researches for the nomination of objectives in order to apply the World Heritage

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ation report.

Convention and the inclusion of some objectives in the World Heritage List.

Directorate of Historical Monuments, taking into account the Paul Henri work *Les glasses de la Moldavie du Nord. Des origins a la fin du XVI siècle* (1930) demonstrated the universality of the mural paintings from the churches in Moldova region, the north-eastern part of Romania and started, with enthusiasm, the elaboration of the first documentation for the nomination in 1993 in the World Heritage List of churches with mural painting (located at Arbore, Humor, Moldoviţa, Pătrăuţi, Probota, Suceava - St. George, Voroneţ) but later completed in 2010 with Suceviţa.

The Romanian proposals continued and based on the convincing documentations, the UNESCO Heritage Commission approved the inclusion in the list of other positions: the Danube Delta (1991) as a natural site, then cultural sites: Villages with fortified churches in Transylvania (1993), Hurezi Monastery (1993), Dacian Fortresses in the Orăştie Mountains (1999), Sighişoara Historical Centre (1999), Wooden Churches in Maramureş (1999). The most recent registration being the Mining Cultural Landscape of Roşia Montană (2021), at the same time included on the List of World Heritage in Danger. Then followed the secular and virgin beech forests of Carpathians and other European regions, as an extended position, in 2017, the natural site also containing the Romanian regions.

16. *First enthusiasm than the responsibilities of sites management*

For implementing the World Heritage Convention, the Romanian central administration has issued/organized specific norms: government decisions on the organization of committees (COU) of special protection for each of the objectives included in the World Heritage List.

At the same time, the Romanian legal norm of built heritage protection was also improved by the Law 422/2001 for the pro-

tection of historical monuments. The definitions of Convention (WHC) objectives were taken over in the Romanian law for: monument, ensemble, site.

The established COU tried to gather together specialists, beneficiaries, representatives of the local administration who cooperated to take practical measures to specifically protect the objectives included in the WHL.

The increase of the tourist attraction for these objectives, in addition to the media and economic benefits, have also produced certain disturbances / dissatisfaction of the owners of the objectives regarding the creation of a parallel market for touristic services and souvenirs. That is, the holders of WHL objectives ensure the maintenance in optimal visiting conditions, the accommodation possibilities, but the private entities in the neighbourhood attract tourists in visiting stays. So, the commercial benefits do not support the maintenance and safety of the WHL sites.

The inhabitants in the localities where there are WHL objectives complain about the growing cost of local life due to the increasing tourism.

The preservation of the rural environment by not consider the inhabitants aspirations for a comfortable life led to gentrification through which the native population left the villages, a series of dwellings were abandoned and left to ruin, and others became secondary residences or acquired by new residents who do not know and do not practice the local agricultural-craft traditions and thus the traditional rural character is changing.

The lack of economic development left room for the emergency of a completely new agro-tourism industry that brings with it a unidirectional development dependent on the flow of tourists and unable to function efficiently due to lack of specialized personnel for tourism and without the contribution of contemporary facilities – water, sewerage, electricity, internet. There was opposition of certain civil society against actions/projects with socio-economic impact in the localities with WHL assets (in listed Saxon villages – opposition to the inhabitants demands for up to date the main local

roads and the contemporary urban public facilities, but finally the opposition was defeated).

After adopting the Convention, it increased interest of civil society for the heritage and it attempt to use the quality of WHL in various cultural activities, but not only non-profit. There are in Romania NGOs, awarded at European level, that did practical activities for preservation ancient craftsmanship needed for conservation worksites.

In the last decades, novel aspects have appeared, the use of issues related to the cultural heritage, universal values as a resource for propelling political careers or supporting vindictive claims with pecuniary purposes.

17. *Instead of conclusions*

In the present days, after 2 years of world pandemic, the fear of war in East Europe is a dangerous menace even for the cultural patrimony. In spite of Blue Shield Convention, the cruel reality is unpredictable, unforeseeable and the situations happened in other sites could not be secure avoided by juridical means (ex. wars in Kosovo, Syria).

On the other hand, the recent reconversion to mosque of Hagia Sophia due to a local political decision was done against the entitle protests of UNESCO together with several states part on WH Convention. This world heritage site is a depository of Byzantine cultures 'largest church for near 1000 years before it became a mosque upon Ottoman conquest of Constantinople in 1453 and since 1934, at the time of Kemal Ataturk it was opened as laic museum. The actual owner restrictions waste social potential that culture provides, puts obstacle to the promotion of historical and artistic universal education.

The recent news (end of august 2022), that the WH Committee will deliberately analyze the tentative for inscription on WHL of Historic Center of the Port City of Odessa from Ukraine, brings

a hope that by the force of the Convention, even peace in that area will be restored.

To save, at least, the testimonies of WH sites it is necessary to save from all dangers the archives concerning the inscribed documentations that could be useful even in the post conflict time. The digitalization of these documents would be easier to be stored in reliable, sure different places far from the protected site. This work should be included in the operational guidelines as a preventive measure. Certainly (the forecast) WH site should include in the management plan practical means, in order to prevent, as much as it can be predicted, danger caused by natural disasters.

The more than 3 decades since Romania joined the WHC have determined the increasing the general awareness towards the preservation of the cultural heritage and have favored the researches on the cultural heritage from the universal perspective. The registrations in the WHL were moments of pride for the recognition of our contributions to the universal culture. Despite the inherent difficulties in the implementation of the WHC, interventions on the objectives registered in the WHL are accepted as quality standards for both conservation / restoration works and maintenance activities.

However, in the light of the above, cultural heritage deserves to be considered a resource with real potential for social development, which is an argument for our citizens, that investing in culture, in cultural heritage, does not mean investing in a dull past or in an oscillating present, but is sustainable for our own future. For the future, we should be confident.

There will be finds carefulness, wise, solutions for implementing the WHC that will respond to the appropriate challenges: increasing migration of population, climate change…

Ana Gemma López Martín

THE APPLICATION BY SPAIN OF THE CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE OF 1972[*]

Abstract: Spain is a State Party to the 1972 UNESCO Convention since 1982. The work will carry out an analysis of the application by Spain of this Convention with reference to the tangible and intangible goods that have been declared a World Heritage Site in Spain, as well as a detailed study of them. Specifically, as of 2021, forty-nine assets had been declared in Spain: forty-three are cultural, four are natural and two are mixed. We find among them four sites shared with other countries: one with France, another with Portugal, a third with Slovenia and a fourth shared with eleven other European countries. On the other hand, Spain has seventeen intangible assets, which makes it one of the two countries in Europe, together with France, with a greater number of assets declared Intangible Cultural Heritage. In addition, Spain also has eleven documents distinguished as Memory of the World by UNESCO. The Spanish regulations approved in accordance with the obligations derived from the 1972 Convention will also be addressed in order to end up detecting the main problems that exist for adequate protection.

1. *Introduction*

Spain is one of the most culturally rich countries in the world. For this reason, the Spanish Constitution of 1978 recognises the protection and conservation of its heritage as one of its inalienable rights, establishing that the public authorities shall be responsible for the conservation, access and enrichment of the historical, cultural and artistic heritage of the Spanish nation[1].

As a result of this commitment, which extends to the international level, Spain acceded in 1982 to the Convention Concern-

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[*] Double-blind peer reviewed content.
[1] Articles 44 and 46 of the 1978 Constitution.

ing the Protection of the World Cultural and Natural Heritage, drafted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and adopted in Paris on 16 November 1972. This international treaty establishes that certain places on earth possess *Outstanding Universal Value* and belong to the common heritage of mankind and should therefore be preserved for present and future generations. Outstanding Universal Value is of such extraordinary cultural and/or natural significance that it transcends national boundaries and becomes important for present and future generations of mankind as a whole. The conservation of this heritage is therefore of paramount importance to the international community as a whole. Among other criteria, a property is considered to be of Outstanding Universal Value if it meets requirements such as representing a significant exchange of human values, providing a unique testimony to a cultural tradition, or being an eminently representative example of a type of building, architectural or technological ensemble.

Following the inclusion in 2021 of the so-called 'Paisaje de la Luz' in Madrid, Spain has forty-nine sites on the World Heritage List, which places it in fourth place in the world of States with the highest number of sites recognised as World Heritage Sites by UNESCO. Italy ranks first with 58 sites, followed by China with 56 and Germany with 51 sites. It should be noted that, in terms of regions, Castilla y León is the region in the world with the most cultural properties included on this list, with eigth. The list includes a total of 1155 World Heritage sites from 167 States.

However, being part of the 1972 Convention not only grants the right to have sites on the World Heritage List with the projection that this entails at an international level, fundamentally as an attraction for tourism, as they all have a great capacity for attracting tourists. Belonging to the World Heritage List is, without a doubt, an international recognition, but it also entails a responsibility. Being a Party entails duly complying with all the obligations that the Convention imposes on States in order to achieve the main objective of protecting the world's cultural wealth. In this way, the Con-

vention establishes the duties of States Parties in identifying potential sites and their role in the protection and conservation of those sites. By ratifying the Convention, each country commits itself not only to conserve World Heritage Sites located on its territory, but also to cooperate in the preservation of the World Heritage of other countries. States Parties are also encouraged to integrate the protection of cultural and natural heritage into their planning programmes, to train their professionals and develop services linked to their environment, to undertake scientific and technical conservation research and to adopt measures that link their heritage values to the everyday life of the community. It establishes the obligation of States Parties to report periodically to the World Heritage Committee on the state of conservation of their properties, and encourages them to strengthen people's appreciation of World Heritage properties and enhance their protection through educational and information programmes.

In order to properly comply with all these obligations, it is essential to have specific internal regulations that are effectively applied. The following is a description of the existing legislation in Spain.

2. *Spain's domestic legal framework for the protection of cultural heritage*

One of the defining characteristics of States with great cultural wealth is the enactment of national laws to protect their heritage. This is the case of Spain which, as we have indicated, has recognised in its Constitution the protection and conservation in this field as one of its inalienable rights.

To this end, a distribution of competences between the State and the Autonomous Communities is established, as laid down by the Constitutional Court in its judgment 17/1991 of 31 January 1991. According to this distribution, the State has competence for the control and defence of Spanish cultural, artistic and mon-

umental heritage against exportation and despoilment, as well as for adopting the necessary measures against anything that contributes to this. While the Autonomous Communities hold the rest of the powers related to the promotion, enrichment of culture and the custody and conservation of their cultural heritage. In this respect, the Autonomous Communities have assumed, through their Statutes of Autonomy, powers over those elements of interest to them, and most have drafted their own legislation on the protection of Historical Heritage. The following Autonomous Community laws are worth mentioning:

- Law 14/2007, of 26 November, on the Historical Heritage of Andalucia, and Law 8/2007, of 5 October, on museums and museum collections of Andalucia.
- Law 3/1999, of 10 March, on the Cultural Heritage of Aragon.
- Law 1/2001, of 6 March, which contains the regulatory norms of the Cultural Heritage of Asturias.
- Law 4/1999, of 15 March, on the Historical Heritage of the Canary Islands and Law 11/2019, of 25 April, on the Cultural Heritage of the Canary Islands.
- Law 11/1998, of 13 October, on the Cultural Heritage of Cantabria.
- Law 4/1990, of 30 May, regulating the Historical Heritage of Castilla-La Mancha; Law 4/2001, of 10 May 2001, regulating the Archaeological Parks of Castilla-La Mancha; and Law 4/2013, of 16 May, on the Cultural Heritage of Castilla-La Mancha.
- Law 12/2002, of 11 July 2002, on the Cultural Heritage of Castilla y León.
- Law 9/1993, of 30 September, on the Cultural Heritage of Cataluña.
- Law 2/1999, of 29 March, on the Historical and Cultural Heritage of Extremadura.
- Law 8/1995, of 30 October, on the Cultural Heritage of Galicia.

- Law 12/1998, of 21 December, on the Historical Heritage of the Balearic Islands.
- Law 7/2004, of 18 October 2004, which contains the regulations governing the Cultural, Historical and Artistic Heritage of La Rioja.
- Law 10/1998, of 9 July, on the Historical Heritage of the Community of Madrid.
- Law 4/2007, of 16 March 2007, which contains the regulations governing the Cultural Heritage of the Autonomous Community of the Region of Murcia.
- Foral Law 14/2007, of 4 April, on the Heritage of Navarra.
- Law 7/1990, of 3 July 1990, on Basque Cultural Heritage.
- Law 4/1998, of 11 June, on Valencian Cultural Heritage.

At the state level, under the mandate of the Spanish Constitution, Law 16/1985 of 25 June 1985 on Spanish Historical Heritage was enacted[2]. A law in line with the constitutional precept that arose with the firm intention of protecting and enriching Spanish art and culture. It is, therefore, a cultural heritage protectionist law that also seeks to enhance its legacy.

This law is complemented by the more recent Law 10/2015, of 26 May, for the safeguarding of Intangible Cultural Heritage, which regulates for the first time at state level, in a comprehensive manner, this elusive manifestation of culture, providing formulas and legal techniques different from the classic model of public legal intervention in the promotion, encouragement and management of the cultural phenomena of the community. For this reason, it is not a law of conservation or (physical) maintenance of cultural heritage (movable or immovable), but rather, as its title indicates, of safeguarding the practices and communities (fundamentally local) that carry them, from a diachronic, functional and intergenerational approach.

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[2] This law consists of a preamble, seventy-nine articles, nine additional provisions, eight transitional provisions, a final provision and a repealing provision. This law was subsequently regulated by Royal Decree 111/1986 of 10 January 1986 and Royal Decree 64/1994 of 21 January 1994, amending the former.

As a result, Spain has an ambitious and specific set of regulations to protect our extensive cultural, tangible and intangible heritage[3], which must be understood in line with the obligations imposed by the UNESCO Convention of 1972, which is also part of our legal system.

3. *Process followed in Spain for the declaration of a World Heritage Property*

Undoubtedly the best known and most remarkable aspect of the 1972 Convention is the inclusion of a property or site on the World Heritage List. This possibility is duly regulated, with the World Heritage Committee (composed of representatives of 21 States)[4] issuing the procedural instructions for the inscription of cultural and natural properties on the World Heritage List. In carrying out this task, the Committee is advised byindependent bodies such as the International Council on Monuments and Sites (ICOMOS), the International Union for Conservation of Nature (IUCN) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM).

Inclusion on the World Heritage List is according to the following categories:

- *Monuments*. Monuments are considered to be architectural works, sculptures, paintings and archaeological pieces or structures, inscriptions, caves and groups of elements that are of exceptional value from a historical, artistic or scientific point of view.
- *Ensembles*. These are groups of isolated or assembled constructions, whose architecture, unity and integration into the land-

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[3] All these Spanish regulations, state and autonomous, can be consulted at *www. boe.es/biblioteca_juridica/codigos/codigo.php?id=175&modo=2&nota=0&tab=2.*

[4] Spain is one of them, along with the United States, Canada, Israel, Morocco, Tunisia, South Korea and Madagascar, among others.

scape give them a universal value from the same points of view as for monuments.

- *Sites*. This category includes works of man, or the combined works of man and nature, including archaeological sites, which are of outstanding universal value from a historical, aesthetic, ethnological or anthropological point of view.

According to the 1972 Convention, the first step that a country must take in order to include a property on the World Heritage List is to make an inventory of properties that are likely to be declared World Heritage in the future. This Inventory is known as the Tentative List and aims to reflect the cultural and natural diversity of a country with potential Outstanding Universal Value.

The World Heritage Centre launched the Global Strategy in 1994 with the objective of establishing a credible, representative and balanced World Heritage List and encourages States Parties to harmonise their Tentative Lists at regional and thematic levels. The principles of this Strategy should be taken into account in the selection of nominations.

It is the responsibility of the national authorities to determine an order of priority, according to which the nomination dossiers will be constituted following the recommendations contained in the *Operational Guidelines for the Implementation of the World Heritage Convention*. Properties eligible for subsequent nomination to the World Heritage List should remain on the Tentative List for a minimum of one year before they can be formally nominated. Dossiers must be sent to the World Heritage Centre by 1 February each year for submission to the World Heritage Committee at the following year's session in June.

In Spain, the body responsible for this work is the Historical Heritage Council, which is the highest national consultative body in this field. The State and all the Autonomous Communities are represented on it. The Council is responsible for submitting to the national government the Indicative List of aspiring assets, grouped by cultural periods and trends, with justification of their value, also taking other similar national or foreign assets as a reference. Cur-

rently, the Spanish Tentative List is made up of thirty-one[5].

The Indicative List in Spain is compiled in the following steps:

- Each Autonomous Community selects the properties in its Community that are likely to be declared World Heritage in the future.

- This selection is presented to the World Heritage Working Group I, created in 2010 by the Ministry of Culture and endorsed by the Historical Heritage Council. This group is made up of representatives of the Ministry and representatives of the heritage areas of all the Autonomous Communities[6]. It deals in a technical way with the study of new proposals to integrate the Spanish Tentative List in order to obtain the best results by means of quality proposals that are in line with the Global Strategy.

- The Autonomous Community submits to the Historical Heritage Council both the properties that could be included in the Tentative List and the recommendation of the technical report of the Working Group on these properties.

- The Plenary Session of the Historical Heritage Council approves the additions to the Spanish Tentative List.

- The Ministry forwards these Tentative List inclusions to the World Heritage Centre, which, if the necessary requirements are met, forwards them to the World Heritage Committee for evaluation.

- With regard to the latter procedure, it should be noted that the World Heritage Committee considers a property to be of outstanding universal value for inscription on the List when it meets at least one of the following requirements:

- It bears a unique or exceptional testimony to a civilisation or cultural tradition that has disappeared.

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[5] See the list in: *http://whc.unesco.org/en/tentativelists/state=es*.

[6] See the complete information about thes groups in: *www.culturaydeporte. gob.es/cultura/areas/patrimonio/mc/patrimoniomundial/iniciativas/grupos-de-trabajo-sobre-patrimonio-mundial.html*.

- It exerts a considerable influence, in a given period or in a given cultural area, on the development of architecture, monumental arts, urban planning or the creation of landscapes.
- It is an outstanding example of human settlement or occupation of territory representative of traditional cultures, especially when they are vulnerable to irreversible mutations.
- It provides an outstanding example of a type of building or architectural or landscape ensemble that illustrates a significant period in the human history.
- It is a masterpiece of man's creative genius.
- It is directly or materially associated with events or living traditions, ideas, beliefs or artistic and literary works of exceptional significance.

In addition to any of these criteria, any property for which registration is sought must meet two preconditions:
- Respond in its conception, materials and execution to the value of authenticity.
- To enjoy legal protection and adequate management mechanisms to ensure their conservation.

4. *A brief note on each of Spain's World Heritage Sites*

Taking as a criterion the location by Autonomous Communities in alphabetical order, we proceed to make a brief description of each of these forty-nine World Heritage Sites in Spain[7].

We can see in the following image the approximate location of each one of them to get a preview:

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[7] See the detailed description of each of them in I. Buqueras y Bach, El Patrimonio Mundial Cultural, Natural e Inmaterial de España. Ediciones Alimar, Barcelona, 2019. See also *https://viajes.nationalgeographic.com.es/a/sitios-patrimonio-humanidad-espana_13602*; *www.sitiosdeespana.es/articulo/los-48-lugares-patrimonio-de-la-humanidad-en-espana*; *www.lasexta.com/noticias/cultura/49-bienes-patrimonio-humanidad-espana-cuales-son-donde-estan_2021072660fe87004aeb-d80001c37187.html*.
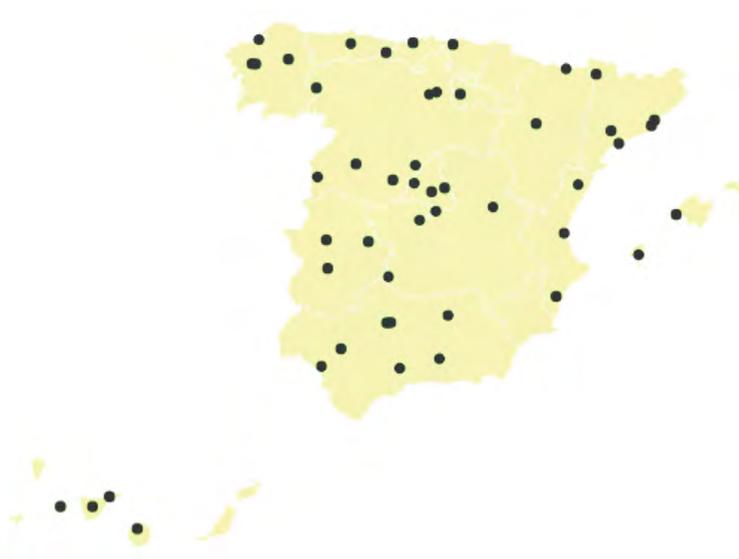
Source: Ministry of Culture and Sport - Graphic: Á. Celorio

4.1. *Andalucía*

Alhambra, Generalife and Albaicín in Granada. The magnificent palace of the Alhambra and the gardens of the Generalife were declared a World Heritage Site in 1984. The Albaicín quarter was added to the list ten years later, in 1994. Situated on two adjacent hills, the Albaicín and the Alhambra form the medieval core of Granada overlooking the modern city. On the eastern side of the fortress and royal residence of the Alhambra are the gardens of the Generalife, the country house of the emirs who ruled this part of Spain in the 13th and 15th centuries. The Albaicín quarter preserves a rich collection of Hispano-Muslim buildings harmoniously blended with traditional Andalusian architecture.

Mezquita y Centro Histórico de Córdoba (Mosque and Historic Centre of Cordoba). The Mosque was inscribed in 1984; the His-

toric Centre in 1994; and the Patios de Córdoba in 2012. Cordoba's period of glory began in the 8th century, after its conquest by the Muslims, when some 300 mosques and countless palaces and public buildings were built. The city's splendour then rivalled that of Constantinople, Damascus and Baghdad. In the 13th century, during the reign of Ferdinand III the Saint, the great mosque was transformed into a Christian cathedral and new defensive buildings such as the Calahorra Fortress Tower and the Alcázar de los Reyes Cristianos (Fortress of the Christian Monarchs) were built.

Ciudad Califal de Medina Azahara (Caliphate City of Medina Azahara). This city near Cordoba was created in the mid-10th century by the Umayyad dynasty to be the seat of the Caliphate of Cordoba, but it was to last less than a century, as a civil war that destroyed the Umayyads destroyed it 80 years after its creation. After centuries of neglect, it was declared a World Heritage Site in 2018.

Catedral, Alcázar y Archivo de Indias de Sevilla (Seville Cathedral, Alcázar and Archive of the Indies). These three buildings, declared World Heritage Sites in 1987, form an admirable monumental ensemble in the heart of Seville. The Cathedral and the Alcázar are two exceptional testimonies to the Almohad civilisation and to Christian Seville, whose art was heavily impregnated with Muslim influence from the time of the city's reconquest (1248) until the 16th century. The ancient minaret of the Giralda, a masterpiece of Almohad architecture, stands on the side of the cathedral, the largest Gothic building in Europe, and houses the colossal tomb of Christopher Columbus. The old fish market, now converted into the Archivo de Indias (Archive of the Indies), houses invaluable documentary collections from the Spanish colonies in America.

Parque Nacional de Doñana (Doñana National Park). Declared a World Heritage Site in 1994 and extended in 2005. The Doñana Park occupies the right bank of the estuary of the Guadalquivir River, near its mouth in the Atlantic. It is remarkable for the great variety of its biotopes: lagoons, marshes, scrubland, Mediterranean scrubland and mobile and fixed dunes. It is the habitat of five endangered bird species, has one of the largest populations of herons

in the Mediterranean region and serves as a winter refuge for more than half a million water birds.

Conjuntos Monumentales Renacentistas de Úbeda y Baeza (Renaissance Monuments of Úbeda and Baeza). Declared World Heritage Sites in 2003. The urban configuration of these two small towns located in Jaén dates from the periods of Arab domination (9th century) and the Reconquest (13th century). In the 16th century, both towns underwent major changes with renovation works inspired by the Renaissance style. These urban transformations were due to the introduction of humanist ideas from Italy into Spain and had an important influence on Latin American architecture.

Dólmenes de Antequera (Dolmens of Antequera). It was in 2016 that this natural site was declared a World Heritage Site. Located in southern Spain, this site comprises three megalithic monuments: the tholos of Romeral and the dolmens of Menga and Viera; as well as two nearby natural sites that offer panoramic views of great beauty: the Peña de los Enamorados and El Torcal. Built with large blocks of stone in the Neolithic and Bronze Age periods, the three funerary monuments are buried in their original burial mounds and form chambers and spaces with linteled or false-domed roofs, making them one of the most remarkable architectural ensembles of prehistoric times in Europe and an outstanding example of European megalithic art.

4.2. *Aragón*

Arquitectura Mudéjar de Aragón (Mudejar Architecture of Aragon). Teruel, Zaragoza, Calatayud, Cervera de la Cañada and Tobed are the places where we find the 10 examples of Mudejar art in Aragon, declared World Heritage Sites in 1986 and 2001. The Mudejar monuments – whose construction began in the 12th century and continued until the beginning of the 17th century – are characterised by an extremely refined and ingenious use of brick and glazed ceramics, especially in the bell towers.

Pirineos-Monte Perdido (Pyrenees - Monte Perdido, shared with France). In the Central Pyrenees, the Monte Perdido massif is the highest limestone massif in Europe at 3,355 metres. It was declared a World Heritage Site in 1997 and extended in 1999. This declaration includes two large and deep canyons – the largest in Europe – on the Spanish side, and three large glacial cirques on the northern French side. In addition, Monte Perdido is a pastoral area where you can observe a rural way of life that is widespread in the mountainous regions of Europe, and which has only been preserved intact in this part of the Pyrenees throughout the 20th century.

4.3. *Asturias*

Monumentos de Oviedo y del Reino de Asturias (Monuments of Oviedo and the Kingdom of Asturias). The cradle of pre-Romanesque architecture, Oviedo and the surrounding area has a series of churches that are considered to be representative of this style. These churches, included on the World Heritage List in 1985 and 1998, are: Santa María del Naranco, San Miguel de Lillo, Santa Cristina de Lena, San Julián de los Prados and the Cámara Santa of the cathedral of San Salvador. Also included is the Foncalada, a notable work of hydraulic engineering.

4.4. *Baleares*

Ibiza, Biodiversidad y Cultura (Ibiza, Biodiversity and Culture). In addition to its marine ecosystems, Ibiza was declared a World Heritage Site in 1999 for its history. The archaeological sites of the human settlement of Sa Caleta and the necropolis of Puig des Molins bear witness to the important role played by the island in the Mediterranean economy of Protohistory, and more specifically of the Phoenician-Carthaginian period. The Alta Vila, an extraordinary example of Renaissance military architecture, had a great in-

fluence on the design of the fortifications of the Spanish settlements in the New World.

Paisaje Cultural de la Sierra de la Tramontana (Cultural Landscape of the Sierra de la Tramontana). On the island of Mallorca, this mountain range has changed its landscape due to the millenary agriculture in an environment with scarce water resources where terraces were common. Here, water mills and stone constructions without mortar decorate this landscape, declared a World Heritage Site in 2011.

4.5. *Canarias*

Parque Nacional de Garajonay (Garajonay National Park). In the centre of the island of La Gomera (Canary Islands), this national park is one of the few remaining examples on the planet of a Tertiary forest in which the laurel forest covered almost everything. It has been a World Heritage Site since 1986.

San Cristóbal de la Laguna. Popularly known as La Laguna, this city on the island of Tenerife is divided into the Upper City, laid out according to philosophical principles, and the Lower City, with historic buildings from the 16th, 17th and 18th centuries. It was declared a World Heritage Site in 1999

Parque Nacional del Teide (Teide National Park). Declared a World Heritage Site in 2007. Located on the island of Tenerife, this site essentially comprises the Teide-Pico Viejo stratovolcano, which at 3,718 metres above sea level is the highest peak in Spain. This volcanic structure rises 7500 metres above the ocean floor and is estimated to be the third highest in the world. Teide's global importance lies in the fact that it is a vivid illustration of the geological processes underlying the evolution of oceanic islands.

Risco caído y las montañas sagradas de Gran Canaria (Risco Caído and the sacred mountains of Gran Canaria). Beyond its scenic value, the heart of the island of Gran Canaria has been recognised as a World Heritage Site for its importance as a pre-hispanic reli-

gious centre. A site in which the almogarenes, the temples where the main celebrations and rites in honour of Mother Earth took place, stand out.

4.6. *Castilla La Mancha*

La Ciudad Histórica Amurallada de Cuenca (The Historic Walled City of Cuenca). It was declared a World Heritage Site in 1996. Built for defensive purposes by the Muslims in the territory of the Caliphate of Cordoba, Cuenca is a fortified medieval city in an excellent state of conservation. Once conquered by the Castilians in the 13th century, it became a royal city and episcopal see, and the construction of buildings of great value multiplied, such as the first Gothic cathedral in Spain and the famous hanging houses, suspended high above the gorge of the Huécar River.

La Ciudad Histórica de Toledo (The Historic City of Toledo). It was in 1986 that Toledo was declared a World Heritage Site. The repository of more than two millennia of history, Toledo was successively a Roman municipality, capital of the Visigothic kingdom, stronghold of the Emirate of Cordoba and advanced command post of the Christian kingdoms in their struggle against the Muslims. In the 16th century it was the temporary seat of supreme power, under the reign of Emperor Charles V. Its monuments are masterpieces of different civilisations, created in a context in which the presence of three great religions – Judaism, Christianity and Islam – was an essential factor; this coexistence is the reason why it is known as the city of the three cultures.

Patrimonio del Mercurio: Almadén e Idria (Mercury Heritage: Almadén and Idria). The mercury mines of Almadén, in Ciudad Real, were declared a World Heritage Site in 2012 along with the mines of Idria, in Slovenia, where mercury was first found in 1490. These two sites are proof of the importance of the mercury trade, which generated important commercial exchanges between Europe and America for centuries.

4.7. *Castilla y León*

Catedral de Burgos (Burgos Cathedral). The Cathedral of Santa María de Burgos is one of the jewels of Spanish Gothic architecture. Included on the World Heritage List in 1984, the temple took almost three centuries to complete (13th-16th century) and its interior houses jewels in the form of paintings, choir stalls, altarpieces, tombs and stained glass windows.

Old Town of Segovia and its Aqueduct. It was in 1986 that UNESCO included the old city of Segovia on the list. Probably built around 50 AD, Segovia's Roman aqueduct remains exceptionally intact. This imposing double-arched construction is set in the magnificent setting of the historic city, where you can admire other monuments such as the Alcazar, whose construction began in the 11th century, and the 16th-century Gothic cathedral.

Ciudad Vieja de Segovia y su Acueducto (Old City of Ávila and Churches Outside the Walls). Founded in the 11th century, Ávila has the most complete medieval walls in Spain with 82 semicircular towers and nine gates. And it was this, together with the history that can be seen in its streets that led to its inscription on the World Heritage List in 1985.

Ciudad Vieja de Salamanca (Old City of Salamanca). Salamanca was conquered by the Carthaginians in the 3rd century BC and was later a Roman city. Subsequently, it was under the power of the Muslims until the 11th century. The heyday of its university, one of the oldest in Europe, coincided with the city's golden age. Declared a World Heritage Site in 1988, it has important Romanesque, Gothic, Renaissance and Baroque monuments. Highlights include the Cathedral, the Casa de las Conchas, the University and the towers of La Clerecía, and its Plaza Mayor.

Cuenca Arqueológica de Atapuerca (Atapuerca Archaeological Basin). In the province of Burgos and a World Heritage Site since 2000, the importance of the Atapuerca site lies in the fact that it contains fossil remains of the first human beings to settle in Europe, from almost a million years ago to the present day.

Las Médulas (The Médulas). It was in 1997 that this site was declared a UNESCO World Heritage Site. Las Médulas is an ancient open-pit gold mine exploited at the beginning of the 1st century A.D. by the Roman Empire, using a technique based on hydraulic power. After two centuries, the mine was abandoned and the landscape was devastated. Due to the absence of subsequent industrial activities, the spectacular traces of the use of the ancient Roman technology are visible everywhere, both on the bare mountain slopes and in the waste disposal areas, which are now cultivated.

Yacimientos de Arte Rupestre Prehistórico del Valle del Côa y Siega Verde (Prehistoric Rock Art Sites of the Côa Valley and Siega Verde). While the Côa Valley is located in northern Portugal, Siega Verde is in Castilla y León. These sites were declared World Heritage Sites in 1998 and extended in 2010, thanks to the large amount of petroglyphs from the Upper Palaeolithic (22,000-10,000 BC), unique in the world.

4.8. *Cataluña*

Obras de Gaudí (Gaudí's Works). Seven buildings by Antoni Gaudí have been included on the UNESCO World Heritage List between 1985 and 2005: Park Güell, Palau Güell, Casa Milà, Casa Vicens, Gaudí's work on the Nativity façade and the crypt of the Sagrada Família, Casa Batlló and the crypt of the Colònia Güell.

Palau de la Música Catalana y Hospital de Sant Pau (Palau of catalan music and Hospital of Sant Pau). Declared a World Heritage Site in 1997. These buildings are two of the most beautiful contributions of the Catalan architect Lluís Doménech i Montaner, an Art Nouveau specialist, to Barcelona's architecture. The Palau de la Música Catalana is an exuberant steel-framed building, spacious and full of light, which was decorated by a plethora of great artists of the time. The design and decoration of the Hospital de Sant Pau are also bold and perfectly adapted to the needs of the patients.

Iglesias Románicas Catalanas del Vall de Boí (Catalan Romanesque Churches of the Vall de Boí). Located in a valley surrounded by steep mountains in Alta Ribagorza, this group of nine Romanesque churches was declared a World Heritage Site in 2000 thanks to its landscape and historical value.

Monasterio de Poblet (Monastery of Poblet). In 1991, the Monastery of Santa Maria del Poblet was included on this list as one of the largest and most complete Cistercian abbeys in the world. Built around the church built in the 13th century, the monastery, impressive for the severe majesty of its architecture, has a fortified royal mansion and houses the pantheon of the kings of the Crown of Aragon.

Conjunto Arqueológico de Tarragona (Archaeological Ensemble of Tarragona). Ancient Tarraco was one of the main cities of Hispania during the Roman Empire. Its amphitheatre, aqueduct and other constructions have been preserved. The complex was declared a World Heritage Site in 2000.

4.9. *Extremadura*

Ciudad Vieja de Cáceres (Old City of Caceres). Romanesque, Islamic, Northern Gothic and Italian Renaissance. The architecture of Cáceres is beautiful and surprising, which is why it was inscribed on the UNESCO World Heritage List in 1986.

Conjunto Arqueológico de Mérida (Archaeological Ensemble of Merida). The origins of the Extremaduran city of Merida date back to 25 BC, when Augustus, at the end of his campaign in Hispania, founded the colony of Emerita Augusta, which later became the capital of the Roman province of Lusitania. The remains of the ancient Roman city, which are complete and well preserved, include a large bridge over the Guadiana River, an amphitheatre, a theatre, a large circus and an extraordinary water supply system. This archaeological site was declared a World Heritage Site in 1993.

Monasterio Real de Santa María de Guadalupe (Royal Monastery of Santa María de Guadalupe). In the province of Caceres and declared a World Heritage Site in 1993, the importance of this monastery lies in its illustration of four centuries of Spanish religious architecture – with its mixture of Gothic, Mudejar, Renaissance, Baroque and Neoclassical styles – as well as in its history. It was here that the Catholic Monarchs received Christopher Columbus in 1486 and 1489 and where they went to rest after the reconquest of Granada in 1492. Its famous statue of the Virgin of Guadalupe became a powerful symbol of the Christianisation of much of the New World.

4.10. *Galicia*

Ciudad Vieja de Santiago de Compostela (Old City of Santiago de Compostela). Home to one of Christianity's most famous pilgrimage sites and a symbol of the Spanish Christians' struggle against islam, this city in north-western Spain was razed to the ground by the Muslims at the end of the 10th century. Completely rebuilt in the following century, Santiago de Compostela, a World Heritage Site since 1985, is one of the most beautiful urban areas in the world, enhanced by its Romanesque, Gothic and Baroque monuments. The oldest are concentrated around the cathedral, the tomb of the apostle St. James, which is accessed through the magnificent Portico de la Gloria.

Muralla Romana de Lugo (Roman Wall of Lugo). Built at the end of the 2nd century and declared a World Heritage Site in 2000, the wall of Lugo surrounds the old part of the city. It is more than two kilometres long and is crowned by 85 powerful towers. It is the most beautiful archetype of a late Roman fortification in all of Western Europe.

Torre de Hércules (Tower of Hercules). Located in the city of A Coruña and declared a World Heritage Site in 2009, this impres-

sive lighthouse has been lighting the way for sailors since the early 1st century. The Tower of Hercules has served as a lighthouse and emblem of the entrance to the port of A Coruňa since the 1st century AD, when the Romans built it under the name of Farum Brigantium. This 55-metre lighthouse is built on a 57-metre-high rock. The tower consists of three levels that taper towards the top, the first of which corresponds to the structure of the Roman lighthouse. Adjacent to its base is a small rectangular Roman building. The site also includes the Iron Age petroglyphs of Monte dos Bicos, a Muslim cemetery and a sculpture park.

4.11. *Madrid*

Monasterio y Real Sitio del Escorial (Monastery and Royal Site of El Escorial). It was in 1984 when UNESCO included this famous Herrerian style monastery on the World Heritage List. It was built at the end of the 16th century according to a grid layout. The austerity of its style broke with prevailing architectural trends, subsequently exerting a marked influence on Spanish architecture for more than half a century. Originally a place of retreat for King Philip II, the monastery was the centre of his political power in the last years of his reign.

Universidad y Recinto Histórico de Alcalá de Henares (University and Historic Site of Alcala de Henares). The Complutense City was included in the World Heritage List in 1998. Founded by Cardinal Jiménez de Cisneros in the early 16th century, Alcalá de Henares was the first planned university city in the world. It was the example of the civitas dei (city of God), an ideal urban community that Spanish missionaries transplanted to America and served as a model for a whole series of universities in Europe and other parts of the world.

Paisaje Cultural de Aranjuez (Cultural Landscape of Aranjuez). Declared a World Heritage Site in 2001, it is an example of the complex relationship between man and nature. Over the course of

three hundred years, Spanish monarchs devoted themselves to designing and caring for this site of Aranjuez, making it a sample of the evolution of the concepts of humanism and political centralisation, as well as a landscape in which the characteristics of the French Baroque garden of the 18th century converge with those of the urban way of life of the Age of Enlightenment.

El Paseo del Prado y el Buen Retiro, paisaje de las artes y las ciencia -Paisaje de la luz- (The Paseo del Prado and Buen Retiro, a landscape of arts and sciences). Located in the heart of Madrid's city centre, this 200-hectare cultural landscape has been evolving since the Paseo del Prado was created in the 16th century, the prototype of a Hispanic boulevard with a longitudinal grove of trees arranged in three rows. The Paseo is home to an emblematic symbol of the city: the Plaza de Cibeles. The site is highly representative of the new conception of urban space and development introduced by the regime of enlightened despotism that prevailed in the 18th century. The largest area of the site is occupied by the 120 hectares of the Jardines del Buen Retiro. Remnants of a former royal palace of the same name from the 17th century, these gardens are representative of the different styles that have characterised landscape art from the 19th century to the present day. Adjacent to these gardens are the Royal Botanical Gardens and the residential district of Los Jerónimos.

4.12. *País Vasco*

Puente Vizcaya (Vizcaya Bridge). Declared a World Heritage Site in 2006. Also known as the Portugalete Suspension Bridge, it crosses the River Nervión in the Ibaizábal estuary, to the west of Bilbao. Designed by the architect Alberto de Palacio y Elissague, the bridge, 45 metres high and 160 metres long, was completed in 1893. It was the first bridge in the world that simultaneously allowed the passage of ships across the river and the transport of passengers and vehicles from one bank to the other, thanks to a sus-

pended nacelle. It served as a model for the construction of many similar bridges in Europe, Africa and America.

4.13. *La Rioja*

Monasterios de San Millán de Yuso y de Suso (Monasteries of San Millán de Yuso and Suso). Cradle of the Spanish language, these monasteries were declared a World Heritage Site in 1997. The site of the monastic community founded by Saint Millán in the mid-6th century became a place of pilgrimage over time. In honour of this saint, a beautiful Romanesque church was built in Suso, which is still preserved today. At the beginning of the 16th century, the community settled on land below the old monastery and built the new monastery of Yuso, where it is still active today. Inside, the Glosas Emilianenses are the earliest known written testimony to the monastery.

4.14. *Valencia*

La Lonja de la Seda (The Silk Exchange). The Silk Exchange of Valencia is in fact a group of buildings erected between 1482 and 1533, originally intended for the silk trade and since then it has been used for mercantile purposes. Of all of them, the Sala de Contratación, a spectacular room in the flamboyant Gothic style that represents all the power that was displayed here during the 15th and 16th centuries, stands out. The Silk Exchange of Valencia was declared a World Heritage Site in 1996.

El Palmeral de Elche (Palm grove of Elche). Within the Alicante city of Elche, this immense palm grove is the largest in Europe with 200,000 specimens. Its origins date back to the first Muslim settlements, although it was the Umayyad prince Abderramán I who created a system of irrigation channels to irrigate this palm grove. It was included in the World Heritage List in 2000.

4.15. *Shared*

There are some Assets which, due to their characteristics, are located in several Autonomous Communities, and some are even shared with other States.

Camino de Santiago (the Way of St. Jame). This route, declared World Heritage in 1993, begins its route in the town of Valcarlos (Navarre), joins in Puente de la Reina with the Aragonese Route that crosses municipalities such as Jaca, Estella, Logroño, Santo Domingo de la Calzada, Nájera, Burgos, León and Astorga. Burgos, León and Astorga. It thus crosses Navarre, Aragon (Huesca and Zaragoza), La Rioja, Castile-León (Burgos, Palencia and León) and Galicia (Lugo and A Coruña). In addition to the French Way, there are other routes to Santiago in Spain: the Northern Way, the Silver Route, the Portuguese Way and the English Way. The importance of the Way of St. James lies not only in the artistic works it has left us – it is marked by more than 1,800 religious and civil buildings of historical interest – but also in the religious, cultural and economic links established in this pilgrimage network. The history of the Way of St. James dates back to the beginning of the 9th century with the discovery of the tomb of St. James the Greater, evangeliser of Spain. The growing belief in the miracles of St. James led people to start making pilgrimages to Santiago de Compostela to obtain his grace. These pilgrimages were the beginning of the Way of St. James, which was consolidated in the 12th and 13th centuries with the granting of certain spiritual indulgences. This first route, which started in Oviedo, has been called the Primitive Way.

Cueva de Altamira y Arte Rupestre Paleolítico de la Cornisa Cantábrica: (Altamira Cave and Palaeolithic Rock Art of the Cantabrian Coast): Cantabria, Basque Country and Principality of Asturias. The Cantabrian region of the Iberian Peninsula preserves one of the most important collections of Palaeolithic rock art in Europe, dating from between 35,000 and 11,000 years ago. The exceptional and universal values – exceptional testimony to the Palaeolithic human groups of southern Europe – recognised by UNESCO in

1985 for the Altamira cave, are extended to 17 other sites with Palaeolithic cave art in the Cantabrian region, which were inscribed on the World Heritage List in 2008 as an extension of Altamira. It was thus assumed that this cave is not an isolated case, but one more example of the work of those human groups in a specific territory. The Caves of La Peña, Tito Bustillo, Covaciella, Llonín and El Pindal in Asturias; Chufín, Hornos de la Peña, the Caves of Monte Castillo (El Castillo, La Pasiega, Las Chimeneas and Las Monedas), El Pendo, La Garma and Covalanas in Cantabria, and Santimamiñe, Ekain and Altxerri in the Basque Country add to and complement the importance of Altamira by contributing to a better understanding of the first art of mankind. Much of its importance lies in its geographical dispersion, which demonstrates that the Cantabrian region was a territorial and cultural unit during the Upper Palaeolithic.

Arte Rupestre del Arco Mediterráneo de la Península Ibérica (Rock Art of the Mediterranean Arc of the Iberian Peninsula). Year of inscription: 1998. This is a unique and representative cultural manifestation of a post-Palaeolithic prehistoric society that inhabited the mountain ranges and landscapes of the eastern part of the Iberian Peninsula, between the Pre-Pyrenees of Huesca and the southeastern mountain ranges, occupying large areas of the Autonomous Communities of Catalonia, Andalusia, Murcia, Valencia, Aragon and Castile-La Mancha. It constitutes the largest collection of rock art in Europe and shows us exceptional images of daily life in a fundamental period of the cultural evolution of mankind: the Epipalaeolithic and Neolithic periods, between 10,000 and 3,500 BC. The collection consists of more tan 750 sites located in rock shelters or cliffs; the landscape interest, as well as the historical interest, was a key element in the inclusion of these properties on the World Heritage List.

Hayedos primarios y maduros de los Cárpatos y otras regiones de Europa (Primary and mature beech forests of the Carpathian and other European regions). Year of inscription: 2017. This serial property extends over a vast territory spread over twelve European countries. Beech forests are indispensable for understanding the history and

evolution of the genus Fagus, which, given its wide distribution in the northern hemisphere and its ecological importance, is of global relevance and a living testimony to the genetic adaptability of trees. The Spanish components, representative of southern beech forests in the European context, are distributed *in Madrid (Montejo de la Sierra), Castilla-La Mancha (Tejera Negra), Castilla y León (Cuesta Vieja and Canal de Asotín in Picos de Europa) and Navarra (Lizardoia and Aztaparreta).*

5. *Intangible Cultural Heritage of Humanity and the Memory of the World Programme: the Spanish inscriptions*

In 1999, UNESCO launched the Masterpieces of the Oral and Intangible Heritage of Humanity Programme. This programme was conceived as an instrument to make known and enhance the diversity of this type of heritage, constituting a decisive stage in UNESCO's strategy for the safeguarding of Intangible Heritage. The experience gained through this Masterpieces programme, especially in the framework of the associated safeguarding activities, was invaluable in the preparation of the Convention for the Safeguarding of the Intangible Cultural Heritage, which was adopted on 17 October 2003 and entered into force on 20 April 2006. This Convention left behind the series of proclamations of Masterpieces and opened the way for a new system of inscription and promotion of the Intangible Cultural Heritage of Humanity. In order to give it greater visibility, the Convention establishes a two-list system:

- Representative List of the Intangible Cultural Heritage of Humanity: is composed of expressions that illustrate the diversity of intangible heritage and contribute to a greater awareness of its importance and is considered the equivalent of the World Heritage List.
- List of Intangible Cultural Heritage in Need of Urgent Safeguarding: is composed of elements of intangible cultural heri-

tage that communities and States Parties consider in need of urgent safeguarding measures to ensure their transmission. Inscriptions on this List help to mobilise international cooperation and assistance to enable the actors concerned to take appropriate safeguarding measures.

Spain has seventeen incriptions on the Representative List of Intangible Cultural Heritage. Namely: *Caballos del vino* (2020); *Cerámica de Talavera de la Reina y El Puente del Arzobispo* (2019); *Técnica constructiva tradicional de la piedra seca* (2018); *Tamboradas, rituales de toque de tambor* (2018); *Espacio cultural de la fiesta de las Fallas valenciana*s (2016); *Las fiestas del fuego del solsticio de verano del Pirineo* (2015); *Fiesta de los patios de Córdoba* (2012); *Fiesta de «la Mare de Déu de la Salut» de Algemesí* (2011); *los 'castells'* (2010); *el canto de la Sibilla de Mallorca* (2010*); la cetrería, un patrimonio humano vivo* (2010); *la dieta mediterránea* (2010, extension 2013); *el flamenco* (2010); *el Silbo Gomero* (2009); *Tribunales de regantes del Mediterráneo español: el Consejo de Hombres Buenos de la Huerta de Murcia y el Tribunal de las Aguas de la Huerta de Valencia* (2009); *el Misteri d'Elx* (2008); *la Patum de Berga* (2008).

While there are three included in the Register of Programmes, Projects and Activities for the Aafeguarding of Heritage that most adequately reflect the principles and objectives of the Convention: *Inventario Montseny* (2013); *Revitalización del saber tradicional de la cal artesanal en Morón de la Frontera* (2011); and *Centro de Cultura Tradicional Museo Escolar de Pusol* (2009).

Moreover, in 1992 UNESCO established the Memory of the World Programme. The impetus originally came from a growing awareness of the parlous state of preservation of, and access to, documentary heritage in various parts of the world. War and social upheaval, as well as severe lack of resources, have exacerbated problems that have existed for centuries. Significant collections around the world have suffered a variety of fates. Looting and dispersal, illegal trade, destruction, inadequate housing and funding have all played a part. Thus we find that much of this documentary heritage has disappeared forever or is endangered.

At the proposal of Spain, the following have been included in this Programme: The Archive of Simancas; the Archive of Santiago Ramón y Cajal and the Spanish School of Neurohistology; Capitulations of Santa Fe; Treaty of Tordesillas; the work of Fray Bernardino de Sahagún; the 'Llibre del Sindicat Remença'; the documentary corpus of The 'Decreta' (or Decrees) of León of 1188; and a selection of vocabularies and dictionaries of various indigenous languages, translated into Spanish at the end of the 18th century. Jointly with Portugal: the Codex Calixtinus and other medieval copies of the Liber Sancti Jacobi; the Treaty of Tordesillas; and the texts of the Commentaries on the Book of Revelation (Beatus of Liébana) from the Iberian tradition. And with Japan, a collection of materials brought to Japan by the Keicho mission to Europe has been presented.

6. *A final thought on the list of Spanish World Heritage Properties and the urgent problems that need to be addressed as a conclusion*

As we have already seen and exposed, Spain has a total of forty-nine properties inscribed on the World Heritage List. From the remote times of Atapuerca to the originality of Catalan modernism, from the biodiversity of Ibiza to the poetry of the Alhambra, the properties declared World Heritage allow us to take a journey through the history of our territory, highlighting the most outstanding elements that have been produced. Natural wealth and biodiversity are also part of our common heritage, as culture and nature are inextricably intertwined. The inclusion of properties on the World Heritage List highlights our wealth of heritage, while at the same time demonstrating the commitment of administrations and citizens to its conservation[8].

All of these assets are of different typologies:

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[8] See *www.culturaydeporte.gob.es/cultura/areas/patrimonio/mc/patrimoniomundial/presentacion.html.*

(a) *Natural*: Garajonay National Park; Teide National Park; Doñana National Park; and primary and mature beech forests in the Carpathians and other regions of Europe.

(b) *Cultural*: Gaudí's work; Monastery and Royal Site of El Escorial; Burgos Cathedral; Alhambra, Generalife and Albaicín of Granada; Historic Centre of Córdoba; Altamira Cave and Palaeolithic Rock Art of the Cantabrian Coast; Old City of Segovia and its Aqueduct; Old City of Santiago de Compostela; Old City of Ávila and churches outside the walls; Monuments of Oviedo and the Kingdom of Asturias; Old City of Cáceres; Historic City of Toledo; Mudejar architecture of Aragon; Cathedral, Alcázar and Archive of the Indies of Seville; Old City of Salamanca; Monastery of Poblet; Royal Monastery of Santa María de Guadalupe; Archaeological Ensemble of Mérida; The Way of St. James; Historic Walled City of Cuenca; La Lonja de la Seda de Valencia; Palau de la Música Catalana and Hospital de Sant Pau; Las Médulas; Monasteries of San Millán de Yuso and Suso; Rock art of the Mediterranean Arc of the Iberian Peninsula; University and historical site of Alcalá de Henares; San Cristóbal de La Laguna; Atapuerca archaeological basin; Catalan Romanesque churches of Vall de Boi; Archaeological Ensemble of Tarraco; Palm Grove of Elche; Roman Wall of Lugo; Cultural Landscape of Aranjuez; Renaissance Monumental Ensemble of Úbeda and Baeza; The Bridge of Vizcaya; Tower of Hercules; Prehistoric Rock Art Sites of the Côa Valley and Siega Verde; Cultural Landscape of the Sierra de la Tramontana; Mercury Heritage: Almadén and Idrija; Dolmens of Antequera; Caliphal City of Medina-Azahara; Risco Caído and the Sacred Mountains of Gran Canaria; The Paseo del Prado and the Buen Retiro, landscape of arts and sciences.

(c) *Mixed*: Ibiza, Biodiversity and Culture; Pyrenees-Monte Perdido.

We can see that in Spain there is a very marked predominance of cultural heritage over natural heritage: forty-three cultural properties, four natural properties and two mixed sites. While the first monuments (some of which were later extended to urban areas)

were inscribed in 1984, the first Spanish natural property on the List was inscribed two years later (Garajonay National Park) and the first mixed property, Monte Perdido, was inscribed eleven years later, in 1997. On the other hand, and reinforcing the way in which the Spanish list reflects the character of the List in general, we find that cultural properties are basically monuments, historic cities and archaeological sites.

Another aspect that should be highlighted, and which explains the large number of Spanish properties declared World Heritage, is the attitude of the Ministry of Culture over the last few decades. It is not so much a question of Spain being among the countries with the most heritage of universal value, which in itself is debatable in view of UNESCO's own principles and criteria, nor even of competing with other states in terms of the best models of heritage management; the reason is different. In a political context such as Spain's, in which cultural competences have been transferred to the Autonomous Communities for many years, one of the responsibilities that still resides in the Ministry of Culture is the management of new World Heritage nominations, as well as the Tentative List. In this respect, the Spanish State has taken as a criterion that all the Autonomous Communities should have properties included on the List. This non-explicit objective has been translated into a process whereby all of them currently have a property on the List, a process that culminated in 2006 when the only Autonomous Community that did not yet have any property, the Basque Country, obtained its first property when it added the Vizcaya Suspension Bridge to the List. Only the autonomous cities of Ceuta and Melilla do not have any properties, nor are they likely to do so in the future[9].

However, this honour of being one of the States with the greatest World Cultural Heritage must be in line with the due protection to which Spain is obliged by being a party to the 1972 Convention, and to which we have referred above. There are several prob-

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[9] V. Fernández Salinas, La protección del Patrimonio Mundial en España, in Revista electrónica de Patrimonio Histórico, 2008, 2.

lems present in this respect that call into question the due fulfil-
ment of these international protection obligations.

One of the main problems is the over-exploitation of properties
for tourism, either because of pressure of use that exceeds their car-
rying capacity, or because they are transformed to appear as an at-
tractive tourist attraction. The most significant loss in these cases
affects the authenticity of the property. If we also take into account
that the intention, declared or not, of many of the authorities that
encourage the inclusion of a property on the World Heritage List is
to include their locality and/or territory in tourist circuits, the result
is worrying. As proof of this, we can see how the Jewish Quarter of
Cordoba has not improved but, on the contrary, has worsened since
it was added to the List by the extension of the Mosque-Cathedral
(which had already been added to the List ten years earlier) in 1994,
with the loss of authenticity as a result of tourist erosion. Similar as-
sessments could be made of some neighbourhoods or areas in Gra-
nada, Toledo or Ibiza, among others.

Secondly, the real estate dynamic should be mentioned. In a
country like Spain, where construction is considered a basic sector,
a driving force of the economy and on whose health the health of
the State as a whole depends to a large extent, the protection of cul-
tural heritage rarely takes precedence over real estate interests. Thus,
the situation of heritage has suffered in all the Autonomous Com-
munities and in cities at all levels. During the 1960s and 1970s, the
destruction of the historic fabric was a constant feature from which
few towns were spared and, in recent decades, the transformation,
if not the simple prolongation of the destruction, has accompanied
the updating of many historic centres. Almost all of them look bet-
ter, but from the point of view of authenticity, the assessment can-
not be so optimistic. Real estate activity has also taken advantage of
the image and prestige that has accompanied World Heritage dec-
larations. This has led to the fact that, sometimes with the signature
of a prestigious architect, sometimes simply with mediocre projects
or very permissive plans, initiatives have been produced that are not

in keeping with the heritage character of these towns. The most significant cases are those of Oviedo and Seville.

Likewise, there is inadequate or very generic management of the heritage. In relation to this inadequate management, we can point to basic aspects such as the lack of surveillance of the assets, which is especially significant in relation to the assets inscribed in the Rock Art of the Mediterranean arc, to other problems related to urban traffic or the criteria used in restorations and rehabilitations. Another noteworthy point that we also find in relation to this management is the use of interventions in cultural assets (or the lack of them) as a weapon of war between local political parties, which occurs with all types of parties and throughout the country. Suffice it to recall Calatrava's project to build three skyscrapers in Oviedo or the Can Botino building in Ibiza.

All of the above leads us to point to the existence of a certain relaxation in the fulfilment of UNESCO's obligations once properties are inscribed on the World Heritage List. In general, during the years in which a nomination dossier is being prepared, extreme care and actions are taken to influence the property in question and, in general, all existing properties in the locality or territory in which it is located. However, once on the List, this care is perceived to be relaxed. Neither the municipal nor the regional authorities[10] are able to control the new processes imposed by the increased influx of tourists and a real estate market that always participates in the requalification processes of a listed town. This situation is worrying, to say the least, in the historic centres of large cities, although smaller towns, such as the Aragonese Mudejar or the Médulas in León, are no strangers either.

In the same sense, we also note a certain lack of compliance with the obligation of prior notification to the World Heritage Committee of any new work or restoration affecting the property, as fore-

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[10] The Ministry of Culture is absolved on principle, as cultural competences have been transferred to the Autonomous Communities, although the responsibility before UNESCO is that of the Spanish State.

seen in Article 172 of the Operational Guidelines for the Implementation of the World Heritage Convention. On many occasions, the simple fact of considering the referral of certain projects to UNESCO would prevent ideas contrary even to common sense from being proposed – such as the construction of skyscrapers less than 300 metres from Oviedo Cathedral – and would allow intervention in the processes before irreparable situations arise.

Finally, a message to reflect. Spain is a world leader, recognised by UNESCO, in Cultural, Natural and Intangible Heritage. Unfortunately, however, Spaniards are not generally aware of the diversity and richness of our heritage, of which we should feel proud and be disseminators.

We need to know it, care for it, love it and promote it. So let's keep in mind that Heritage is a bridge that links the past with a better future for all.

José Antonio Perea Unceta

STATE SOVEREIGNTY AND PRIVATE PROPERTY IN UNESCO CULTURAL HERITAGE: THE PROBLEMS THAT ARISE FROM THE OWNERSHIP AND USE OF THE CATALOGED ASSETS. AN ANALYSIS OF SPANISH PRACTICE[*]

Abstract: The international system designed by UNESCO for the protection of cultural heritage is essentially respectful of the sovereignty of States; For this reason, it establishes a cooperation system in accordance with which mechanisms are created to supervise the state of conservation and the risks in which the assets inscribed on the World Heritage List are found. It is a mechanism that imposes obligations on States and allows recommendations to be made on their registered cultural property. However, the norms of UNESCO and other international organizations distinguish between sovereignty and property, in such a way that the cataloging of a property as of cultural interest does not necessarily imply its public nature or impairs its correct management and conservation. The UNESCO World Heritage List includes assets in the public domain and also in private ownership. However, this does not prevent that in certain circumstances or activities, international standards provide limitations to property rights, such as those that prevent the expatriation of certain cultural assets or those that impose public access to cultural heritage and in particular to underwater heritage. In this last area, and in others, such as the restitution of property looted by theft, looting in time of war or depredation during colonial domination, sovereignty and property come together, since the State is the main promoter of the national defense of that heritage lost and later found.

1. *Introduction*

The international mechanism for the promotion and supervision of the protection of cultural heritage has its main headquarters in the United Nations Educational, Scientific and Cultural Organization (UNESCO) and its most important tool in the Conven-

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[*] Double-blind peer reviewed content.

tion Concerning the Protection of the World Cultural and Natural Heritage signed in Paris in 1972. Although there are other international organizations with programs of action in this area – such as, among others, the Council of Europe – the main work in the international institutional sphere corresponds, without any doubt, to this specialized agency of the United Nations. There are also many actions undertaken by this international organization with functions in the field of culture and education, such as the Atlas of the World's Languages in Danger, the Memory of the World Programme, the Biosphere Reserves or the Creative Cities Network. But its broad public projection is due to the cultural heritage protection system that revolves around the World Heritage List and the legal regime established by the Paris Convention.

UNESCO, with its own legal personality and resources, functions as a specialized agency of the UN. As stipulated in Article 1.2.c) of the founding treaty (London, 1945), its main function is to ensure «the conservation and protection of the world's inheritance of books, works of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions». The Convention concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris on November 16, 1972, defines in its Article 1 the cultural heritage as «monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science». However, its scope currently covers cultural heritage in the strict sense, intangible heritage and natural heritage in all its different expressions, as regulated, among others, by the Convention on the Protection of the Underwater Cultural Heritage (Paris, 2001), the Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 2005).

The living core of UNESCO's monitoring activity is the institution of the World Heritage List[1], which includes 1,154 properties from 166 States plus Palestine. Of these, 897 are cultural sites, 218 are natural sites and 39 are mixed. Most of them are located in a single State and at the same time are land, buildings and other constructions and installations or movable property that can be appropriated, which gives rise to a dual ownership: the sovereign ownership of the States, which allows them to deploy the range of discretionary powers that are proper and inherent to this notion with respect to the activities carried out in their territory by nationals and foreigners and with respect to any property located in their territory; and the ownership of individuals and legal persons, which recognizes private law (or, where appropriate, public law in relation to the property of public administrations) and allows the use, enjoyment, benefit and transmission of the same by the former.

These are two distinct levels that are not mutually exclusive in principle, as is clear from the international rules on cultural heritage. The 1972 Paris Convention distinguishes between the sovereignty of the territorial State, which it requires all States Parties to respect, and the ownership of property forming part of the cultural and natural heritage. Thus, article 6.1 states (emphasis added) that

> «Whilst fully respecting the *sovereignty of the States* on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to *property right* provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate».

Thus, what the States agree by means of this international treaty is a duty of cooperation to protect the cultural heritage 'located' in the territory of which they are sovereign holders, independently and without affecting the private legal title (property right) provid-

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[1] It can be consulted at *https://whc.unesco.org/es/list/*.

ed for each of them or for the whole of them in their national legislations. The international norm neither limits State sovereignty beyond the duty to cooperate – voluntarily assumed, moreover – nor conditions the ownership of cultural and natural property, referring to national law. Notwithstanding the confirmation of both levels, public and private, state and individual, the fact is that in the international legal regime for the protection of cultural heritage there are several gateways between them, which must be clarified to highlight their legitimate and essential objectives and also to avoid self-interested confusion. This is so because sovereignty also includes the regulation of the right to property in general and of property of cultural interest in particular, so that in some States there may be rules of national law that entail an expropriation of such property or impose a limitation on the rights of its owners. And likewise, States reserve certain powers of protection or intervention, such as those established in armed conflicts or with respect to plundered property or in relation to marine wrecks, issues that are presented in this study in a very concise manner, since its purpose is not to analyze them exhaustively but rather to consider them as a whole.

2. *Provision for private ownership of properties inscribed on the World Heritage List*

Previously, we believe it is appropriate to refer to a minority tendency to improperly assimilate World Heritage (until 2014 called 'Cultural Heritage of Mankind' at UNESCO) with foreign notions, such as the Common Heritage of Mankind. As we have already explained in another paper[2], the international legal regime provided

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[2] See the observations on the report issued on March 11, 2016 by the Secretary General of the City Council of Cordoba regarding the legal feasibility of the exercise of the corresponding legal actions with respect to the possible nullity of full nullity and rectification of the registration of the Holy Church Cathedral of Cordoba in the name of the Catholic Church, which advocates for a non-existent concept of «supradominio público», in J.A. Perea Unceta, *Las obligaciones inter-*

for Antarctica, the Seabed and Ocean Floor and the Moon, in texts such as the Antarctic Treaty of 1959, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, of 1967, the 1982 Convention on the Law of the Sea, and General Assembly Resolutions 1962 (XVII) of 13 December 1963 and 2749 (XXV) of 17 December 1970, recognize with greater or lesser breadth and precision the application of the notion of the Common Heritage of Mankind[3] to these territorial spaces and the assets and resources located therein, each with its own legal regime of rights and obligations of the States and regime of access and use by individuals and enterprises[4]. Thus, in outer space, States have decided to prevent the extension of State sovereignty and, likewise, appropriation by individuals and companies except for the benefit of Humanity; in the Seabed and Ocean Floor, the extension of jurisdiction or sovereignty of coastal States is not foreseen, but State and corporate access to their economic resources with an initial – and reformed – benefit for Humanity[5]; and on the Antarctic continent and ocean,

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nacionales asumidas por España en la conservación de la Mezquita-Catedral de Córdoba: cumplimiento de las normas y recomendaciones de la UNESCO, in *Estudio histórico y jurídico sobre la titularidad privada de la Mezquita-Catedral de Córdoba*, edited by J. Fernández-Miranda, J.C. Cano Montijano, Dykinson, Madrid, 2019, pp. 213-263.

[3] See also A.C. Kiss, *La notion de patrimoine commun de l'humanité*, in *Recueil des Cours de l'Académie de Droit International de La Haye*, 175, 1982, pp. 99-256; A. Blanc Altemir, *El Patrimonio Común de la Humanidad: hacia un régimen jurídico internacional para su gestión*, Bosch, Barcelona, 1992, and K. Baslar, *The Concept of the Common Heritage of Mankind in International Law*, Nijhoff, Londres, 1998.

[4] See M. Adda Bekkouche, *Recuperation du Concept de Patrimoine Commun de l'Humanite (P.C.H.) par les Pays Industriels*, in *Revue Belge de Droit International*, 20, 1987, 1, pp. 124-137.

[5] See R.J. Dupuy, *La notion de patrimoine commun de l'humanité appliquée aux fonds marins*, in *Etudes offertes à Claude-Albert Colliard*, Pédone, París, 1984, pp. 197-205, and J.M. Sobrino Heredia, *El régimen jurídico de la explotación de los fondos marinos y oceánicos y los intereses de España*, in *Anuario da Facultade de Dereito da Universidade da Coruña*, 3, 1999, pp. 609-634.

territorial claims for exploration and contiguity have been suspended and exploitation by companies is permitted with the license, where applicable, of the Antarctic Council[6].

As Paolillo explained in 1984, the principle of the Common Heritage of Mankind is new and precise but also different for each of the areas and properties for which the States have decided to apply it[7]. There are, therefore, only these provisions in international norms of a conventional nature and in the practice of States and international organizations[8]. For this reason and due to an impossible conceptual assimilation, it is inapplicable to equate cultural heritage with the notion of Common Heritage of Mankind, as Frigo rightly states[9], and as should be specified beforehand, since it could have consequences – if so established by the States in the respective international regulatory treaties – with respect to the inappropriability of the assets.

The system established by UNESCO for the protection of cultural heritage, generally articulated around the World Heritage List, provides for both public and private ownership of listed elements. This is clear from different texts, such as the aforementioned article 6 of the 1972 Paris Convention.

It is also reflected in the 1954 Hague Convention, whose Article 1 (Definition of cultural property) begins by stating that «for the purposes of the present Convention, the term `cultural property' shall cover, irrespective of origin or ownership …». Also in the Recommendation concerning the Protection, at the National Lev-

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[6] F. ORREGO VICUÑA, *La Antártica y sus recursos: problemas científicos, jurídicos y políticos*, Editorial Universitaria, Santiago, 1983.

[7] Confronting in F. PAOLILLO, *Naturaleza jurídica del principio de "patrimonio común de la Humanidad",* in *Anuario del IHLADI*, 7, 1984, pp. 353-377.

[8] See V. POSTYSHEV, *The Common Heritage of Mankind: From Mew Thinking to New Practice*, Progress Publ., Moscú, 1990.

[9] Confronting in M. FRIGO, *La protezione dei beni culturali nel diritto internazionale*, Giuffrè, Milán, 1986, p. 135, y *Bienes culturales o patrimonio cultural: ¿una batalla de "conceptos" en el derecho internacional?*, in *Revista Internacional de la Cruz Roja*, 30, 2004.

el, of the Cultural and Natural Heritage of 16 November 1972, it is stated that «the effects of the measures taken to protect any element of the cultural or natural heritage should continue regardless of changes of ownership. If a protected building or natural site is sold, the purchaser should be informed that it is under protection» (point 46).

Similarly, the Recommendation concerning the safeguarding of historic or traditional areas and their function in contemporary life, of 26 November 1976, specifically regulates historic areas, districts or centers, which include elements of public domain (such as streets, squares, etc.) and others normally privately owned (such as dwellings and premises). Thus, in its first section

«"Historic and architectural (including vernacular) areas" shall be taken to mean any groups of buildings, structures and open spaces including archaeological and palaeontological sites, constituting human settlements in an urban or rural environment, the cohesion and value of which, from the archaeological, architectural, prehistoric, historic, aesthetic or socio-cultural point of view are recognized. Among these "areas", which are very varied in nature, it is possible to distinguish the following in particular: prehistoric sites, historic towns, old urban quarters, villages and hamlets as well as homogeneous monumental groups, it being understood that the latter should as a rule be carefully preserved unchanged».

And

«40. Grants, subsidies, loans at favourable rates, or tax concessions should be made available to private owners and to users carrying out work provided for by the safeguarding plans and in conformity with the standards laid down in those plans. These tax concessions, grants and loans could be made first and foremost to groups of owners or users of living accommodation and commercial property, since joint operations are more economical than individual action. The financial concessions granted to private owners and users should, where appropriate, be dependent on covenants requiring the observance of certain

conditions laid down in the public interest, and ensuring the integrity of the buildings such as allowing the buildings to be visited and allowing access to parks, gardens or sites, the taking of photographs, etc».

To give other examples, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 1970) stipulates in Article 11 that «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». And Article 2 of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro, 2005), which states that

«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».

The possibility of diverse ownership – the effectiveness of which depends on the regulations of each State – is reflected in the UNESCO World Heritage List. In the first place, with many cases of historic areas (with public and private properties), such as historic centers in Spain: Córdoba (1984 and 1994), Ávila, Segovia, Santiago de Compostela (1985), Toledo, Cáceres (1986), Salamanca (1988), Albaicín (1994), Cuenca (1996), Alcalá de Henares (1998) y Úbeda y Baeza (2003); and in other neighboring countries, such as Évora (1986), Cintra (1995), Oporto (1996) or Guimaraes (2001) in Portugal; Mont Saint-Michel (1979), Paris-Sena (1991), Aviñón (1995), Carcassonne (1997), Lyon (1998), Le Havre (2005), Bordeaux (2007), Albi (2010) or Nice (2021) in France; or Firenze (1982), Venezia (1987), San Gimigiano (1990), Vicenza (1994 and 1996), Napoli (1995), Siena (1995), Ferrara (1995 and 1999), Verona (2000) or Mantua (2008).

The complexity of historic areas is present in UNESCO texts, recognizing the diverse ownership in property, management and financing, as in the Handbook of Cultural Heritage Management.

The complexity of historic areas is present in UNESCO texts, recognizing the diverse ownership in property, management and financing, as in the *UNESCO Managing Cultural Heritage* handbook[10]:

> «There are some heritage properties withmultiple owners, occupancy and ongoinguses. Historic centres and cultural land-scapes are examples. Some of the monu-ments or areas may be under directcontrol of the primary management sys-tems but some may belong to privateowners. Ownership or responsibility fortheir care may be under a local heritageauthority or a local civic authority, partic-ularly in the case of non-listed buildingsand infrastructure. In these cases, the decision-making processwill be different, involving. amongst others,governing and managing bodies, ownersand users. While some decisions may betaken by individual entities, there should bea new mechanism to take joint or collective decisions».

Secondly, sites of exclusive and well-known private property of different religious communities and entities abound, be it the Catholic Church, such as the Church of St. Augustine in Manila[11] (Philippines, 1993), of the Church of England, such as Durham Cathedral[12] (United Kingdom, 1986), of the Baha'i Community, such as the Holy Places in Haifa and Western Galilee (Israel, 2008), or of different Shinto and Buddhist religious entities, such as the shrines and temples of Nikko[13] (Japan, 1999).

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[10] *Manual de Gestión del Patrimonio Cultural*, UNESCO/ICCROM/ICOMOS/UICN, Paris, 2014, p. 59.

[11] Property of catholic Church, administered by the Order of St. Augustine, as stated in the ICOMOS Report of November 6, 1992 (File No. 677).

[12] As stated in the listing proposal report (p. 61), it is owned by Durham Cathedral Chapter, the University of Durham and the College of St John's.

[13] There are 103 buildings whose ownership is described in the nomination report of December 4, 1999 (p. 39). Consult in *http://whc.unesco.org/uploads/nominations/913.pdf*.

And also non-religious, such as, by way of examples: The Verla wood and cardboard processing factory[14] ((Finland, 1996), the industrial landscape of Blaenavon[15] (UK, 2000), the industrial site of Rjukan-Notodden (Norway, 2015) and the architectural work, in seven countries, of Le Corbusier[16] (2017).

In Spanish law there is no expropriating norm of the ownership and use of the historical-artistic heritage as there is in some countries[17]. Thus, for example, in France, by means of the Combes Law or Law of Separation of the Churches and the State of 1905, all the religious buildings constructed up to that date were nationalized on the understanding that they formed part of the cultural heritage of the French people, with the State assuming their rehabilitation and conservation, and permitting the corresponding cultural use. However, there is no equivalent expropriation rule with respect to the enormous patrimony of the French nobility in the form of palaces, castles, etc. In Portugal the situation is similar, although excluding buildings of lesser value, distinguishing more clearly the religious use and with a consensual origin between the State and the Catholic Church in the Concordat with the Holy See of 1940. In other countries, such as Austria or the United Kingdom, private properties, including church properties, have not been intervened by the States.

In Spain, article 36.1 of Law 16/1985 on Spanish Historical Heritage provides that «the property forming part of Spanish Historical Heritage must be conserved, maintained and guarded by its

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[14] Owned by Wilhelm Dippell until his death in 1906 and finally acquired by the current 'Kymmene Corporation'.

[15] Mixed ownership, public and private, as stated in the listing proposal report of November 2, 2000 (pp. 57-58).

[16] Among them, the Maison Blanche was owned by the family that built it until it was sold in 1919, with several transmissions until 2000 when it was bought and restored by the 'Association Maison Blanche', which opened it to the public in 2005.

[17] See J.C. Cano Montijano, *La protección del Patrimonio Histórico-Artístico en Francia: su evolución histórica*, in *Tutela jurídica del Patrimonio Cultural*, edited by M.J. Roca Fernández, M. Olaya Godoy, Tirant lo Blanch, Valencia, 2021, pp. 130-156.

owners or, as the case may be, by the holders of rights in rem or by the possessors of such property». These last references imply the recognition of private ownership of cultural property, on the other hand, not excepted in the constitutional order of the right to private property or in the organic laws of development of Article 33 of the Constitution, which enshrines the social function of this right «in accordance with the laws», so that «no one may be deprived of their property and rights except for justified reasons of public utility or social interest, through the corresponding compensation and in accordance with the provisions of the laws». In such a way that these laws must articulate the obligation contained in Article 46, according to which «the public authorities shall guarantee the conservation and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain and of the assets that comprise it, whatever their legal status and ownership»[18].

The Spanish Historical Heritage Law of 1985, the regional heritage laws and other national and regional regulations, some of them implementing European directives[19], make up a complex set of rules that seek to guarantee these constitutional rights and obligations, which must also be combined with other rights and freedoms enshrined in the Constitution, such as religious freedom[20], or

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[18] On the interrelationship between these and other constitutional precepts, see L.A. Villanueva, *La protección jurídica de los bienes culturales en el derecho español*, in *Ius et Praxis*, 10, 2004, 1, pp. 11-44.

[19] Such as Law 1/2017, of April 18, on the restitution of cultural property unlawfully removed from Spanish territory or from another Member State of the European Union, which transposes Directive 2014/60/EU, of the European Parliament and of the Council of May 15, 2014, into Spanish law.

[20] See J.C. Cano Montijano, *Libertad religiosa en la Unión Europea: el caso de la Mezquita-Catedral de Córdoba*, in *Libertad religiosa en la Unión Europea: el caso de la Mezquita-Catedral de Córdoba*, edited by J.C. Cano Montijano, 2017, pp. 13-54; y J.M. Coello De Portugal, *Libertad religiosa, aconfesionalidad estatal y derecho de propiedad a la luz de la Constitución: algunos aspectos relevantes del estatuto jurídico de la Mezquita-Catedral de Córdoba*, in *Estudio histórico y jurídico sobre la titularidad privada de la Mezquita-Catedral de Córdoba*, edited by J. Fernández Miranda, J.C. Cano Montijano, Dykinson, Madrid, 2019, pp. 83-128.

regulated in international treaties, such as those promoted by the Council of Europe, UNESCO or the 1979 Agreements with the Holy See[21].

As far as the object of this paper is concerned, Spanish legislation, following the trend imposed by European legislation, strikes a balance between the right to private property and the protection, promotion and public access to cultural heritage. Although there are different assessments on this issue[22], we understand that there is a sufficient consideration of the historical and social value of cultural property, which results in the obligations of both location in Spanish territory and preferential acquisition by the State, as well as conservation (with the help, always insufficient, of the Public Administrations) and study and public access and dissemination.

With specific regard to the ownership, management and public access to the sites included in the World Heritage List, as has been explained, the properties protected in Spain – extensively described in this work in the work of A.G. López Martín – include natural sites of diverse ownership, historic urban centers with elements of public domain and others (most of them) of private ownership, and singular elements, some of public ownership (such as the Alhambra

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[21] See M.J. Gutiérrez Del Moral, *Otras normas internacionales sobre el patrimonio cultural de las confesiones religiosas*, in *Protección de patrimonio cultural de interés religioso*, edited by A.M. Vega Gutiérrez, M.M. Martín García, M. Rodríguez Blanco, J.M. Vázquez García-Peñuela, Comares, Granada, 2012, pp. 13-44; CH. Starck, *El patrimonio arquitectónico y arqueológico desde la perspectiva del Derecho europeo e internacional*, in *Patrimonio histórico-artístico de la Iglesia Católica: Régimen jurídico de su gestión y tutela*, edited by M.J. Roca Fernández, M. Olaya Godoy, Tirant Lo Blanch, Valencia, 2018, p. 37 ss.; and J.A. Perea Unceta, *Las obligaciones internacionales asumidas por España en la conservación de la Mezquita-Catedral de Córdoba: cumplimiento de las normas y recomendaciones de la UNESCO*, in *Estudio histórico y jurídico sobre la titularidad privada de la Mezquita-Catedral de Córdoba*, edited by J. Fernández-Miranda, J.C. Cano Montijano, Dykinson, Madrid, 2019, pp. 213-263.

[22] See M.R. Alonso Ibáñez, *El Patrimonio Histórico: destino público y valor cultural*, Universidad de Oviedo-Civitas, 1992; and J.L. Peñalba, *Evolución del concepto y de la significación social del patrimonio cultural*, in *Arte, individuo y sociedad*, 17, 2005, pp. 177-206.

in Granada, 1984, the Aqueduct of Segovia, 1985, or the Monastery of San Lorenzo del Escorial, 1984) and others of private ownership, either of the Catholic Church (such as the Mosque-Cathedral of Córdoba or the Cathedral of Burgos, 1984) or of other private persons or entities. This is the case, for example, of the Casa Batlló (on the List in 2005 and winner of the Europa Nostra Award 2006), in Barcelona, built by Antonio Gaudí in 1906 and whose ownership has always been in private hands, from the family of the industrialist Josep Batlló i Casanovas, the Godó family, Sociedad Iberia de Seguros and the Bernat family.

In any case, this recognition of the possibility of private ownership of cultural property, a dual model shared with other countries in our environment, does not prevent adherence to the international regime of reservation of certain property in national territory, which we mention below, and which implies a limitation of the right of ownership for reasons of social interest.

3. *Manifestations of sovereignty in international law for the protection of cultural heritage*

Regarding State sovereignty, the general rule of this international legal regime, the Paris Convention of 1972, only makes that negative warning in article 6 – cited above – by which, we understand, it warns States that the rules established therein do not imply in any way the recognition of a possible right or even duty of interference by the international community in the heritage located in each State, even if it is in serious danger.

In relation to this question, it is necessary to make a preliminary observation related to the interest of the international community, since from approaches outside of international law there is sometimes confusion – or confusion is intended – with the terminology used in this legal regime. Thus, it is evident that there is a shared interest among the States that make up international society to define cultural heritage as a common value, since it is understood that

it provides a service to all persons and societies regardless of State borders. When the preamble to the 1972 Convention stresses «the importance for all the peoples of the world of the preservation of these unique and irreplaceable properties, irrespective of the country to which they belong» and that «certain items of cultural and natural heritage are of exceptional interest and should be preserved as part of the world heritage of humanity as a whole», the existence of a value of the international community as a whole is confirmed[23] in the Convention.

However, this common value on which this legal regime is based does not go beyond the level of mere cooperation between States, as is the case in other fields. The main consequences of this nature are that States voluntarily submit to this regime and that no interference by other international subjects is permitted. Thus, as long as the State complies with the 'recommendations' emanating from the UNESCO system, its properties remain inscribed therein, being expelled when they are in serious non-compliance, but there is no provision for major, direct or subsidiary intervention.

Indeed, we are not in the legal regime for the use of force or for the protection of human rights[24]; we do not have an international

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[23] As had already been stated, among other texts, in the treaty establishing UNESCO in 1945 (Article 1 cited above) or in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the preamble of which states that «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» and «that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection».

[24] See, C. Bories, *Le patrimoine culturel en droit international, Les compétences des Etats à l'égard des éléments du patrimoine culture*l, Pedone, Paris, 2011, p. 199 ss.; K.J. Patel, *Culture Wars: Protection of Cultural Monuments in a Human Rights Context*, in *Chicago-Kent Journal of International and Comparative Law*, 11, 2011, pp. 1-24; and P. Cortés Jiménez, *La destrucción de patrimonio cultural en caso de conflicto armado: consecuencias, dilemas, herramientas para combatirla, esperanzas*, in *Instituto Español de Estudios Estratégicos*, 31, 2019, p. 5, on the impact of heritage destruction on cultural identity.

system based on a duty of States to behave on the basis of peremptory norms or *jus cogens*, as in some of these matters, nor are there any binding or coercive supervisory mechanisms. In other words, there are no limitations on the sovereignty of States born of the consensus of all of them in such a way that obligations have been created that can only be modified by the same general consensus and from which States can no longer unilaterally dissociate themselves. Nor are there international institutions that have the capacity and the means to intervene in the internal sphere of States when they are violated, even through the denunciation of individuals or of other States before international tribunals or commissions. The international legal regime for the protection of cultural heritage, on the contrary, is based on the proclamation of common values, but on their management according to the method of cooperation and, within this, on certainly light levels of supervision, which undoubtedly exist. This does not imply an absolute disconnection between the international protection of cultural heritage and the systems related to Human Rights or International Humanitarian Law, applicable to armed conflicts, since, as Jiménez García states,

> «en la Observación General nº 21 se insiste en que el derecho de participar en la vida cultural puede ser ejercido por toda persona, sola, en asociación con otras o como una comunidad. Por tanto, el derecho de acceso al patrimonio cultural y de su disfrute puede considerarse tanto un derecho humano individual como colectivo»[25].

Indeed, an important exception is the provision contained in International Humanitarian Law concerning the destruction of cultural property, which allows – but only in time of war – a possi-

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[25] F.J. Jiménez García, *Conflictos armados y Derecho internacional humanitario*, Ommpress, Madrid, 2020², p. 281. «General Comment No. 21 emphasizes that the right to take part in cultural life may be exercised by any person, alone, in association with others or as a community. Therefore, the right of access to and enjoyment of cultural heritage can be considered both an individual and a collective human right» (translation by the autor).

ble international intervention. This consists of certain obligations of the belligerent parties and a mechanism for demanding international responsibility for non-compliance, an intervention that is both public and private, in this case to protect its owners. Indeed – and only by way of illustration – the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on May 14, 1954[26], provides in its article 4

> «1. The High Contracting Parties undertake to respect 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.
>
> 2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.
>
> 3. The High Contracting Parties 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.
>
> 4. They shall refrain from any act directed by way of reprisals against cultural property.
>
> 5. 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».

In case of occupation of the territory, they are obliged to support the national authorities and to preserve the property located there-

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[26] Also previously in the 1907 Regulations Respecting the Laws and Customs of War on Land (art. 27) and in 1977 Additional Protocol I to the Geneva Conventions (art. 53) and Additional Protocol II (art. 16). See G.D. Solis, *The law of armed conflict*, Cambridge University Press, 2016², p. 710 ss.

in (art. 5), and in general the belligerent parties are obliged, among other things, to place them under special protection (art. 8), to identify them with regulated emblems (arts. 10, 16 and 17), to respect their transport under special protection (arts. 12 and 13) and to ensure their immunity from seizure, capture and prey (14). This treaty is supplemented by two Additional Protocols, dated May 14, 1954 and March 26, 1999, which complete and update the previous one. The main novelties of the latter are the improvement of the conditions for the inscription of property on the List of Cultural Property under Enhanced Protection (reduced to being cultural heritage of interest to humanity, protected by national measures and not used for military purposes[27]) and the restriction of the exception contemplated in the aforementioned article 4.2, which would allow these obligations to be waived when there are imperative military needs[28] (it is a military objective and there is no other alternative[29]).

Once again, the territorial element is at the root of the jurisdictional title, both in sovereignty (of the States involved) and in effective administration (of other belligerents, such as secessionist militias or occupying powers), and establishes obligations directly enforceable on these international subjects (full or otherwise). The importance attached by the international community to this due protection in wartime – understandable if one takes into account the vulnerability of cultural property in such circumstances – is such that even the UN Security Council has intervened in sev-

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[27] J.M. Henkaerts, *Nuevas normas para la protección de los bienes culturales durante un conflicto armado: la importancia del Segundo Protocolo a la Convención de La Haya de 1954 para la protección de los bienes culturales en caso de conflicto armado*, in *Revista Internacional de la Cruz Roja*, 151, 1999.

[28] See R. Kolb, *Ius in bello, Le droit international des conflits armés*, Bâle: Helbing & Lichtenhahn, Bruylant, 2009², p. 130 ss.

[29] This is also stated in Rules 38 and 39 of the Rules elaborated by the ICRC on customary international humanitarian law. See J.M. Henkaerts, L. Doswald-Beck, *El derecho internacional humanitario consuetudinario*, CICR, Buenos Aires, 2007, pp. 144-147.

eral recent armed conflicts to demand compliance with these international norms. This is the case of Resolution 1483 (2003) of 22 May, which stresses «the need to respect the archaeological, historical, cultural and religious heritage of Iraq and to protect at all times archaeological, historical, cultural and religious sites, museums, libraries and monuments» and decides to

«7. 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 removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and calls upon the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph».

It is also the case of Resolution 2100 (2013) of 25 April, by which the Security Council tasked the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) with «protecting sites of cultural and historical significance in Mali from possible attack, in collaboration with UNESCO», and Resolution 2199 (2015) of 12 February, in which, in relation to the conflicts involving ISIS/DAESH and other organizations labeled as terrorist in Iraq and Syria,

«15. Condemns the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF, whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects;
16. Notes with concern that ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, 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, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks».

Moreover, to highlight the importance given to this issue in the framework of the UN peacekeeping mechanism, in its Resolution 2347 (2017) of 24 March, on a general basis[30], thus not referring to any particular conflict, it states that «the illicit destruction of cultural heritage, as well as the looting and smuggling of cultural property in the event of armed conflict, in particular by terrorist groups, and the attempt to deny historical roots and cultural diversity in this context may fuel and exacerbate conflicts and hinder post-conflict national reconciliation, thereby undermining the security, stability, governance and social, economic and cultural development of affected States», condemns the destruction and looting of cultural heritage, and the illicit trade in plundered property, recalling that «unlawful attacks against sites and buildings dedicated to religion, education, the arts, the sciences or charitable purposes, or against historic monuments, may constitute war crimes, under certain circumstances and in accordance with international law, and that the perpetrators of such attacks must be brought to justice».

It should be noted that, as the Security Council recalls, this responsibility is required not only of the belligerents but also of the individuals who form part of their armed forces (regular or irregular). In some international proceedings, military commanders or members of groups classified as terrorists have already been convicted. This was the case when the International Criminal Tribunal for the former Yugoslavia sentenced Miodrag Jokić to seven years in prison after he declared himself responsible for the damage caused by the bombing of the Old City of Dubrovnik at the end of 1991[31].

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[30] See C. Fiankan-Bokonga, *Una resolución histórica*, in *Correo de la UNESCO*, octubre-diciembre 2017.

[31] Judgment of March 18, 1991 (*www.icty.org/x/cases/miodrag_jokic/tjug/fr/jok-sj040318f.pdf*). See M. Lostal Becerril, *La protección de bienes culturales en el*

Also of the ICC Judgment of 27 September 2016 sentencing Ahmad Al Faqi Al Mahdi, to nine years imprisonment for directing attacks on buildings of religious and historical character in Timbuktu, Mali in mid-2012[32], in accordance with the provision contained in Article 8.2.e.iv of the Statute in which it is defined as a war crime:

> «Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives».

There are also other areas or activities in which state intervention in cultural property located outside its territory can be seen,

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Tribunal Penal Internacional para la ex Yugoslavia, in *Revista Electrónica de Estudios Internacionales*, 24, 2012, p. 14 ss.

[32] Consult in *www.icc-cpi.int/mali/al-mahdi*. See, *inter alia*, A. Gutiérrez Zarza, *La destrucción del patrimonio histórico como crimen de guerra: los Templos Sagrados de Tombuctú, Al Mahdi y la Corte Penal Internacional*, in *Diario La Ley*, nº 8664, 14 de Diciembre de 2015; M. San Martín Calvo, *La sanción penal internacional de los crímenes de guerra contra los bienes culturales. El asunto Al Mahdi*, in *Revista Española de Relaciones Internacionales*, 8, 2016, pp. 218-251; C.V. Hill, *Killing culture: the intentional destruction of cultural heritage in iraq and syria under international law*, in *Georgia Journal of International and Comparative Law*, 45, 2016, 1, pp. 191-220; F. Vacas Fernández, *La acción concertada de la Comunidad Internacional para la protección del patrimonio cultural en conflictos armados: Mali como paradigma*, in *Anuario Español de Derecho Internacional*, 32, 2016, pp. 189-223; M. Elewa Badar, N. Higgins, *Discussion Interrupted: The Destruction and Protection of Cultural Property under International Law and Islamic Law - The Case of Prosecutor v. Al Mahdi*, in *International Criminal Law Review*, 17, 2017, 3, pp. 486-516; A. Curci, *The Prosecutor v. Al Mahdi and the destruction of cultural heritage*, in *UCLA Journal of International Law and Foreign Affairs*, 23, 2019, 1, pp. 159-182; A. Pontecorvi, *Is It Possible to Prosecute the Intentional Destruction of Cultural Property by the Islamic State in Syria, Iraq and Libya?*, in *ILSA J. Int'l & Comp. L.*, 26, 2019, p. 1; and C. Escobar Hernández, *Ataque a lugares religiosos y Derecho penal internacional: El caso Al Mahdi ante la Corte Penal Internacional*, in D. Llamazares and others, *El Derecho eclesiástico del Estado: en homenaje al profesor Dr. Gustavo Suárez Pertierra*, Tirant, Valencia, 2021, pp. 107-134.

including regimes for the return of plundered cultural heritage and the settlement of disputes over underwater heritage.

Although it may seem to contradict what has been said about the separation between sovereignty and ownership, in reality, it arises in very special areas and circumstances that in the end lead both to a recognition of the original ownership of certain goods (either 'plundered' or 'found') and to the legitimate state function of protecting nationals and the national cultural heritage, whether state or private. This state function is manifested above all in two areas, historical spoliation and the discovery of treasures, the former being particularly relevant in practice in situations of military occupation and colonial rule, and the latter in the rescue of underwater wrecks and the discovery of treasures, especially archaeological ones.

In the first area, international standards such as the European Convention on the Protection of the Archaeological Heritage (London, 1969), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 1970), the European Convention on Offences relating to Cultural Property (Delphi, 1985), the Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985) and Convention for the Protection of the Archaeological Heritage of Europe (revised) (Valletta, 1992). Not to mention that the International Council of Museums (ICOM), a body associated with UNESCO created in 1946, has drawn up codes of conduct to combat illicit trafficking and promote the restitution of cultural property, failure to comply with which can lead to expulsion from the international system[33], and neither does the Unidroit Convention on Stolen or Illegally Exported Cultural Objects, concluded in Rome on June 24, 1995. In all of them, as Anguita explains for the latter, «it includes a right of effective defense of the private owners of property, which has been stolen from them, of

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[33] F.J. De Rueda Roigé, *La protección internacional del patrimonio cultural en caso de conflicto armado*, in *Locvs Amœnvs*, 1998-1999, 4, pp. 249-266, p. 254.

this nature to have it returned to them»[34], and the role of the States of these owners is that of a kind of *sui generis* 'diplomatic protection', in which, without a *strictu sensu* wrongful act having been committed directly by the State in which the object of spoliation (illicit appropriation) or illicit traffic (illegal trade) is located, the former claims before the latter for its return, not because it is its property but because it must reside in its territory for the public access of its nationals[35].

Both to combat the illegal removal of cultural property and the trafficking of stolen or otherwise criminalized items, Spain applies Law 1/2017, of April 18, on the restitution of cultural property unlawfully removed from Spanish territory or from another Member State of the European Union, which transposes Directive 2014/60/EU, of the European Parliament and of the Council of May 15, 2014, into Spanish law.

Without forgetting that in recent decades a novel concept of 'restitution' is gaining ground, in which it is no longer only a question of returning to their legal owners property stolen by the occupying authorities of States in armed conflicts and by administrative acts of expropriation on discriminatory grounds (most notably the Nazi plunder during the 1930s and 1940s in Germany and Austria to the detriment of their nationals of the Hebrew minority and in the countries occupied during the Second World War), but also in relation to the depredation (in today's perspective) carried out during exploration and colonial domination. This is the work it car-

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[34] Confronting in Anguita, *op. cit.*

[35] See, *inter alia*, J. Magán Perales, *La circulación ilícita de bienes culturales*, Lex Nova, Valladolid, 2001; P. López-Carceller Martínez, *La reivindicación de los bienes culturales muebles ilegalmente exportados*, Tirant lo Blanch, Valencia, 2001; *Protection de la propriété culturelle et circulation des biens culturels – Étude de droit comparé Europe/Asie*, dir. M. Cornu, Université de Poitiers, 2008; I.A. Stamatoudi, *Cultural Property Law and Restitution. A commentary to International Conventions and European Union Law*, Edward Elgar, Cheltenham, 2011; and C. Bakula, *La lucha contra el tráfico ilícito de bienes culturales, la Convención de 1970. Balances y perspectivas*, Unesco, Paris, 2012.

ries out, in a recommendatory, negotiating and conciliatory framework, the UNESCO Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP), created in 1978[36]. As Adewumi notes[37],

> «A Member State of UNESCO or an observer can make a request for return or restitution of cultural objects having a fundamental significance and lost because of illicit appropriation. To be eligible to bring an application, the requesting State must have initiated bilateral negotiations with the State in which the requested object is located and such negotiations must have failed or have been suspended. After fulfilling this condition precedent, a Standard Form Concerning Requests for Return or Restitution, which was devised in 1981 by the ICPRCP, will be filled out by both parties concerned. This request for return or restitution has to be submitted at least six months before the session of the ICPRCP for it to be examined. The Rules of Procedure for Mediation and Conciliation 29 adopted at ICPRCP's 16th session assists in the performance of its functions of contributing to non-judicial settlement of disputes between UNESCO Member States and Associate Members».

This Committee has dealt with such sensitive issues as the Mokondé Mask (Tanzania and Switzerland, Barbier-Mueller Museum) or Boğazköy Sphinx (Turkey and Germany, Berlin Museum).

In the second context, the most relevant text is the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, Rule 2 of which states that

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[36] On the rules on restitution, and especially on the procedures in which the ICPRCP acts, see A. Taşdelen, *The Return of Cultural Artefacts. Hard and Soft Law Approaches*. Springer, Cham, 2016.

[37] A.A. Adewumi, *Return of Cultural Property to Countries of Origin and the Emerging Issues*, in *Law and Policy Thoughts in Nigeria*, edited by A. Olatunbbosun, University of Ibadan, 2018, pp. 301-323, p. 307.

«The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods.

This Rule cannot be interpreted as preventing:

(a) the provision of professional archaeological services or necessary services incidental thereto whose nature and purpose are in full conformity with this Convention and are subject to the authorization of the competent authorities;

(b) the deposition of underwater cultural heritage, recovered in the course of a research project in conformity with this Convention, provided such deposition does not prejudice the scientific or cultural interest or integrity of the recovered material or result in its irretrievable dispersal; is in accordance with the provisions of Rules 33 and 34; and is subject to the authorization of the competent authorities».

Likewise, and in a very controversial regime[38] that seeks to resolve the wide range of positions in dispute between the State on whose seabed the wreck lies[39], the State of origin of the sunken ship, the State owner of the ship (if it is a State ship), the original private owner and the salvor, the fact is that this Convention imposes in its Rule 7 that «public access to in situ underwater cultural heritage shall be promoted, except where such access is incompatible with protection and management»,and in Rule 8 that «international co-

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[38] See, *inter alia*, *The protection of the underwater cultural heritage: before and after the 2001 UNESCO Convention*, edited by R. Garabello, T. Scovazzi, Martinus Nijhoff Publishers, 2003; M.J. Aznar Gómez, *La protección internacional del patrimonio cultural subacuático con especial referencia al caso de España*, Tirant Lo Blanch, Valencia, 2004; and E.M. Álvarez González, *La protección jurídica del patrimonio cultural subacuático en España*, Tirant Lo Blanch, Valencia, 2012.

[39] See the interesting box on marine spaces and rights at p. 479 de M.J. Aznar Gómez, *La Convención sobre la protección del patrimonio cultural subacuático, de 2 de noviembre de 2001*, in *Revista Española de Derecho Internacional*, 54, 1, 2002.

operation in the conduct of activities directed at underwater cultural heritage shall be encouraged in order to further the effective exchange or use of archaeologists and other relevant professional».

With regard to the confluence between sovereignty and private property, some authors point out in relation to these rules that the Convention does not curtail private interests, but makes them subject to the value of the heritage. Thus, the Convention does not conflict with private property rights. However, it is true that the Rules governing activities directed at underwater cultural heritage state that they must be carefully considered and have the permission of the competent authorities. In addition, they must be carried out for the public benefit and because they constitute a significant contribution to the protection, knowledge and enhancement of the heritage. The benefits deriving from these activities are common and should be shared, as well as the heritage itself[40].

4. *Final considerations*

The set of international rules protecting cultural heritage creates a series of rights and obligations for States and individuals that hinge on the central idea of the need to preserve for future generations the artistic, monumental, folkloric, literary and natural heritage that not only provides them – for their enjoyment – with an interesting, complex, original or beautiful asset, but also gives them an identity of their own.

The international system for cultural heritage designed by UNESCO is, however, essentially respectful of the sovereignty of States, so that it establishes a system of cooperation under which mechanisms are created to monitor the state of conservation and the risks

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[40] *Manual para actividades dirigidas al Patrimonio Cultural Subacuático: directrices para el Anexo de la Convención de la UNESCO de 2001*, edited by B. Egger, T.J. Maarleveld, U. Guérinike, UNESCO, Paris, 2013, pp. 49-50 (translation by the autor).

to which properties inscribed on the World Heritage List are exposed. It is a mechanism that imposes obligations on States Parties to the Convention and allows recommendations to be made concerning cultural property located on the territory of another State. These limits, however, are exceeded in extraordinary situations such as armed conflicts, where obligations are imposed on the belligerent parties, internationally enforceable even in the form of peacekeeping measures adopted by the UN Security Council or before international criminal tribunals.

Similarly, UNESCO's rules – and those of other international institutional spheres – distinguish between sovereignty and ownership, so that the classification of a property as being of cultural interest does not necessarily imply – as this will depend on the regulations of each national law – its public nature. UNESCO allows in its List both public and privately owned properties. This does not prevent that in certain circumstances or activities the international norms foresee limitations to the right of ownership, such as those that prevent the expatriation of certain cultural property or those that impose public access to cultural heritage and in particular to underwater heritage (marine wrecks). In the latter area, and in others, such as the restitution of property plundered by robbery, looting during wartime or depredation during colonial rule, sovereignty and property converge, since the State is the main driving force behind the national defense of this heritage that was lost and then found.

Ruxandra-Iulia Stoica

CULTURAL VALUES IN URBAN CONSERVATION: ETIC AND EMIC PERSPECTIVES*

Abstract: The form, structure, and *modus operandi* of historic urban areas are inextricably linked between them, reflecting the essence and dynamics of society. Cultural values of historic urban areas and their theoretical construction can be determined in the light of what linguists and anthropologists call the etic and emic dimensions of systems of meaning. This dichotomic concept was coined by linguist Kenneth Pike in 1954 and transmuted to cultural anthropology by Marvin Harris in 1964; since then, it has proved a very useful heuristic device for many disciplines and has been used in many senses (universal vs. specific, objective vs. subjective, outsider vs. insider, ideal vs. actual, ethnological vs. ethnographic). In the case of urban heritage, this etic/emic approach situates values between a *meta*-discourse on the tangible features of the urban fabric and their meaning, and a *speci(fic)*-discourse on the specificity of urban fabric and its cultural construction and significance. The two discourses are both concerned with recognising and understanding the identity of the urban fabric, and ideally complement each other: the first category of objective values is rooted in history and theory of urbanism and our desire to create better places for living, while the second of specificity, is rooted in anthropology and an understanding of cultural diversity through hermeneutics of space. The evaluation of the urban context for the purpose of identifying what is urban heritage and what are its values should attempt to examine it through both perspectives, in order to ensure a comprehensive, if not exhaustive, investigation. This means that, beside the well-established comparative, typological and morphological methods of architecture and urban history, that represent an objective, etic perspective, attention should be paid to the more relative, emic perspective produced by the societies who in fact build and use a particular urban context.

Introduction

Never before have we dealt with so many categories and types of heritage as there is increased recognition of the many forms in which heritage gives identity and meaning to communities and so-

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* Double-blind peer reviewed content.

ciety as a whole. One category in particular is proving challenging: urban heritage, which is increasingly understood since 1960s as a complex system of built fabric and community rather than the summa of its structures. In contrast with earlier national legislations, the 1972 World Heritage Convention and its list of criteria for assessing Outstanding Universal Value are explicitly referring to 'interchange of human values', 'cultural traditions', 'living traditions', in addition to typically references to the tangible and physical values of heritage. Recently, international pilot programs have tested people-centred heritage approaches in diverse cultural and organisational contexts: People and Heritage run by ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property); Nature-Culture: The World Heritage Leadership partnership between IUCN (International Union for Conservation of Nature), ICOMOS (International Council of Monuments and Sites) and ICCROM; Panorama – solutions for a Healthy Planet developed by IUCN and GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH). Zooming in on urban heritage and its community dimension, this paper examines how cultural values of historic urban areas and their theoretical construction can be determined in the light of what linguists and anthropologists call the etic and emic dimensions of systems of meaning.

Value Judgements

Traditionally, architecture and urban history have built up their own canons for judging architecture and urbanism, but these also were subject to change over time - this explaining the (sometimes widely) differing attitudes towards the historic urban fabric. While in use, however, these canons represented the authoritative way of identifying the values of the historic and contemporary urban fabric. So, the way in which changes in the society have an impact onto the urban fabric can be seen in its changing value judgements.

In philosophy, a key issue of axiology[1] is the rational status of these value judgements[2]. This displays three key positions: one in which value judgements are *absolute* or *objective* on the basis of either divine or other authority, either standards that rationally or otherwise transcend human decision or divine authority; another position is that value judgements are *relative* social constructs or conventions and consequently their relevance is limited, specific; and yet another position considers value judgements completely *subjective* non-rational expressions of personal preference and therefore of no more than personal relevance[3]. It is important to note that, in fact, these categories only exist through each other.

Leaving aside the third position, which is unsuitable for a programmatic analysis due to its very limited scope and subjectivity (nevertheless its potential of influencing the first two categories should not be ignored), the first two positions are indeed relevant for an attempt at quantifying and qualifying the 'resistance of the city to change', to the extent to which value judgements are intrinsic to the urban context, in both its production and perception. The evaluation of the urban context for the purpose of identifying what is urban heritage and what are its values should attempt to examine it through each of these positions to ensure a comprehensive, if not exhaustive, investigation. This means, beside the well-established comparative, typological and morphological methods of architecture and urban history that represent an 'objective' value judgement, attention should be paid to the more 'relative' value judgements produced by the societies who in fact build and use a particular urban context. These value judgements will be, of course, beyond any typology that can be constructed through a cross-cultural comparison and might seem meaningless or difficult to make

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[1] Axiology is the epistemology of values.

[2] The two main branches of axiology, ethics and aesthetics, are isomorphic from this point of view.

[3] D. Carr, *Values in the Arts and Architecture: From Aesthetics to Ethics* (Paper presented at PROKALÓ Postgraduate Seminar Series in Architecture, The University of Edinburgh, 2004/2005).

sense of for professionals, unless they are themselves members of that society.

So, on one hand we have professionals using established typologies elaborated by architectural and urban history, but who are prone to identify only those values of the urban context that they are looking for – «reason only perceives that which it produces after its own design»[4]. On the other hand we have the society that produces and uses the urban context and takes the aforementioned values as identified by specialists as granted, intrinsic, but at the same time have intimate knowledge of the specificity of the urban fabric in a way in which is not possible for an outsider. However, communities encounter difficulty in spelling out these values, although reacting and protesting if they were affected by any malign intervention[5]. This distinction between what we perceive as intrinsic values and what as specificity has been defined in Medieval philosophy by John Duns Scotus (c. 1266-1308): *quidditas*[6], the essential nature of a thing – based on the meaning defined in antique philosophy by Aristotle – and *haecceitas*[7], the individual nature of a thing – to define a non-qualitative property of a thing.

Etic and emic dimensions

A method taking into consideration both these points of view has been developed for the study of languages first, and then cultures, a fact which renders it worthy of consideration for the study of the values of the urban context as manifestation of a particular culture. But for this, it is paramount that the urban context is re-

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[4] I. Kant, *The Critique of Pure Reason*, Henry G. Bohn, London, 1855, p. xxvii.

[5] One method aiming so far to address this issue is participatory urbanism, but it is a rather empirical method and therefore its results depend widely on a large number of variables.

[6] Quiddity, what-ness.

[7] Haecceity, this-ness.

garded as an interdependence between its spatial/formal and social/political dimensions. In this respect, this paper investigates how the cultural values of historic urban areas and their theoretical construction can be determined in the light of what linguists and anthropologists call the etic and emic dimensions of systems of meaning. This dichotomic concept was coined by linguist Kenneth Pike in 1954[8] and transmuted to cultural anthropology by Marvin Harris in 1964[9]; since then it has proved a very useful heuristic device for many disciplines[10] and it has been used in many senses (universal vs. specific, objective vs. subjective, outsider vs. insider, ideal vs. actual, ethnological vs. ethnographic).

In the case of urban heritage, this etic/emic approach situates values between a *meta*-discourse – corresponding to the *absolute* value judgement in axiology – on the desirable features of the urban fabric and their meaning and a *speci(fic)*-discourse – corresponding to the *relative* value judgement – on the specificity of urban fabric and its cultural construction and significance. The two discourses are both concerned with recognising and understanding the identity of the urban fabric, and ideally complement each other: the first category of objective values is rooted in history and theory of urbanism and our desire to create better places for living, while the second, of specificity, is rooted in anthropology and an understanding of cultural diversity through hermeneutics of space.

On one hand, there are values in architecture and urbanism that can be identified cross-culturally and seem to be related to the very nature of architecture and urbanism as human agency. Therefore, the '*meta*-discourse' presupposes a philosophical perspective towards values as principles. This is characteristic for the typological approach in architectural and urban history. This means methods

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[8] K.L. Pike, *Language in relation to a unified theory of the structure of human behavior*, The Hague, Mouton, 1967.

[9] M. Harris, *The Nature of Cultural Things*, Random House, New York, 1964.

[10] *Emics and etics: the insider/outsider debate*, edited by T.N. Headland, K.L. Pike, M. Harris, Sage Publications, Newbury Park-London, 1990, pp. 13-27.

external to each specific culture are used, and therefore only those aspects that are comparable from one culture to another are identified and assessed. This limits in a way this approach to the study of the physical reality of the urban texture and leaves unexplored those aspects that are specific constructions of a given culture.

On the other hand, there are exactly these aspects mentioned above that are the result of specific cultural circumstances that affect the urban environment as a side-effect. These determine the '*speci*-discourse' as an anthropological approach aiming to reveal values, both existing and also latent, as created and experienced by the urban communities themselves. By considering both these discourses, this chapter seeks to uncover some of the key issues and processes that shaped the historic urban fabric to become what we perceive now as urban discursivity.

The etic approach leads to generalised, non-structural observations about the urban texture. The etic perspective relies on extrinsic concepts and categories that have meaning only for scientific observers, these being the only able to judge the accuracy and validity of an etic account of the values of the urban fabric. It is an attempt to identify and decipher its values in relation to a more general classification, which has been a recurrent concern of architectural and urban theory over time. As a result specific characteristics are only identified as variations of cross-cultural typologies, and even when singular manifestations are observed they are only explained in relation to these general classifications. This approach, therefore, while putting a specific urban fabric within its wider context of urban manifestations, actually hinders the possibility of putting it in its own cultural context.

Beside these inner, objective values of the urban fabric, there is also the result of 'happening', of specific spatial or temporal circumstances which affect the urban environment as a side-effect. The '*speci*-discourse' is thus determined through an anthropological approach aiming to reveal values, both existing and latent, as experienced by urban communities. Urban space is essentially an existential space: human existence in the urban space is dependant of

a mental image of it, which should be coherent and offer a multitude of senses and interpretations at different levels of understanding. Urban fabric has, therefore, its own identity and a structured, not chaotic, complexity, which can be read through the eyes of its inhabitants.

The specificity of urban fabric and its historical and theoretical meanings can reveal how place confers identity to humans and vice-versa. In contrast to the etic *meta*-discourse, the emic *speci*-discourse is only valid for one place at a time, being therefore idiosyncratically incomparable. The *speci*-discourse is an attempt to identify and explain the cultural structure[11] of a specific urban fabric by analysing how the different values constructing it in our perception are related to each other.

Therefore, the hierarchy of urban form – buildings, plots, squares and streets – is culturally determined and differs from one culture to another or from one period to another for the same culture. The emic approach seeks what is the inner hierarchy of a community and how is that reflected in the urban form.

Geometrical space vs. anthropological space

The mental image of the urban space is at the basis of this emic approach and observes several levels of interpretation of space from Plato and Aristotle to Kant, Einstein, and Norberg-Schulz' six levels of spatial concepts. For Plato geometry is the science of space, while Aristotle reckons space as the sum of all places, a dynamic field with directions and qualitative properties. Kant considers space as a basic category for the *a priori* human understanding. Einstein opposed to the homogenous Euclidean space a space in which direction and geometry is a straightforward result of human perception and not at all natural. This is the break between the concrete physical space

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[11] If we admit that urban fabric is culturally structured, whether it is traditional or planned.

and the abstract mathematical one. Furthermore, Christian Nor-
berg-Schulz mentions six levels of spatial concepts: the pragmat-
ic space of physical action; the perceptive space of instant orien-
tation; the existential space which gives the image of the environ-
ment; the cognitive space of physical world; the abstract space of
logical relationships which has the capacity of describing the previ-
ous ones; the artistic or expressive space created by artists, architects
and urbanists. While before there were two major spatial theories –
one concerned with the Euclidian abstract geometrical space which
omits the subject, and the other with the human psychological per-
ception of space which puts the subject in the centre of it – Nor-
berg-Schulz approached urban space as existential space by taking
into consideration both its geometrical and also human dimensions
at the same time[12]. The urban structure is primarily determined by
human activity, and at this level we have the place that confers iden-
tity to humans.

In his essay *La rebelión de las masas*, when discussing the broad-
er problem of the implications of «who rules the world» for the
structuring of the society[13], and indeed its cities, Jose Ortega y Gas-
sett ascertains the formation of the Graeco-Roman city-state epito-
mizes the principle of the State as a genuine creation in which the
equilibrium between the «internal» and the «external» is lost, with
the latter taking over. He might be exaggerating when saying that
«the *urbs* or the *polis* starts by being an empty space, the forum, the
agora, and all the rest is just a means of fixing that empty space,
of limiting its outlines»[14]; nevertheless this subsumes the impor-
tance of that 'empty space' for the urban environment: one more

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[12] C. NORBERG-SCHULZ. *Existence, space and architecture*, Praeger Publishers,
NY and Washington, 1971.

[13] «the substance or character of a new historical period is the resultant of in-
ternal variations – of man and his spirit; or of external variations – formal, and
as it were mechanical. Amongst these last, the most important, almost without a
doubt, is the displacement of power. But this brings with it a displacement of spir-
it», in J. ORTEGA Y GASSETT, *The Revolt of the Masses* (1930), W.W. Norton, New
York-London, 1994, Chapter XIV: *Who Rules the World?*

[14] J. ORTEGA Y GASSETT, *The Revolt of the Masses*, cit., Chapter XIV.

reason, perhaps, for urban conservation being concerned with the more complex structures and relationships within the urban environment rather than merely its separate elements – be they houses, ensembles, streets or even conservation areas, if isolated from the entirety of the urban organism. Ortega y Gassett stresses here the very substance of the *synœcism*, emphasising the invention through it of the purely human space, clearly delimited from nature, and therefore characterized by an abstract, socio-political dimension: «The *polis* is not primarily a collection of habitable dwellings, but a meeting-place for citizens, a space set apart for public functions. … Observe that this signifies nothing less than the invention of a new kind of space, much more new than the space of Einstein»[15]. This points out that the values of the urban environment should be sought also elsewhere rather than solely in purely physical qualities, i.e. intangible values intrinsic to the city as tangible manifestation of the *synœcism*. In this way, urban space is defined as an existential space, in which human existence takes place and forms its own identity: humans shape the urban space while this, in return, shapes human existence. These processes result in the construction a mental image of the urban space and its limits able to offer multiple meanings and allowing for interpretation at many different levels of understanding. This means the very concept of urban space has existential roots, its complexity being basically defined by its orientation and contained human actions[16]. In this sense, the urban space is ultimately described by the Platonic concept of *chōra (χώρα)*.

Plato distinguishes notions of space between *chōra* and *topos (τόπος)*. Timaeus, who accounts the creation of the cosmos by a divine craftsman, says one needs three basic principles to explain the *kosmos,* the world order: *being, becoming*[17] (in both actuality and also potentiality), and *receptacle of coming-into-being* (dynamic no-

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[15] J. Ortega y Gassett, *The Revolt of the Masses*, cit., Chapter XIV.

[16] C. Norberg-Schulz, *Existence, space and architecture*, cit, p. 9.

[17] Note the relation to Aristotle's understanding of process as becoming rather than being.

tion) = *space* (*chōra*). Conversely, Aristotle[18] does not generally distinguish between *chōra* and *topos* (but is it the matter out of which the physical objects are composed – as Aristotle suggested[19] – or is it the space in which physical objects are located? Timaeus never calls it matter [*hulē*])[20]. Hence, coming into being and destruction require bodies entering into and departing from something: that is *chōra.* Beside this, Timaeus explains that what comes-into-being in some place (*topos*), although *chōra* provides the seat (*hedra*) for everything that comes-into-being. But it is not necessary that everything is somewhere in some place and occupies some space (the role of the receptacle is restricted to what comes-into-being)[21]. However, Plato uses the term *topos, chōra* and *hedra* as being interchangeable to some extent[22]. But Zeno the Stoic and Epicurus make clear distinction between the meanings of *topos, topos, chōra,* and *kenon (κενόν)*: topos is the fully occupied space, *topos, chōra* is the partly (after Zeno) or temporary (after Epicurus) occupied space, and *kenon* is the empty space[23]. These are names of the same thing, intangible substance in different conditions. By being partly or temporary occupied space, *chōra* emphasises the notion of 'possibility'[24], a reality between the absolute of the universal ideas and the concrete of the substance, it is an enabler, and it is the possibility of becoming. As Alberto Pérez-Gomez puts it in his interpretation of the Platonic meaning in *Timaeus*, *chōra* is the «mimetic re-

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[18] «Aristotle remarks that Plato identifies the receptacle and *chōra*, and he sees that the *chōra* of Plato's discussion is (i) that which is supposed to persist during elemental change in such a way as to define the change, (ii) that which receives form, and (iii) what underlies an object: in other words, he sees that *chōra* is Plato's candidate for what the matter of something is». B. Morison, *On Location: Aristotle's Concept of Space*, Oxford University Press, Oxford, 2002, p. 116.

[19] Aristotle, *On Generation and corruption.*

[20] T.K. Johansen, *Plato's natural philosophy*, Cambridge University Press, Cambridge, 2004, pp. 117-136.

[21] T.K. Johansen, *Plato's natural philosophy*, cit., pp. 117-127.

[22] T.K. Johansen, *Plato's natural philosophy*, cit., pp. 127-130.

[23] T.K. Johansen, *Plato's natural philosophy*, cit., p. 128.

[24] H.G. Liddell, R. Scott, *A Greek-English Lexicon*, Clarendon Press, Oxford (13.08.2006)

ceptacle for truly human action (as opposed to animalized behavior), and yet reducible to neither natural substances nor universal ideas»[25]. To him, this understanding makes *chōra* the realm of language and art, the cultural reality, whose essence is its incredible diversity for a unique biological species.

Perhaps not coincidentally, the two icons in the exonartex of the Chora Monastery in Byzantium representing the Christ Pantocrator and the Virgin bear the inscriptions «land/dwelling place (*chōra*) of the living» and «container/dwelling place (*chōra*) of the uncontainable» respectively[26]. These phrases come from biblical and liturgical texts[27], and their mystical sense seems to refer to exactly the same kind of receptacle that allows coming into being as the Platonic concept of *chōra*. It seems relevant that the second group of more concrete meanings of the word *chōra* comprises the territory of the settlement/city (archaeology of Ancient Greece), the centre of the city/village, as well as the main settlement/city of an island[28]. These other meanings seem to hint to an application of the concept of receptacle to the political and architectural structures of the society.

In this way, the Platonic concept of *chōra* best describes urban space, which is not simply a place or matter, but a receptacle, a me-

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[25] A. Pérez-Gómez, *Architecture and Ethics beyond Globalization* (Unpublished), Simpson Lecture at the University of Edinburgh, 5 June 2003, p. 5.

[26] These inscriptions are recurrent on many other early fourteenth century mosaics in the church (the earliest parts of which may date from the sixth century, but it is not yet known how early might have been erected the first sacred building of this name on the site). P.A. Underwood, *The Kariye Djami*, Volume 1: *Historical Introduction and Description of the Mosaics and Frescoes*, Routlege & Kegan Paul, London, 1967, pp. 3-8.

[27] P.A. Underwood, *The Kariye Djami*, cit., pp. 39-41.

[28] And these meanings also extended to country, its land or its people at Herodot, and even country-side at Herodot. A. Bailly, *Abrege du dictionaire Grec-Francais*, Hachette, Paris, 1901, p. 970.

Although the etymology of the name of Chora Monastery is commonly explained as coming from this last meaning of *chōra*, being outside the city-walls of Bizantium in the time of Constantine, but later being within the wall of Theodosius, it is clear that the fourteenth century mosaics employ the more abstract meanings of this term. Whether that was the case from the very beginning cannot be categorically affirmed or rejected.

dium, a possibility. It is not limited to *topos*, but allows a process of becoming to take place: it is not finite mater in with a crystallised structure and defined form, but rather something much more than this. The potentiality and dynamicity implied by the term *chōra* are exactly those qualities that differentiate the living urban space, where urbanity is naturally manifest, from inert, rigid planned environments, within which if urbanity takes place, it is more often despite rather than due to urban planning and design.

The concept of *chōra* has already been transmuted to architectural theory to show the cultural dimension of the man-made space, doubly coded: in its making and in its perception.

> «Architectural expression in the space of *chora*, understood as cultural space but also the space of human appearance, the space of the city beyond classical definitions, may thus gather the fourfold in a nonescapist way, revealing the mystery of depth that makes us human (rather than a prosaic third dimension), the mystery of Merleau-Ponty's "flesh" (rather than a world split into objective and subjective realms in which space is objective and time is merely a subjective effect of repetition or a construction of absent instants)»[29].

> ALBERTO PÉREZ-GÓMEZ, *Dwelling on Heidegger: Architecture as mimetic techno-poiesis* (1998)[30].

Flesh is used by Merleau-Ponty as being simultaneously inner and outer, at the limit between the body and its surroundings (in a way, like Aristotle's concept of place): perceiving and being the ob-

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[29] A. PÉREZ-GÓMEZ, *Dwelling on Heidegger: Architecture as mimetic techno-poiesis*, in *International Journal of Architectural Theory*, 1998, 2 (*www.tu-cottbus. de/BTU/Fak2/TheoArch/Wolke/eng/Subjects/982/Perez-Gomez/perez-gomez_t.html*).

[30] Simon Richards quotes Frampton saying «the establishment of an articulate realm on which man or men may come into being». And claims he was borrowing from Hannah Arendt's *The Human Condition* (1958), when calling this 'the space of human appearance'.

ject of perception[31]. Urban space is defined by human agency in non-material as well as material ways.

The issue of existential space has been studied by psychologists since late nineteenth century and revealed that human perception of space is subjective, being highly dependent by the motivation and past experience of the subject, existence is perceived as a sum of events in four-dimensional space. Spatial adaptation is defined as a state of equilibrium between assimilation – the subject's action upon the environment – and accommodation – the environment's action upon the subject. Therefore, the understanding of space (which is a chiefly learning process for humans, as opposed to the animal's instinctive sense of space, and therefore can be culturally influenced) presupposes a gradually formed mental image, which is different from instantaneous spatial perception, and is socially and culturally conditioned, resulting in the human's mental image of his environment.

Subjectivity of human perception

Kevin Lynch[32] has coined the concept of 'place legibility' in order to measure the human perception of the urban environment. While his research highlighted a number of physical elements, the network of which contributes to the forming of a mental image, it does not address the question of the quality of the urban environment, in so far as the clarity of a structure is not necessarily a virtue in itself. His research sought to identify those elements that determine the ease of reading the urban environment for a specific cultural group. While his results are indeed valuable for defining the identity of place in the cultural context he had researched, subsequent practice and policy has unsupportedly extended the validity of his observations to city planning operations globally, i.e. out-

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[31] M. Merleau-Ponty, *The Visible and the Invisible* (1961), Northwestern University Press, Evanston, Ill., 1968.

[32] K. Lynch, *The image of the city*, MIT Press, Cambridge, Mass., 1960.

side the said cultural group. On the contrary, in a different cultural framework the legibility of space might have different elements contributing to it and might even not play an important role at all for the way a different cultural group perceives the quality of space and the values that add up to it.

Michel de Certeau's chapter *Ghosts in the City* observes the symptomatic metamorphosis of an urbanism focused on inventing new urban spaces into «a rehabilitation of national heritage», «an uncanninness of the "Already There"»[33]. But when Anthony Vidler applied to the built environment Freud's concept of '*unheimlich*'[34], he brought a new perspective and level of reading of the historical illegible and therefore uncanny remainder within the legible modernist city[35].

The anthropological understanding of space, pioneered by Georg Simmel's sociology of space[36] and Otto Bollnow's anthropology of space[37], goes already far beyond a geometrical-physical one, but it is the concept of proxemics coined by Edward T. Hall[38] that gives it its real breadth. Hall reveals how our perception of space is determined culturally to a great extent, whether consciously or not, despite the fact that it is acquired physically through the same sensorial apparatus. This is why Hall, while developing his theory of proxemics, refers to the cultural dimension as 'the hidden dimension' of space, the one that gives the measure of the identification between people and their urban environment. He extrap-

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[33] M. DE CERTEAU, L. GIARD, P. MAYOL, *The Practice of Everyday Life*, Volume 2: *Living and Cooking*, University of Minessota Press, Minneapolis, 1998, pp. 136-144.

[34] S. FREUD, *The 'Uncanny'* (1919), in *Art and literature: Jensen's Gradiva. Leonardo da Vinci, and other works*, edited by A. DICKSON, The Pelican Freud Library vol.14, Penguin, Harmondsworth, 1985, pp. 335-376.

[35] R. KOOLHAS, *Delirious New York: a Retroactive Manifesto for Manhattan*, Thames & Hudson, London, 1978.

[36] G. SIMMEL, *The Sociology of Space* and *On the Spatial Projections of Social Forms* (1903), in G. SIMMEL, D. FRISBY, M. FEATHERSTONE, *Simmel on Culture: Selected Writings*, Sage Publications, London; Thousand Oaks, Calif., 1997.

[37] O.FR. BOLLNOW. *Mensch und Raum*, Kohlhammer, Stuttgart, 2000.

[38] E.T. HALL, *The Hidden Dimension*, Doubleday, Garden City, N.Y., 1966.

olates his observations about people's attitudes and expectations about space at a personal level to the level of the urban texture. It is indeed a valuable tool which allows for a correct, virtually unbiased analysis of the role played by valuable elements of the urban texture within a certain culture[39-40]. Henri Lefebvre (1901-1991) seems to take these cultural differences for granted and criticises the emphasis put by Hall on this; instead Lefebvre considers that the practices of everyday life and their change over time are more important in determining the nature of the urban form[41]. For him space is essentially a social product and criticises the Modernist Urbanism for failing to understand this. He is interested in the layering of the urban form in time, whose variety he explains through a concurrence of different factors, from our everyday practices and perception to contemporary theories of space and the spatial imaginary. These are manifested in the process of replacement of parts of the social space as they become obsolete, leading to intercalation, combination and superimposition of places within the social space[42]. This is the nightmare of the urban history or geography, but for urban conservation this is in fact an essential characteristic that allows 'continuity' and adaptation without fractures of urban identity.

Georg Simmel	*sociology of space*
Patrick Geddes	*civic survey*
Jane Jacobs	*performance of space*
Kevin Lynch	*place legibility*
Edward T. Hall	*proxemics*
Henri Lefebvre	*social production of space*
Otto Bollnow	*anthropology of space*

Figure 1. Key concepts in the interpretation of the meaning of space in urban conservation

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[39] K.A. Doxiadīs, *Ekistics. An Introduction to the Science of Human Settlements*, Hutchinson, London, 1968.

[40] M. Eliade, *The Sacred and the Profane. The Nature of Religion*, Harcourt Brace, New York, 1959.

[41] H. Lefebvre, *The Production of Space* [1974], translated by D. Nicholson-Smith, Blackwell Publishing, Oxford, 2004, p. 154.

[42] *Ivi*, pp. 86-87 and 167.

The places weaved within the urban fabric, as places to return to[43], have distinct characters and significations contributing to the idea of *genius loci*. They are focal points of the city and the rest of its texture is a continuum around these nuclei, although the neighbourhood, street and square have arguably lost their landmark character due to the distorted scale of the city. One of the contemporary problems of our existence and our existential space is that rapid technological and communication development has led to new forms of mobility, leading to an «experience of the space of flows, superseding the meaning of the space of places»[44]. As a result, some social historians affirm that human interactions rather than places are the essence of the city and its life, a 'social space'[45]. This view went as far as imagining a utopian city, mobile – a New Babylon[46], the new exemplar city – in which the man is no longer returning to places, because life would be a permanent journey[47]. This transgression of spatial boundaries seems to be inconceivable in spite of technological advancement, because it would be altering the very essence of human interactions (The result of such a place is a rather closed and self-sufficient community such as the one on Jules Verne's Floating City). Human development would be impossible in such a city, with human connections becoming extremely weak[48-49]. This whole concept of the mobile city is built on the misunderstanding that a structured city with centre and a stable routes

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[43] M. Eliade, *Le mythe de l'éternel retour: archetypes et repetition*, Gallimard, Paris, 1949.

[44] M. Castells, *The Informational City*, Blackwell, Oxford, 1989, p. 348.

[45] J. Allen, C. Hamnett, *A Shrinking World? Global Unevenness and Inequality*, Oxford University Press - The Open University Oxford, 1995.

[46] Babylon is often used as the image of the exemplar city. See Metropolis, *et al.*

[47] C. Norberg-Schulz, *Existence, space and architecture*, cit., p. 11.

[48] J. Piaget, *The Psychology of Intelligence*, Routledge, London, 1950, pp. 156-164.

[49] While such technological advancements enhanced long-distance human relationships, they cannot replace the role of direct, unmediated human encounter for individual and societal development. The fact that technologically mediated human interaction proves insufficient and personal contact is paramount is now more and more acknowledged, to the extent to which technology is now test-

system would diminish the liberty of human movement and his possibility of action. Mobility itself is based on a structured image of the environment and liberty does not entail chaos and renouncement of human identity, but, on the contrary, entails habitation, harmony and protection. As in the Odyssey, man should have a place to depart from and permanently return to, all other places becoming a continuation of this initial existential space. Therefore, the Odyssey is still a valid narrative, and our problem as far as space is concerned remains the conservation of human identity[50].

The very human existence is spatial, by that of man being inseparable from space and space habitation being essential to existence, therefore, existential space symbolises the human existence in the world[51]. Space is the central concept in architecture and urbanism; their history could be regarded as a succession of different spatial concepts. This makes the historic city the result of continuous superimposition of these concepts, historical layers overlapping and interacting in almost an 'organic' way. Writings in philosophy, anthropology, and their more recent extension – phenomenology have been analysed (some sooner and some later) by architecture and urban theorists, who in most instances have built upon them the denigration of modern architecture and urbanism. It is true that, even if not all has been said on the mutually contradictory essence of the traditional and the modern urban space, the subject itself remains a subject of the last century, which raises historiographical rather than theoretical interest now.

Nevertheless these theories are worth revisiting with the question of conservation in mind, as they have contributed to an understanding of the values of the historical urban texture and its cultural determinism in contrast with a certain globalization of culture to be found in contemporary conservation interventions and theoreti-

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ed to assist personal encounter rather than replace it (as it was the case of the last decades).

[50] C. NORBERG-SCHULZ, *Existence, space and architecture*, cit.

[51] M. HEIDEGGER, *Being and time*, State University of NY Press, Albany, NY, 1996.

cal discourse. Therefore, these put the basis of value judgements as *relative* social constructs or conventions, a fact that draws their relevance to be limited and culturally specific. This highlights the importance of the emic perspective focusing on the intrinsic cultural distinctions that are meaningful to a given community, which is indeed the sole judge of the accuracy of this emic identification.

Cultural determination of urban form

The seventeenth century map of Edinburgh shows a mediated image of the urban form, in which main buildings are oversized and have more accurate details. Also, for the fishbone pattern of the urban fabric, it is not an exact representation but rather intends to show its different densities, to give an impression of it. There is no formal differentiation between dwellings: the social hierarchy is not visible in the urban form. However, the communal places are emphasised in size and form: the church, the castle, the school, the marketplace, the gates, the walls. In terms of configuration, there is a gradual transition from the communitarian space to the private dwelling. In contrast, the Georgian New Town shows a planned alienation of this gradual approach: there is direct contact between the public street space and the very private space inside the house. This results in a loss of the small community structure corresponding to the semiprivate space of the closes and wynds[52]. Moreover, no exterior space for gathering was planned. The two large squares are gardens, for display rather than gathering, just like the large streets. Also, only two churches were planned initially as interior communitarian space. In this way, an imposed urban form induces a change in the culture of the community itself, to the extent to which people moving in the New Town were coming from the Old Town.

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[52] D. BELL, *Edinburgh Old Town: The Forgotten Nature of an Urban Form*, Tholis Publishing, Edinburgh, 2008, pp. 116-121.
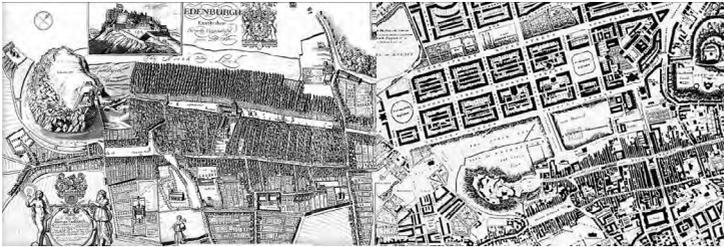
Figure 2. Edinburgh Old Town. Gordon of Rothiemay, 1647 and Edinburgh New Town. 1830-1 General Post Office Directory (Fragments, National Library of Scotland)

A comparison of medieval and modern urban form of Bucharest reveals medieval plots that resulted in irregular trajectory and margins of the streets, the private plot is more important, streets are merely pathways between them; modern city, streets were regulated, enlarged, private plots loose in the favour of the public space. Churches – main public buildings in a society structured by its religion – reveal the parochial organisation of the town, small communities around the parish church.
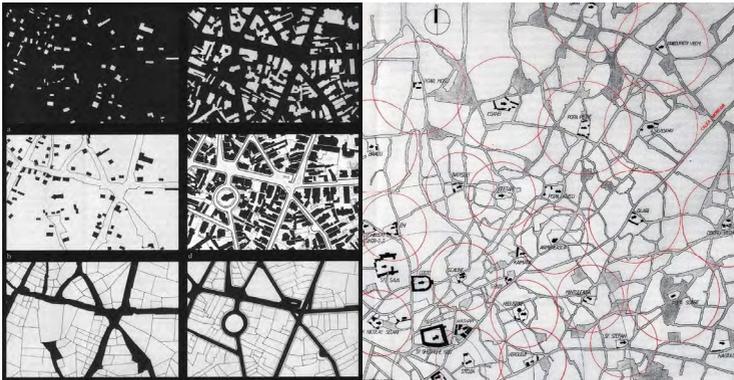
Figure 3. Bucharest. Medieval vs. modern urban texture (buildings, streets, plots) and hypothesis of the concentric development of parishes (Dana Harhoiu, Bucureşti, un oraş între Orient şi Occident/Bucarest, une ville entre Orient et Occident, Bucharest: Editura Simetria, 1997)
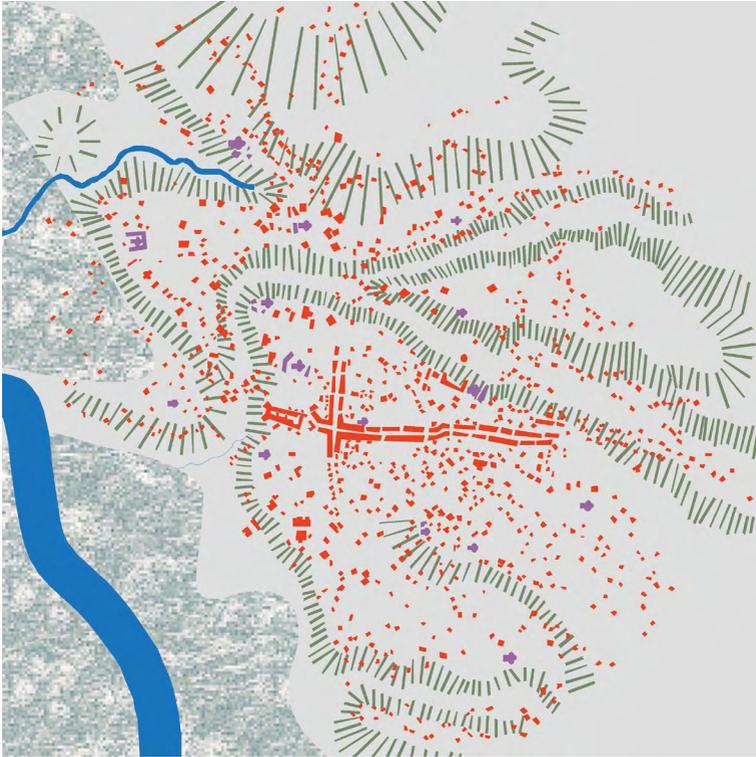
Figure 4. The built environment of medieval Craiova (Author's drawing.)

Similar urban form with different meaning in different cultures

In the case of medieval Craiova, social hierarchy is not shown in the position of the houses within the city structure but in the size and materials used for the houses (brick masonry as opposed to entirely wooden structures). Nobility houses side by side with those of ordinary folk on the higher plateaus but segregated from the gypsies who live in the valley by the marches in precarious structures or tents. The religious and administrative nuclei are on a hill-top, separated from the commercial centre, whilst in other cultures

towns have these around the same central square. The distribution of commercial structures is determined by a weekly market that moves gradually with the limits of the town while its structures become permanent.

In Sighisoara, the fortified Saxon citadel is on a hilltop with this dense texture, whilst the Hungarian and Romanian communities inhabit in the valley with sparse texture (houses with gardens). Patrician houses around the squares in the citadel (painted facades, sculptures). As one goes from the centre towards the town walls the size, materials and style of the houses changes: they become smaller and humbler.

Figure 5. Sighisoara, street in the citadel and street to the outer walls of the citadel (*wikimapia.org*)
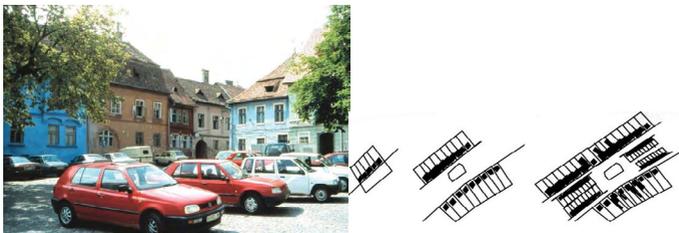
Figure 6. Sighisoara, square in the citadel and diagram of the planned growth of Saxon colonisation settlements (Author's photo and drawing)

In the case of Saxon colonisation settlements: very formal organisation of the community mirrored by the urban form: linear structure with an enlargement of the street in the centre. Plots are subdivided in elongated plots as they are inherited and split between heirs[53]. The aristocracy houses are grouped around the central square (not commercial structures like in other towns). Very strict community hierarchy resulting in inflexible hierarchy of urban form: when a smaller town is promoted to the rank of royal burgh, a new, larger central square is inaugurated and becomes the focal point of the community.

This is how in the emic discourse, we can separate identical urban forms through their meaning, while in the etic one they would have simply been co-massed within the same typology.

Conclusion

Although the etic and emic approach are mutually exclusive, there is not necessarily a dichotomy between the *meta-* and *speci-* discourses produced by them, they merely complement each other, and only a simultaneous reading of the urban texture can possibly reveal the utmost of its values. The fact that similar features of the urban texture have different functions within the urban organism reveals etic differences between various usages of one emic element. The distinction between specificity and intrinsic values is essential and this part of the research offers an articulation of the emic/etic discourse within the urban conservation field. This understanding of the nature of urban fabric could allow a more meaningful use of analyses in urban conservation, going beyond the typological approach developed over the last century.

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[53] Stubben did a plan of Koln showing 102 parallel plots of 2 meters to the street by 200 meters deep (G.R. Collins, C.C. Collins, *Christiane Crasemann. Camillo Sitte and the birth of modern city planning*, Phaidon Press, London, 1965, p. 42.)

Ezequiel Colmenero-Acevedo

THE DOUBLE-EDGED SWORD OF THE WORLD HERITAGE LIST STATUS IN URBAN CONSERVATION: SUPPORT VERSUS OPPOSITION DISCOURSES IN EDINBURGH, SCOTLAND[*]

Abstract: The status of World Heritage, when held by properties of urban heritage, would give several benefits for local governments and the community. Next to economic support for their maintenance, having an urban area or an architectural property inscribed gives automatic World-wide recognition that promotes tourism and investment. For those reasons, authorities and citizens would usually look for keeping cultural heritage properties in the World Heritage List (WHL), always taking care of avoiding its deletion by the World Heritage Committee (WHC) as consequence for failing to preserve the 'Outstanding Universal Value' recognised at the time the inscription on the list was awarded.

This article analyses the use of World Heritage List status as element of discourse for campaigns that support or oppose urban projects that include new buildings and new urban forms within the listed 'Old and New Towns of Edinburgh'. For this purpose, three urban projects were researched, they all proposed at different times the construction of new buildings that would have modify or modified the urban landscape and urban form within the World Heritage Listed area in different degrees. In reaction to this, the local community presented different levels of opposition, sometimes only limiting to commenting on social media and in all cases at least one opposition campaign led by some organisation of civil-society was launched. In all cases, the list inscription and World Heritage status were held as guiding elements of discourse, either by saying that the projects would endanger or protect the listing status.

The article includes data coming from a three-year long investigation with opposition campaigns and developer firms, done mostly by participant-observation of the campaign activities and research of newspaper articles and websites, together with other forms of communication, in which both opposition and support groups took the inscription into the WHL as an element to defend their position. In this article, the ways in which they used that element of discourse are analysed, together with an argumentation of the validity of each of their claims based on the rules and historical precedent of the preservation or deletions of WHL entries. The architectural and urban elements of the projects in Edinburgh are analysed according to how they would endanger the listing status, or how they help to preserve the ele-

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[*] Double-blind peer reviewed content.

835

ments outlined by the WHC. Those elements are confronted with the perceptions of heritage at risk and heritage protection as expressed by the opposing discourses.

Introduction

The background of this paper

This paper is based on one of the issues exposed as part of thesis I wrote for my PhD in Architecture at the University of Edinburgh between 2016 and 2021. It briefly describes the use of the World Heritage status of the city centre of Edinburgh by support and opposition campaigns to urban developments in that city, together with some analysis of the implications of that inscription for the projects and the urban planning landscape in the city. For this purpose, I looked for data about the campaigns on the internet, thus using digital media as the main source of information.

The research focused around 3 study cases that were controversial when I started the research, and that presented different levels of development, with deep involvement from the civil society. I used the cases to research about the public communications of opposition versus support campaigns to the developments of new buildings in the heritage listed areas of Edinburgh. In the thesis I looked for different arguments and communication strategies that the campaigns used to pursue their agenda, including the use of social media strategies and the manipulation of public opinion through metaphors in their discourses.

Urban Conservation

Cities are the largest human creation, products of our social nature. Cities are in constant change; they change together with the population and culture that inhabits them. Cities need to be resilient; they need to adapt to shifts in weather, culture, population, government, and economy. Before the Modern Era, cities would often be partially or completely destroyed and rebuilt by successive generations of inhabitants. It was common to reuse stones and ma-

terials from older buildings for the construction of new buildings. The ideology of heritage conservation created a shift in the attitudes towards older buildings. Societies and individuals across Europe started to take an interest in preserving historic buildings as testament of past times and treasures of their cultural background. The ideal of cultural heritage was born, and during the 20th century, heritage and architectural societies would get organised into conventions that would publish charters, the foundation of the laws and principles of heritage and natural conservation.

> «In the chronology of the adoption of internationally recognized instruments to safeguard cultural property, the Hague Convention was followed by the International Charter on the Conservation and Restoration of Monuments and Sites (Venice Charter) in 1964, in which the "authenticity" of a monument was established as an important criterion warranting protection»[1].

The greatest impulse to the conservation of built heritage came at the aftermath of the World War II, when European countries started to rebuild their cities. In most cases they tried to restore the buildings that were destroyed by bombing and city fighting, while in some instances they decided for the creation of new buildings and new neighbourhoods to replace the destroyed ones. Reconstruction and preservation became fundamental for the restoration of the European cultural identity.

The conservation of the urban heritage is a complicated endeavour. While nowadays most people would agree that it is desirable to preserve historical buildings and urban areas, problems arise when those areas are inhabited, in constant use. People that live in historic urban areas usually would like for those to never change or to change as little as possible, while city officials and urban development companies would rather consider the economic benefit of making some changes in historic cities. The conservation of heritage makes us think on what parts of buildings and urban areas should

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[1] M.-T. ALBERT, B. RINGBECK, *40 Years World Heritage Convention: Popularizing the Protection of Cultural and Natural Heritage*, De Gruyter, Berlin, 2015, p. 50.

be preserved as they are or as they were. Additionally, there is the question of use, some would consider that historic buildings should keep the use they were meant to perform at the time they were built, i.e., churches to be places of worship, while some would prefer for buildings to change their use if needed, considering that sometimes it is better to sacrifice the original use, as long as buildings remain usable and sustainable. The conservation of urban heritage requires more than the intention to do so, it requires laws that would give the guidelines and the legal basis for their protection or modification, and the authorities that are meant to enforce those laws.

Urban Conservation in Scotland

The urban heritage in Scotland is protect by the 'Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997'[2]. It is a law updated from older acts and it guarantees that architectural and urban works in historical areas and buildings need an approval of the local authorities. Modifying or damaging built heritage is a criminal offense, and its conviction can lead to hefty fines or even imprisonment. Local planning authorities as part of the local government are the ones in charge of evaluating modifications to the historical built environment. Only on cases of appeals and projects of special national cultural interest, the Scottish Government might need to get involved. The Planning Act 1997 is developed enough to consider not only the protection of listed buildings, but also the one of larger urban areas.

Urban conservation in Scotland is considered in the mentioned Act (Section 61 Planning), by the definition of 'conservation area' as «areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance». With this legal concept, urban areas are protected from arbitrary changes to the built environment. Developers and individuals need

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[2] Parliament of the United Kingdom, Scottish Law Commission, *Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997*, London, 1997, *www.legislation.gov.uk/ukpga/1997/9/contents*.

planning consent in case they wish to start architectural and urban projects which would be located within urban conservation areas. By this law, not only heritage buildings are protected, but also the larger geographical area needs to be considered when constructing completely new buildings and urban structures. The planning authority safeguards that the cultural and urban character of the area is not threatened by the projects. Another advantage of this legal status is that even individual buildings that are not listed by themselves but included within a conservation area are automatically protected. The reason for that is that they might be part of the larger heritage value of the place. Therefore, the Act demands two kinds of legal procedures for the protection of the heritage-built environment: listed buildings consent (individual buildings) and conservation area consent (larger geographical area). Edinburgh is the city with most conservation areas in the United Kingdom, almost doubling those in London, this results in the need of applying for each or both kinds of planning consent by the many locals that live or have businesses within the 50 conservation areas in the city.

Edinburgh is not only the political capital city of Scotland, but also a source of great pride for its people. After the Scottish Devolution (a transfer of some political power from London to Edinburgh that made Scotland semi-autonomous) in 1998, the new government tried to reorganise the country and enhance a sense of national identity, for which the conservation of heritage is paramount. The protection of cultural heritage became more important than ever, but also as a semi-autonomous entity, the need of achieving economic development. The amount and importance of Edinburgh's conservation areas make many locals be proud of their historic city and eager to participate in the protection of heritage areas. This also results in the complication of managing change in such a historic and heritage-protected city. Even as large parts of the city are protected, this also has limited development of some areas in part because of the strict considerations to new buildings in those historic areas, especially in comparison with other cities in the United Kingdom.

While the protection to conservation areas is given in the Scottish Law, the prestige of the city of Edinburgh as a historical urban landscape also influences decisions and policies, especially since two of its fifty conservation areas are also listed in the UNESCO World Heritage List (WHL) as the 'Old and New Towns of Edinburgh', listing granted by the UNESCO World Heritage Convention (WHC) since 1995 due to the level of authenticity, integrity and protection or the urban heritage, thus achieving the category of Outstanding Universal Value[3].

The World Heritage site is divided in the same two conservation areas of Old Town and New Town of Edinburgh. The Old Town follows the Medieval urban grid of the town and includes the famous fortress of Edinburgh Castle, which nowadays functions as a museum, although a section of it is still a military garrison. Not all the buildings in the Old Town are medieval, in fact only about 50 of them are pre-Modern Era and only 22 of them are pre-17th century, still the most visible buildings can be considered Medieval, and the area retains in large part the urban grid and constitution of that time[4].

The New Town was built in a mostly neoclassic style between 1767 and 1890, it is a precedent for urban planning across Europe and represented one of the first large fully planned developments for a city expansion[5]. The New Town was built overtime in different successive stages, always planned, some areas housed the wealthy, while others were focused on the middle class of the city. The lower income classes were left to live in the Old Town, where apparently conditions were less than ideal, until it was subject to plans of urban renewal at the end of the 19th century.

The double-listed city centre of Edinburgh overtime suffered from the changes in population and the use of some buildings.

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[3] World Heritage Convention, *Old and New Towns of Edinburgh*, *https://whc.unesco.org/en/list/728/*.

[4] The City of Edinburgh Council, "Pre-1750 Buildings in Edinburgh Old Town Conservation Area", https://www.edinburgh.gov.uk/downloads/file/24351/pre-1750-buildings-in-edinburgh-old-town-conservation-area

[5] *Ibidem.*

The difficulty of modifying the listed buildings and adapting to the changing needs, made some buildings and areas to lose their original use. Some buildings were left unused, abandoned, while the heritage listed status complicated the user perspective and ownership. The inscription in the WHL attracted tourism, which generated a shift in the constitution of the population. Many buildings in the World Heritage site passed from being residences to becoming offices and other businesses. Some buildings were even completely abandoned, as the costs of maintenance for historic buildings are usually higher, especially because of the need of keeping the authenticity intact.

Changes in policies and projects of urban development and renewal resulted in some areas to be left empty, as gap sites, others abandoned. It would not be until the beginning of the 21st century that policies, money, and investment would allow for a true city-wide strategy for urban renewal. Part of this strategy was the 'Edinburgh 12 Initiative'. As expected, new developments in a historic city would be highly polemic and opposition is to be expected, especially in the city of Edinburgh, birthplace of the first conservation society in history, the Cockburn Association, founded in 1875 to resist against local government plans that would put in risk the historic and natural heritage of the city, it was named after the judge Henry Cockburn (1779-1854), who in 1849 resisted construction of buildings on a natural area within the city[6].

In Scotland, the planning processes consider public consultation and planning communication as necessary parts of public engagement. Contrary to other countries, it is expected that the local community would be made aware, comment and participate in the design and approval of urban projects. For this endeavour, the use of mass media has always been paramount. Contrary to previous eras, during the digital era is it possible for the common folk to also have their way on media communications. Formerly it was only the government and developers who would be able to have their voice heard through the publication of projects in newspapers and maga-

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[6] The Cockburn Association, *Cockburn Association Chronological Timeline*, *www.cockburnassociation.org.uk/history/timeline/*.

zines, later in television and radio. In this 21st century, mass media communication is digital and open-access, readily available for anyone. In the planning process in Scotland, both developers and opposition campaigns use the digital world to communicate their ideas about urban projects.

Digital Media Campaigns in Urban Conservation

Digital media is an affordable and easy way to communicate projects, easier to reach a bigger audience and to facilitate the distribution of any instrument of communication. Flyers and master plans may find their way to a broader audience once uploaded to an official web page or sent to some recipients, who would resend them many times, making a change of communication with this way.

In the disciplines of urban planning and management, while urban planners are using new methods of analysing digital data for improving cities' systems of transportation, communications, distribution of goods, etc., the work with social networks and public attitudes remains largely an academic endeavour, highly disconnected from the professional exercise of planning[7]. On the other hand, academic research contributes to theoretical understandings of urban planning, which, in the long run, can have an impact in the education of new planners that are educated in universities and schools of the built environment.

In the area of urban heritage management, digital media analytics are taking a relevant position, but not without some resistance from the most conservative actors related to those processes of governance and management. While public participation is extensively treated in academic studies about the subject, in practice, professionals prefer to deal with periods of public consultation and social media input purely as a formality and a simulation. Public opinion

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[7] The use of big data analytics supported on the output of geopositioned devices and social network analysis using mathematical models, is a growing field in urban planning. Cities that use such technologies for better planning are being called Smart Cities.

might have low or no influence in the approval, rejection, or modification of large urban projects. Their influence could come when they exercise enough pressure on politicians and planning officials so they could force changes in projects[8]. It is not a secret that in most cases, the economic interest generated by a large urban project will have greater weight in decision-making than public opinion. On the other hand, many communication companies and developers have already realised that a successful and well-planned social media and digital communications campaign, could redirect public opinion to accept planning proposals and controversial projects, even in historical areas. Following the same principle as the meddling in electoral processes, developers could influence public opinion to encounter less opposition and even allegiance to their interest in the community. This kind of influence would be desirable for developers. Perhaps paying attention to the outcomes of these campaigns and their reactions in social media, we could provide better evaluative and prescriptive data for future communication campaigns and improve interactions and relations between developers, heritage and planning professionals, policymakers, and stakeholders, both for the benefit of the developer and their information/communication strategy and for the community in knowing how to deal with influencing strategies. It is the idea of this research that something can be learned from analysing the developer's communications and the social media reactions, specifically their use of linked discourses and how they communicate their goals in sustainable urban and architectural design.

Several means of influence and power are used in the processes and interactions that surround new urban projects. On very few occasions new developments in already built-up areas would not gen-

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[8] A relevant case of this was Edinburgh City Council refusal to develop an intervention in a historic building in the area of Leith, in which the council rejected the proposal due to a tweet reaction. We can see the omission of the construction company in creating an effective internet campaign, the lack of discussion online between the actors and the action of the city council by rejecting a project without proper online public opinion research. Source: *Barratt Claim "Unfair" Twitter Lobbying Led to Planning Refusal*, in *Greener Leith, www.greenerleith.org.uk/blog/barratt-claim-unfair-twitter-lobbying-planning-refusal-3598*.

erate some reaction from some groups of interests. The most contested reason to fight against a new development proposal appears to be the creation of new buildings in historic areas – or the additions and modifications of standing historic buildings – in a way that their original aesthetic might be modified. After a project proposing new buildings in a historic area is revealed to the public, some degree of public resistance is to be expected, but it is possible that with a good media and digital media campaign, more people could be convinced to agree with the project, therefore keeping them away from activist groups that would oppose it. Well-designed communication campaigns and the proper strategies could even advance the case for a bad project to be accepted by the public. On the contrary, a good project might be opposed if the communication strategy was not the correct one.

Digital media communications exacerbate the conflicts of interest between stakeholders. The flexibility and openness that all parts have of expressing their opinion together with digital media's nature of a not-arbitrated means of communication, allows the dissemination of direct and indirect discourses, perhaps with lies and partial truths. Design professionals, planners, and stakeholders may opt for communicating ideas and discourses to favour one specific reaction in the general audience, while the real intention of the project may be a different one. In urban projects that affect or modify an area larger than a singular building, it is possible that the result would look largely different from the original project. This is due to the many changes that occur over the long period of time an urban intervention takes to be completed. This difference in the result and the original project may be considered intentionally by the designers from the beginning. Some of the research methods that are intended to enquire on these deceptive communication techniques are discourse analysis and qualitative content analysis. Both are anthropological and ethnological methodologies that look for discovering the true meaning of communications, especially textual ones.

In recent years, researchers in planning theory, urban studies, sustainability, and heritage management have been taking an inter-

est in the use of non-professional audiences and non-stakeholder actors, for research on conservation and heritage theories, and heritage and urban policies. This interest has led researchers like Tim Townshend and John Pendlebury to focus their investigations on this issue. As they mention, «a debate has been promoted about a need for conservation practice to evolve and to take more account of the wishes and values of non-professionals, reflected in official guidance»[9]. In this regard, I am convinced that an important notion to consider could be the use that communities and audiences give to digital media related to urban projects in historical cities and which affect or impact they create in projects, developments and policies.

Planning theory has been looking for new forms to include public participation and the broader community into the planning process, as K. Olsson says «how urban heritage should be defined and valued is not only a question for planning and heritage experts but can also be an important question for local citizens»[10]. I say not only local but national and even global citizens. If we are to consider the dimensions of globalisation, we should consider the opinion of a global and digital audience, no matter their origin or location. As historical buildings and cities are no longer part of a nation's heritage exclusively, but also part of the world heritage; any voice may be heard, and the only plausible way to hear them is thanks to the power of communication and the reach of digital media and the Internet.

The World Heritage List

The World Heritage Convention of 1972 is a document that serves as the constitution of the World Heritage Committee, which is the organism of UNESCO charged with selecting the sites to

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[9] T. TOWNSHEND, J. PENDLEBURY, *Public Participation in the Conservation of Historic Areas: Case-studies from North-east England*, in *Journal of Urban Design*, 4, 2007, 3, p. 328.

[10] K. OLSSON, Citizen *Input in Urban Heritage Management and Planning: A Quantitative Approach to Citizen Participation*, in *The Town Planning Review*, 79, 2008, 4, p. 373.

be listed in the WHL. As of 2022, 194 states have adhered to the WHC[11]. Member states are expected to nominate the sites and to protect them. Sites included in the list are expected to receive additional funding and be subject to special laws of heritage protection.

The World Heritage Committee is the result joining the movement for the protection of the natural environment and that for the protection of cultural heritage. Even as its origins can be traced to the aftermath of the First World War and the cultural destruction it caused, the protection of cultural heritage became more important after the massive loss of heritage that resulted from the Second World War. In the 1950s, countries tried to do more to protect the historic heritage while trying to preserve the physical remnants of their history. Egypt and Sudan asked the UNESCO for assistance in which came to be «the most striking example of the significance of tangible heritage for societies was the international campaign to save the Nubian Temples of Abu Simbel, Philae, Kalabscha and other sites in Egypt threatened by an overflow of the planned Aswan Dam»[12]. The project lasted from 1960 until 1980 and saw important heritage buildings moved from their original location, thus saving them while keeping the plans for development.

The World Heritage Committee awards sites nominated by the state members and sees that it meets the six-element criteria[13]:

1. Represents a masterpiece of human creative genius and cultural significance.
2. Exhibits an important interchange of human values, over a span of time, or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning, or landscape design.
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.

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[11] UNESCO, World Heritage Convention, *https://whc.unesco.org/en/statesparties*.

[12] M.-T. Albert, B. Ringbeck, *40 Years World Heritage Convention: Popularizing the Protection of Cultural and Natural Heritage*, cit., p. 53.

[13] Discover Corps, *What Does It Mean to Be a UNESCO World Heritage Site?*, *https://discovercorps.com/blog/mean-unesco-world-heritage-site/*.

4. It is an outstanding example of a type of building, architectural, or technological ensemble or landscape which illustrates a significant stage in human history.
5. It is an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture, or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change.
6. It is directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.

This criterion guarantees that nominated sites fulfil the requirements to be relevant for the humanity, and not only for a local sector or to sustain only a political discourse. When listing is achieved, the site acquires the category of being of 'Outstanding Universal Value', which means that it is of great value to all mankind, not only for a group or a nation. Its protection becomes the responsibility of all the signatory states, nor just of the one it belongs to.

Getting a site listed has 3 main and direct benefits:
1. The site gets publicity. It becomes greater know all over the world as the listing gives it prestige and tourism arrive in greater numbers, thus securing the financial sustainability of the place.
2. Additional funding. In case of need for its protection and maintenance, the member state can apply for additional funding. This is imperative to take damaged or neglected sites to a better state of maintenance.
3. Protection under the Geneva Convention. Which is intended to protect the site from the consequences of war. Under this principle, belligerent countries should abstain from attacking world heritage sites.

Despite these benefits, there has been up to this day three cases of listed sites that haves lost the listing status. This happens when, to the consideration of the World Heritage Committee, the site has not taken the proper measures to retain the authenticity and the lo-

cal authorities have taken decisions that damaged the image or integrity of the site and has lost the category of 'outstanding universal value', this results in the property to be delisted. The three properties ever delisted to this day are:

1. Arabian Oryx Sanctuary, delisted in 2007 (for the state decision to reduce the protected area to only 10% of its original size).
2. Dresden Elbe Valley, delisted in 2009 (for building a four-lane modern bridge).
3. Liverpool Maritime Mercantile City, delisted in 2021 (for building new developments, including a large football stadium).

The Convention takes it seriously their task of protecting the listed properties, the delisted cases are an example of that. All those properties were first warned about the loss of the status by inscribing them in the 'List of World Heritage in Danger', which evaluates the reasons that put the properties in risk of keeping the 'outstanding universal value' and even the risk of lose it.

It might be desirable for properties and governments to keep the listed status, but sometimes the many economic states of development can overweight the interest in conservation, like in the case of Liverpool, or the benefits for the inhabitants to be considered more important than retaining the status, like in Dresden, or the conflicts of land use and land ownership to effectively make a site to disappear, as in the case of Oman.

Three Urban Projects in Edinburgh and the World Heritage Status

The Edinburgh 12 Initiative

As I mentioned before, I selected three urban projects as study cases because of the convenience both in timeframe and the availability of sources, especially digital sources. Also, all these projects were within the World Heritage site and their construction would effectively convert or converted the urban fabric and landscape of

the heritage listed areas in which they are planned or located. All these projects were part of the 'Edinburgh 12 Initiative'.

In 2013 the City of Edinburgh Council (CEC) commissioned a report on all the gap sites (vacant land) in the city, this to create development opportunities. The report final product was the city-wide initiative called 'Edinburgh 12'[14], which was part of a larger strategy for urban renewal that includes the rehabilitation of the commercial and passenger ports, harbours, and brownfield areas. 'Edinburgh 12' was presented as a set of opportunities for private investment in urban renewal and development. All of them were within heritage conservation areas or adjacent to them. These sites are the following (those that form a case-study in this research paper appear in bold):

1. Dewar Place
2. Donaldson's College
3. Edinburgh St James
4. **Former Royal High School**
5. Fountainbridge
6. **India Buildings**
7. 8-20 King's Stables Road
8. **Caltongate/New Waverley**
9. Quartermile
10. Shrubhill
11. 3-8 St Andrew Square
12. The Haymarket Edinburgh

A map of all these sites can be seen in Map 1. I selected three of these twelve developments for being the most controversial among the sites and for all of them being within the World Heritage Site area as defined by UNESCO (Map 2) also because of the convenience of availability of sources at the start of this research. The three study cases treated in this thesis are indicated in Map 3.

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[14] F. Ross, *The 'Edinburgh 12' Gap Sites Strategy*, in *SURF*, November 9, 2015, *www.surf.scot/scotregen/the-edinburgh-12-strategy/*.

Map 1. Edinburgh 12 initiative sites. (Ross, 2015)
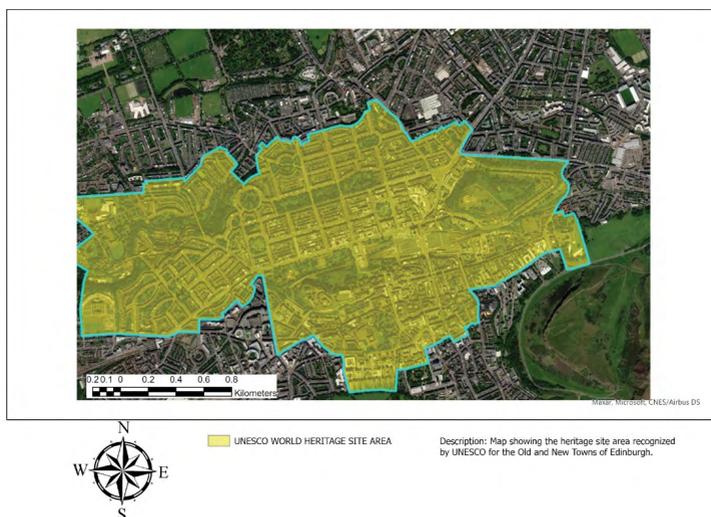
Map 2. Edinburgh World Heritage Site area.
(Elaborated on ArcGIS with data from Historic Environment Scotland)
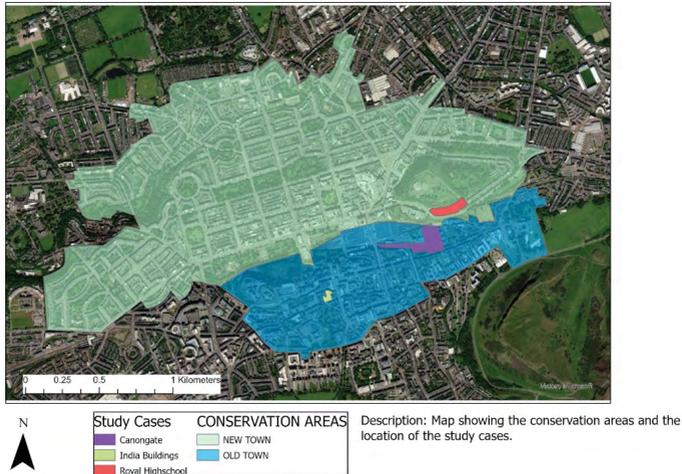
Map 3. The location of study cases within their conservation areas in Edinburgh. (Elaborated on ArcGIS with data from Historic Environment Scotland)

The list of case study sites and some of their characteristics are presented in Table 1, which mentions the general typology of the project, the status of the planning application and the status of the project itself as of Spring 2019.

Table 1. Study cases table

Name of the project	Typology	Planning status	Building status
Caltongate/ New Waverley	Mixed-use with hotel	Accepted	Almost completed
India Buildings	Hotel	Accepted	Under construction
Old Royal High School	Hotel	Refused	n/a

In the beginning I considered the possibility of including a couple of projects that were already built, such as Quartermile and 3-8 St Andrew Square, projects that were controversial at their times, but that are already part of the urban reality of the city. Also, be-

cause they were already built and older, it was harder to find information about them. Additionally, Internet social media was not as developed at the time they were completed. Practically no Internet data remained online about the projects, to the time when I started my investigation. In the end, I decided on three projects that were still active, one planned and on course for its application to be accepted, one that was already accepted and being challenged by a group of locals and one that was being built but already affecting the urban fabric around it.

The criteria and rationale for selecting study cases were the following:

- Urban projects that would be recent, current, or under planning process, to adjust them in a timeline that would make them feasible to research, considering that digital media had to be available and updated. By this criterion, I avoided projects that were too old for digital sources to be available or projects that would still be too recent in their appearing so there would be less information and discussion about them.
- Urban projects that would propose in their design or in their discourse, the intention to improve the sustainability of the place and the urban area. The idea of sustainability following the 1987 United Nations report, which mentions that sustainability is «development that meets the needs of the present without compromising the ability of future generations to meet their own needs»[15].
- Projects that were built with private resources, not government-funded projects. This was important because it would reflect the relationships between private, public and government interests.

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[15] United Nations, *Report of the World Commission on Environment and Development: Our Common Future*, www.un-documents.net/wced-ocf.htm.

- Projects that would mean a change in the architectural and urban heritage conservation, as per the propositions outlined in the Washington Charter[16].
- Projects that could be perceives as a threat to the World Heritage status as awarded by the World Heritage Convention.

The common reasons to select each of these case studies were the following:
- As they were part of the same 'Edinburgh 12' initiative, they were already recognised as elements of the same problem that government and politicians were trying to solve, that of gap sites in the city with huge potential of investment and the desirability for urban regeneration within heritage-listed areas.
- The three projects were within heritage urban areas, recognised in the UK as conservation areas. Additionally, they all included heritage-listed buildings within the projects.
- Each project presented real or perceived risks to the urban and architectural heritage, be it by modification, partial demolition, or total demolition of listed buildings. Also, they proposed the construction of new buildings attached or next to historical buildings and within conservation areas.
- The three projects included examples of adaptive reuse, which presented the possibility to compare the need to improve the ecological, cultural, and economic sustainability of the buildings, against public opinion and the desire for traditional strict preservation.
- The cases presented were not only within historical areas but also those areas were part of the local collective memory.
- The sites were in very visible locations, within the most touristic areas of the city of Edinburgh, thus having the possibility

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[16] ICOMOS, *Charter for the Conservation of Historic Towns and Urban Areas: Washington Charter - 1987, www.icomos.org/en/what-we-do/focus/179-articlesen-francais/ressources/charters-and-standards/159-charter-for-the-conservation-of-historic-towns-and-urban-areas.*

- of having a real impact on the economic and touristic development of the city.
- Despite Caltongate being a mixed-use project, it included the hotel use, which was also the sole use of the other two projects, which brought a commonality in the way that the three projects provided new hotel beds to the city, both in 4- and 5-star categories, therefore oriented to exploit the middle- and high-income tourist sector.
- The sites or buildings that preceded the projects were in all cases and at some point, of public use; and in all cases, formerly considered public land, which was not scheduled to become private land for private interests.

Additionally, to these commonalities, I decided that all the cases should be within the same city, as it would give some advantages in research and analysis, some of which are:
- The benefit of having all the cases within the same country, therefore the same legal and planning system.
- By avoiding comparing cases in different countries, I was exploiting the advantage of already being in Scotland to study the PhD and do the research. Having all the benefits of studying cases within the country I was living in.
- As the subject of study is the development and interactions in the heritage urban area, approaching the city as a geographical area made sense, this way the cases would not be studied only as separate architectural projects, but as constitutive elements of an integral urban reality.

The selection of cases can be representative of some of the current urban challenges all over the world, these are:
- They represent the conflict between local inhabitants, governments, and private investors.
- They are in a city, which matters as more than half of the world's population live in cities.

- They are within a historic centre, which showcases a combination of tourist infrastructure, housing, government buildings, schools and universities and is also packed with poverty, living next to wealth.
- The projects are one of the many policies that local governments have enacted to combat financial problems, in the struggle for managing other urban problems like sprawl, lack of infrastructure and problems with services. Projects of urban renewal are partly intended to create more liveable communities or at least to reduce the impact of a worsening urban environment.

Having the projects selected, I proceeded to research attitudes and use of digital media and social media on several issues. Here I present some of the most relevant references that serve to illustrate the use of the World Heritage List and Outstanding Universal Value status as arguments and elements of discourse in the media campaigns.

Caltongate

The name Caltongate is a combination of the names of Canongate – the neighbourhood where the site is located – and Calton Hill. The project for mixed-use includes residences, hotels and shops and comprises adaptive reuse interventions in heritage buildings, demolitions, partial demolitions of heritage buildings and construction of new buildings. The site is completely within the Old Town conservation area but also bordering the New Town conservation area. After a long opposition campaign and the fall of the developing company, the site remained empty and neglected for years. Later, the project was retaken by another developing company and changed its name from Caltongate to New Waverley. For simplification I refer to the site in general as Caltongate, while making the differentiations when I talk about each of the elements and reactions to the project within its proper name according to the time frame.

The first project was presented by the original firm holding the site, Mountgrange Plc. Their original project was one of opening new roads, highly car-oriented, with the idea of pedestrianisation removed and the public areas highly minimised. All the heritage buildings were to be totally or mostly demolished.

Mountgrange's project remained unapproved and highly controversial since the firm bought the land in 2005. The planning application was constantly revisited under the scrutiny of the civil society. The controversy around the project was the main reason that prompted the creation of the master plan, in which the city council and the firm intended to press their case while modifying some elements worrying for the community. The project was much more aggressive in its urban proposal than in other projects in this study. The original project proposed the following conflicting points:
- The demolition of several heritage buildings, and
- the opening of new roads, and
- the significant increase of urban and economic activity in that section of the city.

The City Council and developers on their side defended that the project was an opportunity to regenerate an abandoned and derelict section of the city. Also, the possibility of creating new jobs and businesses was an important prospect. They presented the project as a mixed-use development that would benefit businesses and inhabitants:

> «The regeneration of this district is vitally important for the prosperity of Edinburgh and our proposals combine both historic influences and functional contemporary design to create a striking new development that will marry state-of-the-art office buildings with premier housing and leisure facilities. We expect the development to appeal to companies within the financial, legal, and new media industries keen to take custom built, premier facilities in the centre of town»[17].

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[17] Edinburgh Architecture, *Caltongate News. 21 March 2002*, *www.edinburgharchitecture.co.uk/calton-gate*.

Surprisingly, and considering the number of proposed demolitions of the architectural heritage, part of the discourse was that the project would be protective of the World Heritage status of the city. 'Edinburgh Architecture' reported that Gensler Architects (original designing firm) said this:

«Our priority in developing these plans has been to create an attractive, appealing development that reflects the site's setting within a World Heritage city and is in keeping with the framework of the existing Waverley Valley Strategy. We have worked closely with a number of community and conservation bodies, including World Heritage Trust, The Cockburn Association, Scottish Civic Trust, Royal Fine Arts Commission and Joint Mobility Unit to ensure that Calton Gate is in tune with its surroundings and that the design of the buildings achieves this aim»[18].

The project found a powerful opposition from the beginning, having the coordinated efforts of several heritage and architectural societies to stop the development. Their opposition was highly heritage oriented. The most active body in opposing the project was the Cockburn Association, asking for revisions of the plans due to the proposals of demolition of heritage buildings in the original plans. Also, they complained about the aesthetics of the architectural projects. It was relevant, both in the websites, news, and social media, that the official response for this position in the city council was that the project was «not horrendous enough to refuse»[19]. The Association did not oppose the project, but rather the treatment of heritage and occupied buildings, and for this reason, they commented and protested without opposing to the development. The Cockburn Association kept voicing their concerns even after the release of the Caltongate Masterplan[20] on 5 October 2006.

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[18] *Ibidem.*

[19] 'Campaings- Caltongate', *The Cockburn Association*, *www.cockburnassociation.org.uk/campaigns/caltongate/*.

[20] The City of Edinburgh Council, *Caltongate Masterplan: 5 October 2006*, *www.edinburgh.gov.uk/downloads/file/24207/caltongate-masterplan-pdf*.

Figure 1. Caltongate Masterplan area.
(Taken from the official Caltongate Masterplan)
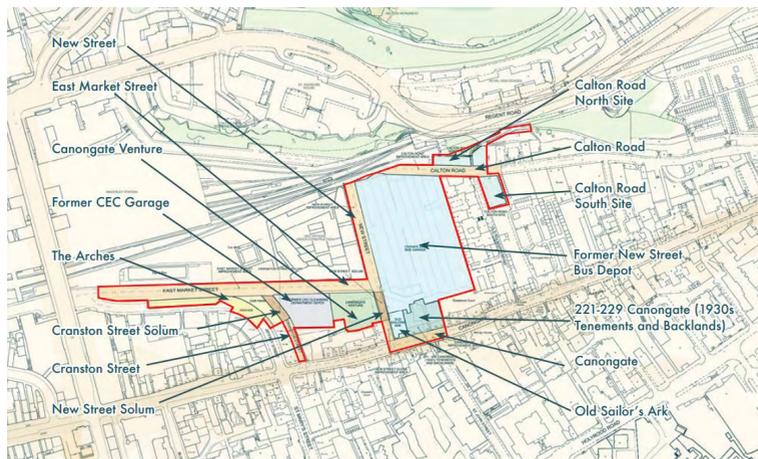
Figure 2. Caltongate site plan with individual sites and properties.
(Taken from Caltongate Masterplan)

Along with the heritage organisations, the public had a campaign called 'Save Our Old Town', led by the 'Canongate Community Forum', they developed a website to inform and track their activities as opposition against the Caltongate project. This campaign called for signing an online petition and for objecting against the planning application, giving clear instructions on how to object online. Their activities centred around opposition to the original Mountgrange's project and focused their complaints on the destruction of heritage buildings, the height of the proposed buildings, the change of the landscape views and the apparent lack of public grounds and pedestrian circulations. Also, they complained that of the housing to be built, only 28 units were for affordable housing[21]. Apparently, the Canongate Community Forum did not continue the activities under the new plan after Artisan took the project. With the rebranding of the project and the change to the plans, the opposition campaign greatly reduced.

The opposition campaign successfully pushed for the worry of losing the World Heritage Listed status. They managed to attract the attention of UNESCO and the World Heritage Committee, which sent a commission to the city in 2009 to personally evaluate the real risk of the projects to the WHL inscription. The inspectors did not reject the idea of development, but called for a «total redesign of a large part of the site»[22].

An important change to the project came in March 2009, when the firm Mountgrange collapsed due to an unpayable debt and went into administration (similar to bankruptcy). The project was halted completely due to this setback. From that moment the whole site was untouched, except for the New Street Bus Garage which had already been demolished and left as an empty ground.

In December 2011, the South African firm 'Artisan Real Estate Investors' became the new owner of the site when they purchased

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[21] 'Save Our Old Town', *Cannongate Community Forum, www.eh8.org.uk/*.

[22] The Scotsman, *Caltongate Revamp to Be Rebranded 'New Waverley, www.edinburghnews.scotsman.com/news/caltongate-revamp-to-be-rebranded-new-waverley-1-3417936*.

the land. At the same time, the city council sold them other properties on Canongate to allow for the integration with the other pending areas[23]. Around September 2012, a 12-month consultation period was announced before the creation of a final proposal. Then in August 2013, they released their master plan with computer-generated views of the new development proposal. According to Artisan, the planning application submitted and approved in January 2014, is the result of an 18-month public consultation[24]. Such consultation confirmed the conservation of both the Old Sailor's Ark and the Canongate Venture listed buildings, with minor adaptations or demolitions, although it confirmed the partial demolition of Canongate Venture's external wall.

In May 2014, Artisan renamed the project as 'New Waverley' partly intending to dilute the long past of controversy around the project[25]. The rebrand and the new project contributed to it encountering less opposition than Caltongate. This way they made a separation from the already unpopular project. This move was necessary as many people might be ignorant of the changes made to the project because of the site. The project was reported as a £200 million investment, with 3 hotels, including 248 rooms from the hotel company Whitbread Hotels and 146 apartments of the Adagio Hotel, 190,000 square feet of office space and 148 residential apartments[26].

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[23] S. McCulloch, *Developer Unveils Proposals for Edinburgh Caltongate Site*, in *Insider*, March 13, 2013, *www.insider.co.uk/news/developer-unveils-proposals-edinburgh-caltongate-9869333*.

[24] B. Ferguson, *Caltongate Will 'Tear Apart Fabric of Edinburgh'*, in *The Scotsman*, March 11, 2014, *www.scotsman.com/lifestyle-2-15039/caltongate-will-tear-apart-fabric-of-edinburgh-1-3336656*.

[25] I. Amos, *Edinburgh's Caltongate in 'New Waverley' Rebrand*, in *The Scotsman*, May 21, 2014, *www.edinburghnews.scotsman.com/news/caltongate-revamp-to-be-rebranded-new-waverley-1-3417936*.

[26] *New Waverley Development in Edinburgh Sold to Legal & General*, in *Legal and General*, *www.legalandgeneralgroup.com/media-centre/press-releases/new-waverley-development-in-edinburgh-sold-to-legal-general/*.

The second life of the project, under the name New Waverley, received a better level of acceptance, as most of the heritage buildings were considered for protection instead of demolition, while the project changed in increasing the communal areas and decreasing the motorised traffic roads. Again, the opposition was heritage centred, in this case about the possibility to lose the UNESCO World Heritage status due to building the new structures within the designated area. The City Council and the developer were constantly giving assurances that the project would not jeopardize such heritage designation. Additionally, to the change in the urban master plan, New Waverley also made many changes to the architectural level. The heights were reduced, and the heritage demolitions were rescinded.
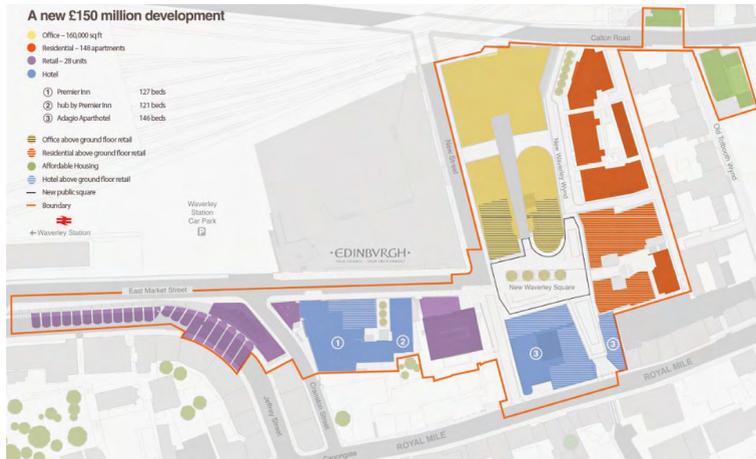
Figure 3. New Waverley Masterplan.
(Source New Waverley, "Masterplan", *http://newwaverley.com/master plan/*)

A 38 Degrees petition created by the opposition campaign to New Waverley project stated that:

«The purpose of this petition is to register continuing objection to the latest proposed 'Caltongate/ New Waverley' plans, and call for a full independent enquiry into this highly controversial scheme so that a sa-

tisfactory outcome can be achieved that befits the potential of this magnificent World Heritage site»[27].

The petition was centred around the threat to the WHL inscription, like in the following quote:

«The proposed development represents a grave threat to the UNESCO World Heritage status of the Old Town due to inappropriate and insensitive design that is contrary to local planning guidelines. Inexcusable neglect of listed buildings within the World Heritage designation, including council housing fronting on to the Royal Mile and the Canongate Venture building»[28].

To the campaign on the listing status, news outlets and blogs also reported about that same concern. The architectural blog 'Edinburgh Architecture' reported in its news section that:

«Fears capital could lose its World Heritage Site status, report the Glasgow Herald. The United Nations is poised to "call in" controversial £300m plans for a hotel and conference centre amid fresh concerns of a threat to Edinburgh's World Heritage Site status.
A South African-led consortium has developed similar plans for Caltongate to those that prompted UNESCO to send the previous developers of the 640,000 sqft site back to the drawing board. Now heritage watchdogs are preparing a new case to go to UNESCO to prevent the city being stripped of its World Heritage Site status. UNESCO investigators warned previously that "to avoid the development having an impact on the outstanding universal value, authenticity and integrity of the World Heritage property" developers should carry out a total redesign»[29].

As can be seen, the concern for the listing status continued in the second life of the project. Interestingly, it became the strongest

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[27] 38 Degrees Petitions, *Petition to Sue Bruce, Chef Executive, City of Edinburgh Council, https://home.38degrees.org.uk/*.
[28] *Ibidem*.
[29] Edinburgh Architecture, *Caltongate News. 16 December 2011, www.edinburgharchitecture.co.uk/calton-gate*.

point in favour of New Waverley, as the new project eliminated the projected demolitions and instead proposed adaptive reuse of heritage buildings, thus defeating the idea that the project was necessarily damaging for the heritage area. Also, new buildings were strongly reduced in size compared to the first project, which kept with the conservation of the urban landscape. A defence of the project came even from the government of the United Kingdom, which was the buyer of a large office area projected in the northern part of the property. Julie McHugh, spokesperson of the Edinburgh Regional Implementation Lead of the 'Her Majesty's Revenue and Customs' (HMRC) said that:

> «The completion of the office hub will complete the cornerstone of New Waverley's current development phase, which will see the high-quality office space blend with restaurants, cafes and shops around the public plaza. Artisan's £200 million, 7.5 acre mixed-use scheme seamlessly links Waverley Station with the city's iconic Royal Mile, forming part of the Old Town's UNESCO World Heritage site»[30].

India Buildings

India Buildings hotel project consists of an intervention in heritage buildings plus the construction of new structures in a gap site next to them. As such, the project includes adaptive reuse, demolition of non-heritage buildings and construction of new buildings. The full site is within the Old Town conservation area and the World Heritage Site boundaries. The name comes from the most relevant one in heritage terms. The India Building, according to the website of the Register for Scotland, is built with the Scots Baronial style by James Lawson and designed by architect David Cousin

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[30] P. GORMLEY, *Edinburgh's New Waverley Marks 'Topping Out' of New UK Government Hub*, in *Gleeds*, *https://gb.gleeds.com/news-media/news/edinburghs-new-waverley-marks-topping-out-of-new-uk-government-hub/#*.

from 1864 to 1866, being originally an office block[31]. The property includes three adjacent buildings, with address 1 to 6 India Buildings. It is important to note that 'India Buildings' is the name of a section on 'Victoria Street', actually there are two sections on the same street. Also adjacent to India Buildings and within the site is 11 to 15 Victoria Street (C listed), which is a 19th century tenement building with a 20th century backstreet extension[32].
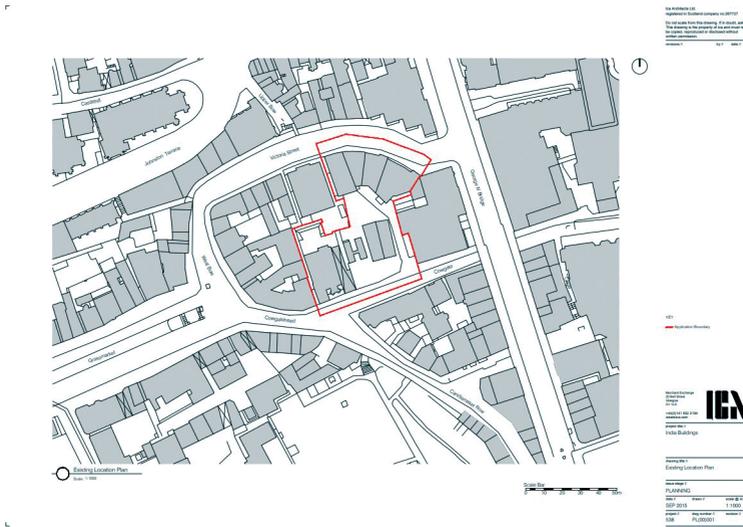
Figure 4. ICA location plan of the project. (Source 15/04445/FUL | Mixed-use development comprising hotel, bar, restaurant, cafe, retail and commercial uses and alterations to India Buildings, 11-15 Victoria Street and Cowgatehead Church. | 1 -15 Victoria Street 18-20 Cowgate Edinburgh EH1 2EX., *https://citydev-portal.edinburgh.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=NV8SY2EWH1J00*)

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[31] Register for Scotland, *1-2 India Buildings, Victoria Street, Edinburgh | Buildings at Risk Register, www.buildingsatrisk.org.uk/details/911505*.

[32] Historic Environment Scotland, *11-15 Victoria Street*, *http://portal.historicenvironment.scot/designation/LB29877*.

Figure 5. Section of the project for India Buildings hotel. (Urban Realm, "Edinburgh's India Buildings set for fresh lease of life", *www.urbanrealm. com/news/5565/Edinburgh_India_Buildings_set_for_fresh_lease_of_life.html*)

The project is a combination of adaptive reuse and the erection of new buildings. All these would be interconnected to form a new single hotel. Both cases cause some stress among the local community. In the case of adaptive reuse of historical buildings, the most traditionalist groups of society would not agree with the buildings of old tenements being repurposed as hotels. The issue of heritage conservation appears to be a lesser worrying point here, compared with the new commercial usage.

The development was carried by Janson Properties, and from the beginning sold as a great opportunity to help preserve the Edinburgh World Heritage by the rehabilitation of the existing historic buildings and a partially neglected urban area. Talking in that case about the lower street of Cowgate, that would be the southernmost exit of the whole property complex, Janson's real estate partner Steven Edgecombe commented:

«We are delighted to have advised Jansons on this landmark project, which it is hoped will provide a significant boost to the local economy. The project entailed challenges unique to a complex site sitting within

the heart of a UNESCO world heritage location. Its successful completion reflects the highly effective collaboration amongst many different partners and agencies»[33].

In a booklet promoting the development of India Buildings, the real estate company Savills presented as one of the development strong points as being within a «Capital city and UNESCO World Heritage site with a strong tourist and corporate visitor market, known to the world as a 'Festival City'»[34]. Developing company Savills role in the India Buildings development was to create the supporting projects and campaign to gain planning consent.

The local community was mostly dissatisfied with the project accepted by the local government to use what they considered public land of the gap site. This was due to four main issues:

- The transfer of public land to the private sector for development.
- The erection of new buildings within the urban conservation area.
- An argued obstruction of sunlight to the main reading room for the neighbouring central library.
- The risk that the development might pose for the World Heritage List status of the centre of Edinburgh.

Another point that was used as part of the opposition and support discourse is the aesthetics of the project, as with any other new development in historical cities. The proposal for the new buildings was not done according to the same standards of pastiche done in the city in the 1980s and 1990s, but rather it was a reinterpretation of the local architecture while following the urban planning guidelines and standards.

The most opposition to this project was the group called Let There Be Light campaign. They met periodically to plan actions against the

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[33] DLA Piper, *DLA Piper Advises Jansons Property on Sale on India Buildings to Virgin Hotels, www.dlapiper.com/en/uk/news/2018/02/dla-piper-advises-jansons-property-on-sale-on-india-buildings/.*

[34] Savills, *India Buildings Edinburgh: City Centre Hotel Development Opportunity.*

project during summer and autumn of 2016. They opted for several small-scale demonstrations. On the part of the online strategies, they started with an online petition called 'Let There Be Light in Edinburgh's Old Town' on the site '38 Degrees' with the text:

> «Safeguard the public land in the Old Town World Heritage conservation area at the Cowgatehead next to the Central Library which is currently threatened by a proposed 9 storey, 225 bed speculative hotel development extending to the India Buildings on Victoria Street»[35].

In this petition, the main ideas were the defence of the Edinburgh Central Library, which would be blocked from sunlight in the proposed project, according to their calculations, and the concern of the WHL status for the whole city.

Figure 6. Let There Be Light in Edinburgh's Old Town, screenshot. (38 Degrees Scotland, "Let There Be Light", *https://you.38degrees.org.uk/petitions/let-there-be-light-in-edinburgh-s-old-town*)

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[35] 38 Degrees Scotland, *"Let There Be Light" in Edinburgh's Old Town*, *https://you.38degrees.org.uk/petitions/let-there-be-light-in-edinburgh-s-old-town*.

The petition attacks the lack of public consultation by the council on the change of land ownership and use, and it proposes its own theoretical project: an extension to the library consisting of a low-level rooftop garden «dedicated to enlightened figures such as Andrew Carnegie and Patrick Geddes»[36]. It is relevant to notice that the complaint of public consultation was about the selling of public land to a private investor, not a consultation about the project, which did happen.

The campaign created an official web page where they updated their actions and described their struggle. It is interesting that besides the complaints about the land use, the light for the Library and the design of the buildings, there are repetitive accusations against large investors' profit, remarking that an unprivileged part of the society was being left out of any consideration for the project, which gives the message that there is a clear intention to oppose anything that would appear as for the profit of private companies alone, without considering benefit for the local community[37].

When these strategies failed, the Let There be Light campaign promoted an expression of no confidence in the CEC with the following statement:

«We the undersigned, backed by over 5000 signatures of public support, wish to register an expression of "No Confidence" in the City of Edinburgh Council, in response to the proposal for a highly contentious development at India Buildings on Victoria Street, following a spate of controversial planning decisions whose cumulative effects are seriously damaging the reputation of this City of the Enlightenment, putting Edinburgh's highest accolade at risk, the World Heritage status»[38].

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[36] *Ibidem.*

[37] *Let There Be Light Edinburgh*, *https://lettherebelightedinburgh.uk/*.

[38] S. Bryrom, *Concerning the Future of Edinburgh's Central Library and the City's World Heritage Status*, in *Ragged University*, *www.ragguniversity. co.uk/2016/11/07/concerning-the-future-of-edinburghs-central-library-and-the-citys-world-heritage-status-by-simon-b*.

Royal High School Hotel

The former Royal High School was built from 1825 to 1829, designed by local architect Thomas Hamilton. It is considered the essential element that granted the city the nickname of 'Athens of the North' due to its Greek-style design[39]. Under these circumstances, it is one of the most important heritage-listed buildings in the city and in Scotland. It was built with the purpose of housing the Royal High School, having that use until 1968.

It is located on the southern slope of the emblematic Calton Hill and it can be seen from different points on the ground. Its position and architecture remind the observer of some kind of 'Parthenon', which contributes to its relevance for the general image of the city centre. It is an A listed building.
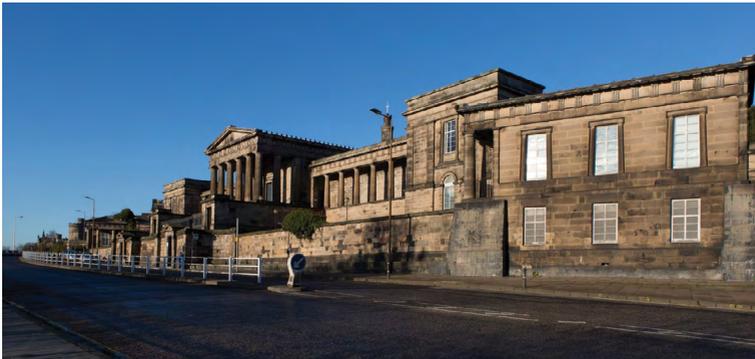
Figure 7. The Old Royal High School as seen from Regent Street.
(Photo taken by me)

The developer Duddingston House Properties (DHP) secured the approval in 2009 when the council launched a competition to design an economically viable use for the RHS building. DHP pro-

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[39] *5 and 7 Regent Road, Former Royal High School, Including Lodge, Classroom Block, Retaining / Boundary Walls, Gateposts and Railings (LB27987), http://portal. historicenvironment.scot/designation/LB27987.*

posed a hotel which won and the next year it was commended to develop a suitable project which they did and presented in September 2015. This first project was defeated by one vote at the CEC for considering it 'too much building/renovation' in it. Then they returned with a new planning application and a listed building consent application with a modified project that would reduce the height and masses of new buildings in February 2017.

Figure 8. Render of the project for the hotel in the place of the Old Royal High School. (Source: The Old Royal High School, *http://theoldroyalHigh School.co.uk/*)

The project proposed a 5-star hotel that would reuse an A listed heritage building that additionally is of paramount importance for the landscape and skyline of Edinburgh. It is located on the slope of Calton Hill, which can be seen from different parts of the city centre. Any additions to the site would affect not only the architectural dimension but also the landscape.

DHP launched their website to promote the project (*http://theoldroyalHigh School.co.uk/*) in which they include renders of the project from the landscape perspective and a short text claiming

that their £65 million privately funded project would revitalise the historical building by bringing a 127-bedroom Rosewood Hotel to the RHS building. They claim that if realised it would generate 250 direct full-time jobs and support 590 jobs by additional services of the supply chain.

One of their main arguments is that the project would guarantee the future of the heritage building «both architecturally and financially without the need for any public funding». Then, they say that the building has never been opened to the public despite being publicly owned. They claim that the luxurious hotel would open the building to everyone. The economic argument is then further supported by revealing that the building creates a yearly burden of £250,000 for the CEC.

DHP admits that there would need to be demolitions and impact on listed buildings but assures that the project would not damage the World Heritage Site status and in fact would protect it, although it is not clarified how. The only reference is the economic benefit that would generate the hotel, therefore securing the financial sustainability of the building.

The points of conflict in the project proposed by the firm strive in the area of use and aesthetics. For one part, the community opposed using the site as a hotel, given its historical and national significance of the site. Also, the erection of new buildings within the site – that would affect the historical view of the hill – was broadly contested, as it would not only damage the heritage of the site but also stain the whole landscape of the city with a pair of glass buildings out of architectural context.

The opposition campaign was very well coordinated with several architectural and heritage organisations involved. The opposition campaign had two fronts, one was the existence of the planning application to reuse the building as a music school and the other was the one opened as the sole opposition to the redesigned and scaled-down project presented by DHP at the beginning of 2017. The campaign was the best organised of the whole study. It was a joint effort by several architectural and heritage institutions,

which included a social media strategy, an official website and well organised public meetings. The communications were well written and clear and large parts of the heritage-interested local community were quickly involved. The campaign promoted and informed on how they would comment on planning applications and gathered more than 3,200 objections against 280 supporting letters.

Next to and before the opposition to the proposed hotel, a voluntary organisation called Royal High School Preservation Trust (RHSPT) had secured in 2016 a planning consent to intervene the site in an adaptive reuse project to transform it into a new house for the St Mary's Music School with a design by Richard Murphy Architects. Their campaign was accompanied by a well-designed web page (*http://www.rhspt.org/*) with the campaign names as 'Perfect Harmony'. The idea is that harmony would be achieved in combining the Royal High School building with the Music School and by creating an architectural project that would be in harmony with the landscape and skyline of Edinburgh.

Figure 9. Artistic architectural section of the St. Marys School project presented by the Royal High School Preservation Trust. (Source Royal High School Preservation Trust, "A New Concert Hall", *http://www.rhspt.org/new-concert-hall*)

The Perfect Harmony campaign was well supported on their website by a short videoclip uploaded to the streaming service Vimeo, which presents the need for a new building for the St

Mary's Music School and shows renders of the proposed project. Relevant from the discourse of this video is that they requested to the architects that any new architectural elements «would need to be very discreet», to which the response of the architects was designing new additions that would be «lower than the Victorian buildings». Additionally, the project proposed closed areas for use as the music schools while still retaining a good amount of public space. The Vimeo video plays a 3D render tour of the project accompanied by classical music and narration. Additionally to the Vimeo video, the Perfect Harmony campaign presented very elaborate renders and a social media campaign with Twitter and Facebook accounts with the same name. Finally, they held some real-life events, like concerts in favour of the campaign and the support to the main campaign Save Old Royal High School.

Royal High School Preservation Trust chairman William Gray Muir said about the St Mary's Music School project that «The former Royal High School is pivotal to Edinburgh's World Heritage status and our plans are designed to celebrate, conserve and enhance the site for the people of Edinburgh»[40].

In the case of the Royal High School hotel project in comparison with the St Mary's Music School project, Duddingston House Properties received the support of the chartered architect and architectural historian Andrew Wright, possibly working for them directly, who said that:

> «For both schemes, the valuations veer towards enhancing the World Heritage Site rather than detracting from it. I would state emphatically that my view remains that the development itself would not affect the status of the World Heritage site […] The development would enhance the conservation area rather than cause harm to it»[41].

[40] D. MacManus, *Royal High School Edinburgh Alternative Proposals*, *www.edinburgharchitecture.co.uk/royal-high-school-edinburgh-alternative-proposals*.

[41] The Scotsman, *Inquiry Starts into Edinburgh Royal High School Future: An Architect and Historian Hit Out at a Music School's Plans for Edinburgh's Former Royal High School Yesterday as a Public Inquiry into the Future of the Building*

The existence of an alternative proposal, one of a music academy, also fuelled the local community's discontent with the hotel project. Thanks to the successful campaign, there was vivid participation in social media for most of the year 2017, mostly critiquing and mocking the honestly unattractive project. On the part of the websites, both the campaign and the developer's websites were of high quality, both visual and discursive. Both made a strong case, the developer talking about sustainability and refinement, while the opposition was evidencing the architectural failure and the threat to the urban landscape.

One important organisation involved in the opposition was Historic Environment Scotland, which on their website announced a public inquiry starting in September 2018 into the refusal for the planning permissions granted to the hotel developers. This organisation considered that the project would damage the World Heritage Site status and diminish the historical building significance. They called for the Scottish Ministers to refuse the planning application appeal and instead look for alternative developments. Ultimately the ministers refused the appeal.

The opposition campaign successfully mobilised the local community in less than a month with their media campaign and flyers that could be found anywhere in the city. The response was so great that even with a projected economic gain from the site, the decision-makers felt the pressure and unanimously rejected the planning applications.

Conclusions

Undoubtedly, the concern for keeping a property inscribed in the World Heritage List do influence the general opinion and attitude towards a new development in a historic urban area. In all the

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Got Under Way, www.scotsman.com/arts-and-culture/inquiry-starts-edinburgh-royal-high-school-future-252680.

presented cases, opposition campaigns supported the idea that any change to the urban landscape would cause a delisting of the whole urban listed area.

The World Heritage Committee might play a role bigger than just listing and giving some benefits for the properties. The organisation can exercise real pressure on local and national governments by listing the properties as endangered and announcing that they might be delisted. While this pressure does not always work, like in the case of Liverpool, that was advised about the consequences by the Committee, in the case of Edinburgh and Caltongate it effectively delayed the development enough as for the company to go into administration, then the New Waverley project was redesigned considering both the opinion of the opposition campaigners and the considerations of the World Heritage Committee.

For the other two projects, India Buildings, and the Royal High School Hotel, while the Committee never gave a report on them, the ghost of the commission that visited Caltongate still roamed in the mind of locals and authorities. The case of Royal High School, in which the risk to the urban landscape was much more evident due to the addition of new buildings to the side of Calton Hill, was a more evident case, as it was rejected by the local and national government.

For India Buildings, while there were still new buildings in the heritage area, the fact that the project respected the heights and did not add new masses to the existing urban landscape, was considered to be preservative of the outstanding universal value of the Edinburgh Old Town. While disliked by locals for being perceived as a threat to the Edinburgh Central Library, for being one additional hotel and for being a private purchase of public land, the project was not perceived in general as a real threat to the World Heritage List status, which apparently made it survive the scrutiny of authorities.

The concepts of World Heritage List status and Outstanding Universal Value represent a true double-edged sword, they were used by both pro and against campaigns, both presenting the pro-

jects as damaging or protective of the WHL status. Other concepts used in these campaigns had no such property, for example sustainability was a common reference in the developers' discourses, but it almost never appeared in the opposition campaigns. Land use and community were concepts common in the opposition groups, but they were nowhere to be found in the discourses of developers.

Urban heritage is always at risk under the conflicting economic interests of development. The World Heritage Committee might play a greater role by being more proactive on projects that would be a risk to heritage, as they did in Edinburgh.

ZIYU FENG

BASED ON SOCIAL MEDIA:
CULTURAL SUSTAINABILITY
AND SOCIAL VALUE OF URBAN HERITAGE[*]

Abstract: The aim of this study is to analyze the impacts of social media in shaping urban heritage and social values. Through culturally engaged practices creating media citizenship, this study catches public's eyes to the issue of social responsibility and provides a case based on the impact of media on heritage values. This study uses theories of cultural sociology and media sociology, and analyzes the sustainability and social value of the cultural elements, which bases on the urban heritage coordinates of Bologna, Italy. This study will evaluate the media characteristics of public participation in social practice, and analyze some social media, mainly Twitter, Instagram, and Meta Platforms (Facebook). The results of this work indicate that: (1) The media can provide a method for citizen participation, creating cultural elements for sustainable development; (2) cultural awareness of citizenship can be activated through the processes of media participation; (3) The increasing in the social values of heritage culture facilitates will promote the collective cultural capital, which will lead citizens to achieve social responsibility.

1. *Introduction*

Urban heritage is considered to have been shaped by different eras and has formed a complex hierarchy of tangible and intangible heritage, promoting a sense of belonging and ensuring that people feel a connection to the past of the local environment[1]. Cultural heritage leads to the interaction between people and the world, and among people, helping to create meaning through social contextual practice[2]. With the development of digital technology, more digi-

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[*] Double-blind peer reviewed content.

[1] L. MYDLAND, W. GRAHN, *Identifying heritage values in local communities*, in *International Journal of Heritage Studies*, 18, 2012, 6, pp. 564-587.

[2] T. COPPLESTONE, D. DUNNE, *Digital media, creativity, narrative structure and heritage*, in *Internet Archaeology*, 44, 2017.

tal technologies are becoming standard tools for collecting, preserving, and disseminating art and cultural heritage worldwide[3]. «Digital and cyber archaeologists generate immense data on endangered heritage»[4]. Also, participation in the planning process is an important theme in heritage research, and residents are actively involved in planning heritage projects. However, the planning process has traditionally been entirely in the hands of professionals in the field of heritage. The popularisation of technology has led to the emergence of digital participation models based on sophisticated technological tools and expanding computer skills, which are gradually integrated into new institutional frameworks[5]. Media ecology implies that urban environments are truly multidimensional, with justice, politics, action and spatial networks that learn beyond geography and society. In addition, social media has become an integral part of daily life, politics, learning, business, public participation, and cross-local citizenship[6]. As a public engagement platform, the Internet plays a key role in the collaborative planning and preservation of cultural heritage for a wider range of stakeholders across scale, class, race, gender, and age[7].

Social media applications have made significant contributions to collective community memory through the practice of storytelling and cultural representation through mapping. The public desire for relevant real-time information and participation in planning has sparked great potential for civic engagement in social media and

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[3] H. Boo, *A digital future for cultural heritage*, in *Arts Management & Technology Laboratory*, 2020, April 2 (*https://amt-lab.org/blog/2020/3/a-digital-future-for-cultural-heritage*).

[4] N. Lercari, *3-D digital preservation of at-risk global cultural heritage*, in *Proceedings of the 14th Eurographics Workshop on Graphics and Cultural Heritage*, Eurographics Association, 2016, pp. 123-126.

[5] M. Stobiecka, *Archaeological heritage in the age of digital colonialism*, in *Archaeological Dialogues*, 27, 2020, 2, pp. 113-115.

[6] T. Broekhuizen, *Digital platform openness: Drivers, dimensions and outcomes*, in *Journal of Business Research*, 122, 2021, pp. 902-914.

[7] Y.K. Dwivedi, *Setting the future of digital and social media marketing research: Perspectives and research propositions*, in *International Journal of Information Management*, 59, 2021, Article 102168.

dealing with cultural heritage. Social media products allow users to post information and receive feedback in near real-time, and social media can facilitate and enhance effective participation in urban heritage planning. Meanwhile, some scholars put forward that more attention should be paid to the research on how social media can improve competence, awareness, and social capital of citizens and some researchers believe that social media can enhance the social capital of citizens as it enables interaction between offline and online and enriches social relationships by using social networks to create and maintain connections[8].

Therefore, from the perspective of cultural awareness, this study discusses the shaping and impact of social media on the cultural sustainability and social values of urban heritage. The research takes the urban heritage of Bologna as an example. Based on the principles above, this study explores how the social participation of citizens is based on social media, how ideology is expressed, and what social values are expressed by urban heritage. In addition, this study reconstructs the sustainability of the cultural values of urban heritage by examining the reproduction of the cultural identity of urban heritage through social media. Also, the study develops an innovative hybrid approach that combines data mining and qualitative research to analyse social media data to understand issues related to social media engagement. At the same time, social media, an open platform, show the public the power of urban heritage as a cultural tool. In everyday life, social connections and identity negotiations can be established to enhance social cohesion.

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[8] Y. Lin, S. Kant, *Using social media for citizen participation: Contexts, empowerment, and inclusion*, in *Sustainability*, 13, 2021, 12, Article 6635.

2. *Materials and methods*

2.1. *Study area*

Bologna, as a medium-sized Italian city[9], has been known as 'la dotta', 'la Grassa' and 'la rossa', respectively for centuries. Bologna, an inclusive, cultural and historical city, demonstrates the progressive, egalitarian and cultural character of the city[10]. The city's famous urban heritage is the portico of Bologna, the University and the Bologna Tower[11]. Among them, the portico (Portici) is one of the important urban heritage of Bologna. In 2021, the UNESCO Committee officially declared Bologna as the 'City of Arcades' and nominated it as a World Heritage Site[12]. The different shapes of the arcades represent different social functions and temporal stages. Considered a private property serving the public, the gallery has become an element and expression of Bologna's urban identity (Fig. 1)[13]. With outstanding universal value, the arcades of Bologna represent high-quality architectural work. «The nearly 40-km-long porticoes make the city of Bologna unique in the world»[14]. By using social media data (SMD, e.g., Twitter, Instagram and Meta

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[9] *A history of the university in Europe: Universities in the Middle Ages*, I, edited by H. DE RIDDER-SYMOENS, W. RÜEGG, Cambridge University Press, Cambridge, 2003.

[10] D. PERÒ, *Left-wing politics, civil society and immigration in Italy: The case of Bologna*, in *Ethnic and Racial Studies*, 28, 2005, 5, pp. 832-858.

[11] A. GUIDAZZOLI, M.C. LIGUORI, M. FELICORI, *Open creative framework for a smart cultural city: Bologna porticoes and the involvement of citizens for a UNESCO candidacy*, in *Information technologies for performing arts, media access, and entertainment*, edited by P. NESI, R. SANTUCCI, Springer, Berlin, 2013, pp. 58-65.

[12] D. MARINO, (2022, January 18). *Bologna, the city of porticoes*, in *Travel Emilia Romagna*, 2022, January 18 (*www.travelemiliaromagna.it/en/porticoes-of-bologna-unesco-world-heritage/*).

[13] UNESCO World Heritage Centre, *The porticoes of Bologna*, in *United Nations Educational, Scientific and Cultural Organization*, 2021 (*https://whc.unesco.org/en/list/1650/*).

[14] A. GUIDAZZOLI, M.C. LIGUORI, M. FELICORI, *Open creative framework for a smart cultural city: Bologna porticoes and the involvement of citizens for a UNESCO candidacy*, cit., pp. 58-65.

Platforms (Facebook), this study was designed to study the participation of the public in the Porticoes of Bologna and I Portici di Bologna. At the same time, a qualitative content analysis of policies, annual reports and business plans of relevant heritage projects and organisations was conducted, with a focus on assessing the value potential of relevant topics.
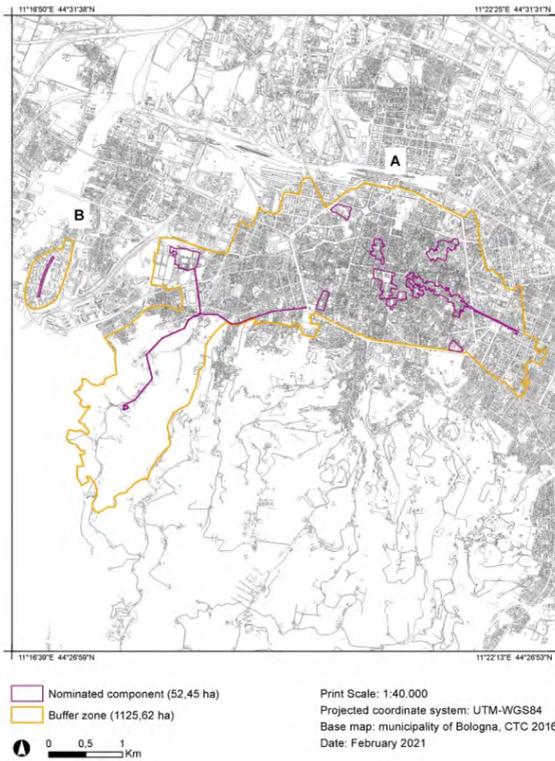
Fig. 1. The Porticoes of Bologna, Copyright ©1992-[2022]UNESCO (World Heritage Centre), All rights reserved

881

2.2. *Data collection & Analysis*

Social media has gradually become an important platform for people to engage in cultural practices and social participation. As a result, data acquisition for this study was divided into following two steps:

In the first step, the original data sources were obtained from the top social media platforms, such as Twitter, Instagram, and Meta Platforms (Facebook), with the highest share of Internet search data[15], to collect public content about The Porticoes of Bologna (English) and I Portici di Bologna (Italian). In addition, through the web crawler Brand24 (*https://brand24.com/*), the search term 'The Porticoes of Bologna' (I Portici di Bologna) was searched from Twitter, Instagram, and Meta Platforms (Facebook) accounts to extract data, such as the messages that were posted by citizens. In order to obtain the necessary information, short sentences containing relevant keywords instead of the full blog post were used. The search provides a useful overview by displaying all articles containing the searched keywords while allowing the users to guess the context of the full text. Data were collected for one year from May 9, 2021 to May 9, 2022. Based on these criteria, a total of 37 user-posted messages were selected for qualitative analysis. Because the search language was restricted to Italian and English, the analysis only used the overview content and the positive or negative attitudes of the messages.

In the second research step, the content of the extracted keywords was analysed. In the data analysis phase, keywords with high relevance to the research topic were extracted. Then, the frequency of the occurrence of these keywords was analysed and would be shown later by exploring the representative examples.

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[15] E. Di Minin, H. Tenkanen, T. Toivonen, *Prospects and challenges for social media data in conservation science*, in *Frontiers in Environmental Science*, 2015, 3, Article 63 (*https://doi.org/10.3389/fenvs.2015.00063*).

3. *Results and discussion*

By using the Brand24 (*https://brand24.com/*) data collection website, the keywords were searched separately, including The Porticoes of Bologna (English) Fig. 2 and I Portici di Bologna (Italian) Fig. 3. In this study, the SMD from10 Apr 2022 to 10 May 2022 (30 days) was crawled. To facilitate the subsequent data analysis, the language initials of the two keywords were capitalised as the abbreviations of this paper, that is, E=The Porticoes of Bologna (English) and I=I Portici di Bologna (Italian). The two keywords were searched for a total of 79 times (I+E=79), where I=42 and E=37. Among them, Twitter, as the SMD that the study focused on, had the highest number of mentioned keywords. On the contrary, the keywords appeared on the Meta Platforms (Facebook)l with a rating rate of 0. In addition, the data for Social Media Reach (SMR) and Non Social Media Reach (NSMR) were the same for SMR (I=62297, E=62297) and NSMR (I=114K, E=79662). According to the analysis of data results, although the total number of NSMR is greater than that of SMR, the total number of effects of SMR is increasing year by year. At the same time, the total number of SMRs (62,297) in The Porticoes of Bologna (English) search is comparable to that of NSMR (79,662). Through the website, the Context of discussion was obtained, from which two-word clouds with different keywords E (Fig. 4) I (Fig. 5) were generated for qualitatively analysing the citizen's published content. The search terms in the data graph show that Patrimonio, Palazzo, Mostra, Maggio, and Accessibile appear more frequently. It shows that the public talks more and pays more attention to the construction and protection of urban heritage.

Fig. 2. The Porticoes of Bologna (English), Screenshot of keyword data. Data sources: Brand24 (*https://brand24.com/*)

Fig. 3. I Portici di Bologna (Italian), Screenshot of keyword data. Data sources: Brand24 (*https://brand24.com/*)

Fig. 4. The Porticoes of Bologna (English), Keyword discussion number word cloud display chart. Data sources: Brand24 (*https://brand24.com/*)

Fig. 5. I Portici di Bologna (Italian), Keyword discussion number word cloud display chart. Data sources: Brand24 (*https://brand24.com/*)

In this study, it has been proposed that the widespread use of social media provides a platform for citizen participation in urban heritage planning and conservation. With their real-time and open nature, social media attract many participants and drive new interaction forms between citizens and cultural bodies. Taking the urban heritage portico (Portici) of Bologna as a cultural element, through a relevant case study, certain empirical evidence was offered on the adoption of social media within cultural heritage planning and practices, revealing the opportunities to use social media for civic engagement.

Existing research suggests that the use of social media for information access at the individual level is positively associated with the production of social capital and social participation[16]. In that context, this study set out with three hypotheses: that social media can provide a method of citizen participation, which can create cultural elements supporting sustainable development; that through its open and real-time nature, social media permits citizens to participate anytime and anywhere, informally expressing their detailed ideas; and that due to the openness of the digital platform participation model, public engagement has increased and the range of participants has widened[17].

On the first hypothesis, as a type of collaborative digital tool, social media provide a popular engagement path for the public to spread multiculturalism and offer a cultural space for sustainable innovation in urban heritage. In addition, from the perspective of cultural theory, it is necessary to discuss 'cultural systems' since culture has a structural dimension. In other words, the 'cultural system' is not closed, but the result of interaction, mixing and pluralism[18].

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[16] H. Zúñiga, N. Jung, S. Valenzuela, *Social media use for news and individuals' social capital, civic engagement and political participation*, in *Journal of Computer-Mediated Communication*, 17, 2012, 3, pp. 319-336.

[17] T. Broekhuizen, *Digital platform openness: Drivers, dimensions and outcomes*, in *Journal of Business Research*, 122, 2021, pp. 902-914.

[18] R. Paltrinieri, *Felicità responsabile. Il consumo oltre la società dei consumi*, Franco Angeli, Milano, 2012.

Meanwhile, cultural spaces are also levers of social inclusion[19]. In view of this, social media, as a new model of digital cultural integration, combine social participation, cultural production and urban heritage regeneration. At the same time, the expansion of civic engagement in cultural practices also promotes respect for human rights and cross-cultural dialogue. For example, social media have been used to document the destruction of cultural heritage sites in Syria and Iraq by ISIS and to raise awareness about the looting of ancient artifacts. Social media have also been used to organize and coordinate efforts to protect cultural heritage sites, such as through crowd-sourced mapping projects that document the locations of endangered sites. Additionally, citizen journalists, bloggers and activists have used social media to expose corruption, illegal activities and looting affecting heritage sites. Further to this, social media allow people to share information and resources on how to preserve cultural heritage, such as through online databases of historical artifacts and photographs and through virtual tours of cultural sites. They can also be used to help support and promote the work of organizations that work to preserve cultural heritage. Such organizations must operate within a collective vision based on citizenship, which leads many to work to transform urban heritage into new cultural elements for sustainable development.

With regard to the second hypothesis, cultural awareness of citizenship can be activated through the processes of media participation. Given the high penetration of digital media, social media have become effective tools for citizens to use to engage in discussions about urban heritage. Benedict Anderson proposed that the nation is an imagined political community, inherently limited; however, it should be noted that the nation is also a sovereign community[20]. If we consider that there is a common society, then the cultural

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[19] F. MONTANARI, L. MIZZAU, *Laboratori urbani. Organizzare la rigenerazione urbana attraverso la cultura e l'innovazione sociale*, Fondazione Giacomo Brodolini, Roma, 2015.

[20] B. ANDERSON, *Imagined communities: Reflections on the origin and spread of nationalism*, Verso Books, London-New York, 1991.

awareness of citizens may be regarded as important for social participation processes[21]. Cultural awareness bridges the collective reality and imagination. One example of this in practice is the revitalization of the traditional indigenous Chicha music in Peru. Chicha is a popular music genre that originated in the Andean region of Peru in the 1960s, blending Andean folk music with elements of rock, cumbia and other popular music styles. In the past, Chicha music was often seen as low-brow and disreputable, and was not given the same level of respect as other forms of Andean music. However, in recent years, there has been a resurgence of interest in Chicha music, driven in part by growing awareness of and appreciation for the cultural heritage associated with the genre. One of the key factors in this resurgence has been the work of a group of young musicians and cultural activists who have sought to reclaim and revitalize the traditional elements of Chicha music. They have done so by drawing on the collective imagination of their community and the cultural heritage associated with the genre, incorporating traditional instruments and rhythms into their music and highlighting the importance of Chicha music as an expression of Andean cultural identity. This revitalization has led to a renewed appreciation for Chicha music and its cultural heritage, with the music now being celebrated as an important part of Peru's cultural heritage. This provides a clear example of how cultural awareness and collective imagination can be used to reshape and revitalize cultural heritage, bringing it to a wider audience and increasing its appreciation. Additionally, this case also highlights the importance of community and grassroots movements in preserving and revitalizing cultural heritage, as it was a group of young musicians and cultural activists who led the way in revitalizing Chicha music, rather than an official cultural institution. Specifically, we can take from that citizens' cultural awareness can enable them to perceive, imagine and

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[21] R. Paltrinieri, G. Allegrini, *Partecipazione, processi di immaginazione civica e sfera pubblica*, Franco Angeli, Milano, 2020, pp. 45-60.

understand collective social events[22]. Citizen participation can contribute to the production of cultural practices, which can eventually become a field of citizen participation and activate the public consciousness to preserve and discuss urban heritage, since it offers new ways of acting on themes and issues of public importance. An essential takeaway is this: the everyday actions of citizens have the power to reconfigure society.

Finally, when we come to the third hypothesis, often, an increase in the social value of heritage culture will boost the collective cultural capital, leading citizens to assume social responsibility. In some parts of the world, economic and social inequalities have caused a proliferation of conflicts or protracted crises, often with ensuing economic and social impacts. Conflict may strongly impact culture, such as through the deliberate destruction of cultural heritage and through cultural and human rights violations that undermine respect for cultural diversity[23]. According to Putnam, social capital is a public good, constituting the potential for participation, civic orientation and trust in others that a city, state or nation can facilitate[24]. Social capital is defined as the features of social organizations, including the trust, networks and norms, that can facilitate mutual action and cooperation[25]. As a tangible form of social capital, urban heritage is now being transformed into an intangible cultural consciousness in the digital sphere. In this transformation process, the development of collective cultural capital encourages social cohesion, inclusiveness, resilience and participation, which make culture accessible to all. Through an increasing social value of heritage culture, the development of collective cultural capital is

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[22] R. Paltrinieri, G. Allegrini, *Partecipazione, processi di immaginazione civica e sfera pubblica*, cit., pp. 23-25.

[23] A.F. Vrdoljak, *The criminalisation of the intentional destruction of cultural heritage*, in *Forging a socio-legal approach to environmental harm: Global perspectives*, edited by T. Bergin, E. Orlando, Routledge, London, 2016, pp. 237-266.

[24] R.D. Putnam, *The prosperous community: Social capital and public life*, in *The American Prospect*, 4, 1993, 13, pp. 35-42.

[25] R.D. Putnam, *Bowling alone: The collapse and revival of American community*, Simon and Schuster, New York, 2000, p. 45.

promoted and citizens are encouraged to fulfill social responsibilities. Likewise, the development of collective cultural capital can increase the democratic space as it promotes an adherence to shared values and ideas. In these ways, the civic cultural consciousness is activated and developed through widespread participation, which prompts people to rethink the shared responsibility of the individual. At the macro level, this is based on trust and reciprocity. If those are established and the movement flourishes, it can even translate into collaborative governance, which can be understood as a matter of social responsibility rather than a moral outcome of responsibility, that is, if we take a perspective that upholds the concept of responsibility as a shared social responsibility[26].

4. *Conclusions and recommendations*

This study was designed to explore citizen participation in sustainability studies of urban heritage. The research revealed that social media offer a valuable source of data on the multiple values citizens place on a city's cultural heritage since they now engage in cultural practices through social media. At the same time, UNESCO's recommendations on historic urban landscapes mark a new method of urban heritage conservation[27]. One study proposed that urban areas must be understood as consisting of a historical stratification of both tangible and intangible urban heritage[28]. As a result, the researcher proposes a novel approach to research that combines media studies with urban heritage studies. In this way, the cultural

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[26] M. Davis, *From individualism to interdependence: A basis for shared social responsibility*, in *Towards an Europe of shared social responsibilities challenges and strategies*, vol. 23, Council of Europe Publishing, Strasbourg, 2011, pp. 103-114.

[27] F. Bandarin, R. Van Oers, *Reconnecting the city: The historic urban landscape approach and the future of urban heritage*, John Wiley & Sons, Oxford, 2015.

[28] A. van der Hoeven, *Historic urban landscapes on social media: The contributions of online narrative practices to urban heritage conservation*, in *City, Culture and Society*, 17, 2019, pp. 61-68.

elements of urban heritage, as well as citizens' sustainability and social values, can be analyzed by exploring their cultural participation process. According to Nico Carpentier, the mediatization of participation refers to the ways in which media shape and influence the opportunities for, constraints on and forms of participation in society. In his book *Media and Participation: A site of ideological-democratic struggle* (2011), Carpentier asserts that the media are powerful tools for promoting public participation in heritage conservation, but also can be a source of conflict and power struggles over the interpretation and representation of heritage[29]. Carpentier emphasizes the importance of critical and participatory approaches to heritage conservation, which question dominant narratives and power relations and involve the participation of diverse actors and perspectives. He proposes that a critical and participatory approach can facilitate more democratic, inclusive and sustainable heritage conservation.

Opportunities in the intangible dimension include drawing public attention to urban heritage issues and increasing social engagement opportunities for digital citizens through social media platforms. Traditionally, heritage conservation has paid much attention to buildings and monuments but neglected their sociocultural importance[30]. However, as social media serve as important tools to engage a broad audience in urban heritage conservation, they evoke a human-centered form of urban conservation that provides insights into a variety of experiences linked to a city's past. For example, the #My Heritage Story campaign in the UK encourages members of the public to share their personal connections to heritage sites and buildings on social media. This campaign helps raise awareness of the importance of heritage conservation and the role of the public in protecting a city's heritage. Instagram and Facebook are sim-

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[29] N. CARPENTIER, *Media and participation: A site of ideological-democratic struggle* Intellect, Bristol-Chicago, 2011, p. 408.

[30] C. POCOCK, D. COLLETT, L. BAULCH, *Assessing stories before sites: Identifying the tangible from the intangible*, in *International Journal of Heritage Studies*, 21, 2015, 10, pp. 962-982.

ilarly used by the National Trust in Australia to engage the public with heritage conservation efforts, including virtual tours, behind-the-scenes access and information on conservation projects. Elsewhere, the Save Our Heritage campaign in India uses social media to mobilize public support for the conservation of historic monuments and buildings in the country, utilizing hashtags, live streaming and social media stories. In addition, the use of virtual reality by the Smithsonian's National Museum of American History to provide virtual tours of its exhibitions allows the public to engage with heritage from the comfort of their own homes.

This study has pointed out certain positive functions of adopting social media to promote citizen engagement within urban heritage conservation but also revealed potential problems. For example, digital citizenship manifests itself in a lot of ways, and social differences can appear in the process. However, positive instances of its application were found in the Heritage Heroes campaign in Singapore, which uses social media to recognize and thank members of the public who have made significant contributions to the conservation of heritage sites in the city-state. Furthermore, the use of social media by the National Trust for Historic Preservation in the United States to engage the public with heritage conservation efforts enables information to be shared on endangered historic sites, with calls to action to support preservation efforts. These examples demonstrate how social media can be used effectively to raise awareness, mobilize public support and increase engagement with heritage conservation efforts.

When taking into account the advantages and disadvantages of social media platforms, we surmise that online engagement can supplement traditional engagement methods. According to Dahlgren, active citizenship refers to the ways in which individuals and groups engage in public life and participate in the processes of democratic decision-making. In the context of heritage conservation, this concerns the public's active involvement in the identification, protection and interpretation of heritage sites and monuments. In his book *The Political Web: Media, Participation and Alternative*

Democracy (2003), Dahlgren notes that the use of new media technologies, such as the internet and social media, can increase opportunities for public participation in heritage conservation[31]. At the same time, the digital divide should be considered with a view to how social media data can contribute toward informing the just and sustainable planning and management of urban heritage. To extend our current knowledge, in future research, it will be greatly beneficial to study the public imagination of social media, analyze the path from value to engagement and evaluate the influence of cultural values on social media and their potential to strengthen public agency and improve public wellbeing. Findings on each of these fronts may valuably contribute toward determining how we can activate the social engagement of citizens through imaginary co-production processes[32].

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[31] P. DAHLGREN, *The political web: Media, participation and alternative democracy*, Springer, Berlin, 2013, pp. 38-40.

[32] R. PALTRINIERI, *Culture e pratiche di partecipazione: Collaborazione civica, rigenerazione urbana e costruzione di comunità*, Franco Angeli, Milano, 2020, pp. 20-30.

LIST OF THE AUTHORS

Paloma Almodóvar is an Associate Professor in the Department of Business Organisation at the Complutense University of Madrid. She has focused her research on strategic management and, in particular, on international business. To this end, she has carried out numerous research stays in prestigious institutions (Henley Business School (University of Reading); Rotman School of Management (University of Toronto); University of Auckland Business School; CEIBS …) and, as a result of her work, she has received several awards and has published in high-impact international journals. In the classroom, Paloma uses a wide variety of teaching methodologies and has been recognised with numerous teaching excellence ratings, for which she has received a teaching excellence award from her institution.

Chiara Alvisi is a Full Professor of Private Law and Commercial Communication Law at the University of Bologna and the Eu.c.l.i.d.e. Jean Monnet Module Coordinator for the academic years 2022-2023-2024. During her academic career, she lectured on Institutions of Private Law, as well as Tourism Law and Financial Markets Law. Prof. Alvisi obtained a PhD in Private Law with a dissertation regarding self-regulation and freedom of contract. She is a member of the "Giurì di Autodisciplina Pubblicitaria", the adjudicating body of the Italian Authority for Advertising Standards and has been appointed by the Bank of Italy as a member of the banking and financial ombudsman panels in Bologna and Turin. She has also been appointed by the Council of the Italian Ministry for Universities and Research as a member of the judiciary council at the Court of Appeal in Bologna. Chiara Alvisi is involved in several academic projects and collaborations, both at the national and international level. She has been a visiting Professor at the University of Paris-Assas and has been invited to deliver lectures and seminars at many foreign and international universities. She is the author of several monographs and numerous articles published in leading peer-reviewed journals.

BASHEER ALZOUGHBI is a Bethlehemite, born and raised in Bethlehem-Palestine. His research interests and specialization cores at public international law branches particularly international humanitarian law, international criminal law, state responsibility law, international human rights law, international diplomatic law and international consular law. He is currently pursuing a doctorate degree at the Department of Legal Studies at the University of Bologna (Italy).

ELISA BARONCINI, PhD in EU Law, is Full Professor of International Law at the University of Bologna, where she teaches International Law, International Economic Law, and International Law on Sustainable Development at the School of Law. For ten years (2012-2022) Elisa was Co-Chair of the ESIL IG on International Economic Law; in 2019 she co-founded and is now Coordinator of the Interest Group on International Economic Law of the Italian Society of International Law (DIEcon). She has been Visiting Professor at the China-EU School of Law, speaker and organizer of many international conferences, Visiting Researcher at the European University Institute. Elisa manages and participates in international and national research projects. She has been recently awarded the Jean Monnet Module "Re-Globe - Reforming the Global Economic Governance: The EU for SDGs in International Economic Law" and she is the Coordinator of two UNA Europa Seeds Research Projects: "WHC@50 - Forever Young: Celebrating 50 Years of the World Heritage Convention"; and "ImprovEUorGlobe - The UN 2030 Agenda in the EU Trade Policy: Improving Global Governance for a Sustainable New World". Member of the "Centro Interuniversitario sul Diritto delle Organizzazioni Internazionali Economiche" (CIDOIE), Elisa is also part of the Promoting Committee of the University of Bologna to honour the 1972 UNESCO Convention, and Member of the Scientific Committee of the Institute of Advances Studies (ISA) of the University of Bologna. In June 2022 she has been appointed by the European Commission TSD Expert for the dispute settlement mechanisms of the new generation of EU free trade agreements, and she is member of the section of Bologna of the editorial board of the review *Diritto del commercio internazionale*. Elisa publishes extensively mainly in Italian and English, and her fields of research include: the reform process of the WTO dispute settlement mechanism; the relation between free trade and non-trade values; transparency and civil society in

international economic law; the new generation of EU FTAs and their enforcement; the participation of the European Parliament and the Commission in the EU treaty-making power; the relation between free trade and investment protection and cultural heritage protection.

Francesco Boldrin is research fellow at the University of Bologna - Department of Political and Social Sciences and conducts his research in the field of private law. His research interests are mainly directed towards the legal implications, at a systematic level, of new technologies and, in particular, of A.I. and automated decision-making processes.

Ezequiel Colmenero-Acevedo is an architectural and urban planning historian. He recently finished a PhD in Architecture at the University of Edinburgh. He has a Master in History of Architecture and Town Planning from the University of Groningen. His areas of specialisation are the digital humanities focused on the built environment, urban heritage conservation, planning history and urban morphology.

Francesco Paolo Cunsolo is a third year PhD student in Cultural and Environmental Heritage at the University of Bologna, with a research topic on the intentional destruction of cultural property as an international crime. He holds a Master's degree in human rights, migration and development (2012) and since 2014 he has been a teaching assistant for the chair of international law at the University of Bologna. Since January 2022 he is part of the "Una-Her-Doc" programme of Una Europa, a joint doctoral programme in cultural heritage. He has published in Italian and English on several topics, including the UNESCO system and the protection of cultural heritage, international criminal law, international environmental law and the CETA agreement between EU and Canada. Parallel to his academic career, he has worked until 2021 for a non-profit association dedicated to the prevention of gender-based violence.

Joshua Davis is currently undertaking a PhD in the KU Leuven Faculty of Law on the extent to which the EU is able to act externally for the protection and safeguarding of cultural heritage. Joshua is also an executive board member of HERKUL (Heritage KU Leuven), an interdisciplinary commons governed institute dedicated to research in cultural heritage.

Bᴇʀᴛ Dᴇᴍᴀʀꜱɪɴ (°1980) studied law at KU Leuven (1998-2003, *magna cum laude*) and at Université Paris I - Panthéon-Sorbonne (2003, *magna cum laude*). In 2008 he obtained a doctorate in law with a thesis entitled *Authenticity and contracting about art - A comparative legal analysis.* Subsequently he was a postdoctoral researcher at Stanford Law School (USA). Currently Bert Demarsin is Professor of both Art and Cultural Heritage Law and Comparative Law at KU Leuven. He is the author of numerous publications in the aforementioned fields of law. Given his legal expertise in the art and heritage sector, he is the director of the Academic & Historical Heritage Office, responsible for the management of the University's cultural heritage and scientific collections.

Zɪʏᴜ Fᴇɴɢ is a PhD student in the Visual, Performing, and Media Arts Department at the University of Bologna. Her research focuses on feminist media, art sociology, cultural participation, interactive design, and participatory design. In addition, she was involved in research in related areas, such as the sociology of culture and the link between creative practices and social well-being. She uses disciplinary research between sociology, participatory art, and media technology, which considers how design reflects social phenomena and solves social problems. She has multilingual and multicultural academic and teaching experience. She can speak Chinese, English, Korean, and Italian.

Mᴀʀᴛᴀ Iɢʟᴇꜱɪᴀꜱ Bᴇʀʟᴀɴɢᴀ. Assistant Professor of International Public Law at the Faculty of Law of the Complutense University of Madrid. Collaborating Professor at various centres affiliated to the Universidad Complutense de Madrid (Instituto de Estudios Bursátiles, Instituto Superior de Derecho y Economía, Centro Universitario Villanueva, Colegio Universitario Cardenal Cisneros), at the Universidad Pontificia de Comillas (ICADE) and at the Universitat Oberta de Catalunya (UOC). PhD in Law from the Complutense University of Madrid (UCM). Master's Degree in Community Law from the UCM. She has carried out several research stays in Geneva (Switzerland) and The Hague (The Netherlands). She is a member of several research projects, such as the UCM project "La CEDAW 40 años después: Los derechos líquidos de la mujer?" and of different research groups and institutes such as the Grupo de Investigación Globalización, Derechos Humanos y Unión Europea (UCM) or the Instituto de Derecho e Integración Regional de la UCM. Her work includes

numerous articles published in national and foreign specialised journals, extensive participation in collective works and two monographs on the Law of the Sea.

Nikolia-Sotiria Kartalou is an architect, researcher and tutor based in Edinburgh. She holds a PhD in Architecture and an MSc in Architectural Conservation from the University of Edinburgh. Nikolia obtained her diploma in Architecture Engineering at the Aristotle University of Thessaloniki in 2011 and she has worked since then in a variety of projects in Greece, France and the UK. Her architectural output intersects with her research interests, investigating design methodologies that address and trace correspondences between architecture, heritage and society. She is a Tutor at The University of Edinburgh and an Associate Lecturer at the University of Newcastle.

Dan Kisilewicz. Graduated from the University of Architecture and Urban Planning "Ion Mincu" in Bucharest, Romania, since 1986, he has attended Architecture Conservation courses at ICCROM-UNESCO in 1994, in 1997 followed lectures urban management at Institute for Housing and Urban Studies, Rotterdam, Netherlands, in 1999 Master in Conservation of Cultural Property at Bologna University, Italy. He has been carrying out his professional activity individually, as an associate and in various forms of collaboration. It deals with design and construction, relating to historical buildings for private and public sector. For him the architectural language moves from a multidisciplinary design method based on the dialectical relationship between architecture, urban planning and art. He has a PhD degree since 2010 in History at Valahia University of Târgovişte, Romania worked for Department of Cultural Heritage, Ministry of Culture until 2018 teached Architectural Design at University Spiru Haret, Faculty of Architecture.

Ileana Maria Kisilewicz. Senior lecturer PhD Habil. Faculty of Architecture and Urbanism, Politehnica University Timişoara, Romania. She is an architect and she obtained her Master in Science of Conservation of Monuments and Sites in 1998 at the Raymond Lemaire Centre (University of Leuven). During her advanced studies she conducted an scholarship at the University La Sapienza in Rome, where she assisted in fieldwork

for the development of project conservation methodology of carved-stone decoration. In 1999, following 2 years of pre-doctoral research on Italian influence on Romanian architecture, which she concluded in 2009 when she obtained her degree of PhD in Architecture. Complementary in Italy, in 1999 and 2011 she assisted working sites in Venice on stone conservation and followed at ICCROM the Stone Conservation Course. Since 2001 she was involved in projects funded by UNESCO for conservation architectural heritage in Romania. She is senior lecturer at the Politehnica University of Timişoara (Romania), Faculty of Architecture and Urbanism, entitled to conduct PhD theses in the field of architecture at Politehnica University Timişoara. Also she holds advisory position in the Romanian Ministry of Culture, Department of Cultural Heritage.

Niccolò Lanzoni is post-doctoral research fellow (*assegnista di ricerca*) in International Law at the Department of Legal Sciences. He is also Adjunct Professor (*Professore a contratto*) in International Law at the Department of Cultural Heritage. He holds a PhD in International Law from the University of Bologna and has been admitted to the Italian Bar. Previously, he lectured as guest professor in International Economic Law at the Eastern Mediterranean University and was a visiting scholar at the Heidelberg Institute para América Latina. He also served as research assistant for the Italian Defence College in the M/V 'Norstar' case (Panama v Italy).

Umberto Lavorata is a 37th cycle PhD Student in Future Earth, Climate Change and Societal Challenges at the Department of Political and Social Sciences, University of Bologna (Italy). He is currently working on a project about deliberative/participatory democracy and climate change. He holds a Master's degree in Geography and Territorial Processes (2020), and a Bachelor's Degree in International Development and Cooperation (2018) from the University of Bologna.

Alessia Legnani Annichini. Full Professor of History of Medieval and Modern Law, she teaches History of Medieval and Modern Law, Ius commune and History of Modern and Contemporary Law in Bologna. Her researches – resulted in monographies and essays – are focused on some aspects of *ius mercatorum* both substantial (commercial brokers) and processual (the Bolognese Mercanzia and bankruptcy procedure); on fraud in

liberal Italy; on legal professions in the '800 and on the protection of Cultural Heritage in the Italian history. She deals at present with the History of Bolognese juridical school between the 19th and the 20th century and with maritime insurance in the Modern Age.

Ana Gemma López Martín. Full Professor of International Public Law at the Complutense University of Madrid. Extraordinary PhD Award. Director of the Department of International Law, Ecclesiastical and Legal Philosophy of the University Complutense of Madrid. Member of the Spanish-Portuguese American Institute of International Law. Member of the Institute of European Law and Regional Integration. Director of the research group "Globalization, Human Rights and International Law", and of multiple research and innovation projects. He has written 8 monographs: *El territorio estatal en discusión* (1999); *Tratados sucesivos en conflicto* (2002); *La navegación por los estrechos* (2008); *El ejercicio continuo y pacífico de funciones de Estado como modo de adquisición del título territorial en la jurisprudencia internacional* (2009); *International Straits* (Springer, 2010); *Los Estados fallidos* (2015); *Creación de Estados, Secesión y Reconocimiento* (2018); *Secession and Statehood. Lessons from Spain and Catalonia* (Routledge, 2021). And more than a hundred articles and contributions in collective works. It has four teaching manuals: *Instituciones y Organizaciones Internacionales* (2021), *Historia e Instituciones de la Unión Europea* (2021), *Public International Law* (2022), *Derecho Internacional Público* (2022). He has directed seven doctoral theses with the highest qualification. He has given a multitude of conferences and courses, both in Spain and abroad, in Mexico, Puerto Rico, Nicaragua, Peru, Morocco, the Dominican Republic, Miami or Angola. The complete curriculum can be consulted in: *https://anagemmalopez.wordpress.com/*.

Francesco Massarenti was born in 1992 in Bologna, the city where he has been living till now. He graduated in Law at the University of Bologna in 2016 (with a thesis on Administrative Law about the role of Municipal Circumscriptions within the Italian legal framework) and then got a diploma of specialization in administrative studies at SPISA in 2019 (with a thesis on Administrative Law about the Pacts of collaboration). Now he is attending a PhD in Administrative Law at the University of Udine, as well as working as social protection consultant at INPS.

ANNA MOSNA is a postdoctoral researcher at the Leuven Institute of Criminology (LINC), KU Leuven. She holds a PhD from the University of Luxembourg, where she defended a doctoral thesis on 'Art Laundering', focusing on cultural property crime and laundering phenomena within the art market. Her research interests further lie in topics of judicial cooperation in criminal matters, including cross-border evidence gathering and defence rights protection.

CHIARA NOTARANGELO was born in Bari (BA) on Apr 12 1996 and she is currently living in Rimini. She is a PhD fellow in "Future Earth, Climate Change and Societal Challenges" (Department in Economics). Her PhD topics is on the Environmental Cost-Benefit Analysis of the innovative solutions for the Healthcare waste management. She is also interested in the field of behavioural economics, particularly on the role of miscommunication in shaping agents' choices. Her conception of doing research tends to have multidisciplinary shades, as she beliefs in the role of cooperation and sharing ideas among different subjects. She is currently tutor for the A.Y. 2022/2023 of: Statistics for Data analysis (MSc in John Hopkins University SAIS Europe), Behavioural decision making (MSc Economia e management – University of Bologna) and Cultura digitale (BSc in Management and marketing – University of Bologna).

MICHELE PANZAVOLTA is Associate Professor of Criminal Law at the Leuven Institute of Criminology (LINC), KU Leuven. He has experience as a practicing criminal lawyer in Italy. He specialises in European and international criminal law and in comparative studies on criminal law and procedure. His research interests are in intelligence-related topics, financial crime and asset recovery, digital evidence and, more generally, the protection of individual rights in criminal matters.

JOSÉ ANTONIO PEREA UNCETA. Senior Lecturer in Public International Law. He is the author of works such about the performance of the United Nations in the conflict in the former Yugoslavia (2000), the International Law of secession (2008) and *The foreign policy of the EU in the Caucasus: The different performance of international organizations in the Nagorno-Karabakh conflict* (2021), and co-author – among others – of work about creation of States, secession and recognition (2019) and *Secession*

and Statehood: Lessons from Spain and Catalonia (London, 2021, both with Ana Gemma López Martín). He has published numerous collaborations in collective works and articles on human rights, secessionism, peacekeeping or cultural heritage in Spain and also in Germany, Mexico, Peru or Colombia, and has given conferences on these topics and others, such as armed conflicts, in different universities and countries, such as Morocco or Portugal. He is currently Academic Secretary of the Department of International Law, Ecclesiastical Law and Philosophy of Law at the Complutense University of Madrid and Co-director of its Master's Degree in International Promotion and Defense of Human Rights. He is a member of the UCM Research Group "Globalization, human rights and the European Union" and a participant in various research projects, such as the one related to "Cultural rights as an element of integration of the European Union and the constitutional identities of its Member States", and has served as an advisor on UNESCO regulations for the ecclesiastical managers of the Cathedral-Mosque of Córdoba.

Ivano Pontoriero. Associate Professor of Roman Law, responsible for the courses of Institutes in Roman Law, History of Roman Law, Roman Foundations of European Law within the single-cycle degree in Law of the University of Bologna (Ravenna Campus). He has been granted the qualification for the full professorship (ASN 2018). His main research interests concern the history of roman jurisprudence, roman tradition and the foundations of European law. He is author of four monographs: *Il prestito marittimo in diritto romano*, Bologna, 2011; *Il terzo libro del commentario di Paolo ad edictum. Parte prima*, Bologna, 2013; *I vizi del consenso nella tradizione romanistica*, Torino, 2020; *I Brevium [ad edictum] libri XXIII di Giulio Paolo*, Torino, 2023. He is the Principal Investigator of the University of Bologna Research Unit to implement the PRIN 2017 project "Italian Scholars in the face of the Race Laws (1938-1945): Ancient Historians and Jurists".

Alessandra Quarta is enrolled in the second year of the doctoral program in cultural and environmental heritage at the University of Bologna, with research focused on analysing the European Union's approach to cultural heritage. She received her single-cycle master's degree in Law *cum laude* in 2019, collaborating immediately afterwards with the chair of In-

ternational Law at the Ravenna campus as a teaching tutor until 2021. Since 2020, she has been teaching tutor of the Chair of European Union Law at the campus of Ravenna. Alessandra collaborated to the Volume *Tutela e valorizzazione del patrimonio culturale mondiale nel diritto internazionale*, edited by Elisa Baroncini, published by Bononia University Press in May 2021, in which she also wrote a chapter on the international and EU legal framework contrasting the illicit traffic of cultural goods. Since 2021, she has been a member of Una Europa's Seed Funding Project "WHC@50 Forever Young: Celebrating 50 Years of the World Heritage Convention", and in 2022, she joined the research team of the Una Europa's Seed Funding Project "ImprovEUorGlobe - The UN 2030 Agenda in the EU Trade Policy: Improving Global Governance for a Sustainable New World".

Raquel Regueiro Dubra, Associate Professor in International Law, Universidad Complutense de Madrid. She holds a PhD in Law (Universidad Complutense de Madrid) and a Law Degree (University of Geneva, where she also obtained a Diploma in Transnational Law). She is part of the Universidad Complutense research group "Globalization, Human Rights and International Law", and also is a member of the national projects "Transnational organized crime, multinational companies and human rights violations" (with the University of Salamanca) and "Women's liquid rights: the CEDAW 40 years later" (with Universidad Complutense de Madrid). Also published in several languages, highlighting *Shared Responsibility and Human Rights Abuse: The 2022 World Cup in Qatar*, in *Tilburg Law Review*, 25, 2020, 1, pp. 27-39; *Targeted killings of suspected terrorists in the light of the right of self-defence*, in *Revue Paix et Sécurité Internationales*, 2015, 3, pp. 143-164; *Surrogacy: from the denial of the rights of intended parents to the recognition of the rights of minors*, in *Actualidad Civil*, 2015, pp. 92-100; *The forced assimilation of the Uighur ethnic group as a crime against humanity*, in *Las minorías en el contexto actual*, dir. by A.G. López Martín, C. Otero García-Castrillón, Dykinson, Madrid, 2020, pp. 89-102; *Should we share? The United Nations and Troop-Contributing States Facing International Responsibility for the Sexual Crimes Committed by Peacekeepers*, in *Peacekeeping: Global Perspectives, Challenges and Impacts*, Nova Publishers, New York, 2018, pp. 463-491. She has coordinated the monograph *Antropología cultural del vestido: la perspectiva occidental sobre el burkini*, coord. by R. Regueiro, F. Amérigo, N. Del

Barrio, J. Hellman, Dykinson, Madrid, 2018, and participated in international seminars, highlighting her most recent contribution on *Lethal autonomous weapons and the challenge to humanitarian and human rights law*.

Costanza Rizzetto is PhD Candidate in International and Public Law, Ethics and Economics for Sustainable Development at the Department of Italian and Supranational Public Law of the University of Milan. She has been Visiting Researcher at the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law and she is part of the Italian Society of International Law (SIDI-ISIL) Thematic Group of Interest "Diversità culturale e diritto internazionale ed europeo". She is currently working on the international project "Dictionnaire du patrimoine culturel" directed by the Université de Paris Panthéon-Assas and she has been lecturer in several conferences, both at the Italian and international level, dealing with relevant issues of international public law in the field of cultural heritage. She holds an LL.M. from the United Nations Interregional Crime and Justice Research Institute of Turin and a Double Master's Degree from the University of Milan and the University of Toulouse I Capitole. Her research interests include international criminal law, international human rights and cultural heritage law.

Candida Rolla holds a Bachelor's Degree in Architectural Restoration from the University of Genoa and a Master's Degree in Architecture for Restoration and Heritage Valorization from Politecnico di Torino. After her experience within the Erasmus Scholarship Thesis Abroad program at the School of Architecture and Planning, University of Auckland, she started working as Architectural Conservation Assistant, where she currently works. She is also PhD candidate at the School of Architecture and Planning of the University of Auckland.

Rebecca Rossetti was born in Poggiardo (LE) on the 27/05/1996 and now living in Bologna. She is a PhD student at University of Bologna in "Future Earth, Climate Change and Societal Challenges", with the research topic on "Smart mobility hubs for a sustainable and integrated mobility" (Department of Economics). Most of her research in devoted to environmental and sustainable issues in many sectors, from the economic to the social one, with a deep interest in the interdisciplinary opportu-

nity that these topics offer. She also improves these subjects through daily volunteer experiences and associations, for the implementation and application of good sustainability practices. Furthermore, she is the tutor for the A.Y. 2022/2023 of: *International Trade in Services*, from the Bachelor in Economics of Tourism and *Open Your Mind: A class Without Borders* from the Bachelor in Economics and Finance, both in the University of Bologna. Her recent research activities include the collaboration with: CNR-ISMAR of Bologna about environmental migration and climate change, with the publication of the e-book *Umanità in movimento tra desideria e necessità. Tra cause naturali e forzature socioeconomiche*; Permanent Representation of Italy at ONU (Geneva) with the role of traducing in Italian the press conferences of WHO and other UN agencies, drafting reports and analysis with a regulatory, financial, and technical perspective, creating content for the institutional website and social media of the Headquarters.

Francesca Sabatini, PhD in architecture with a thesis on the urban commons and urban regeneration; she is Research Fellow at the University of Bologna, where she is part of the TRACE research team (Technology and Resilience in Architecture Construction and Environment). She is Adjunct Professor in Management of Cultural Events at the LUMSA University, Rome. She carries out professional freelance activity as a project manager in support of public administrations and the cultural sector with public tenders and funding in the domains of culture and of urban and territorial regeneration. She holds a master's degree in Innovation and Organization of Culture and the Arts from the Department of Economics, Management and Statistics, University of Bologna.

Irene Sacchetti is a PhD candidate in International Law at Nottingham Law School (UK). She graduated in Law *cum laude* from the University of Bologna (Italy); Irene previously joined the Institute of Advanced Sustainability Studies as a Research Fellow, and she worked for the Czech Academy of Sciences and for the Geneva International Centre for Justice. Irene is part of the Centre for Rights and Justice and the Postcolonial Research Centre of NTU and the IUCN World Commission on Environmental Law.

Ruxandra-Iulia Stoica is an architect and urbanist specialising in the historic environment educated at Ion Mincu University of Architecture and Urbanism, Central European University, and the University of Edinburgh, where she pursued PhD research on "Ideology of Urban Conservation". She was inspector of historical monuments, Romanian Ministry of Culture; consultant to Integrated Territorial and Urban Conservation programme, Heritage Settlements Unit, ICCROM; editor of Edinburgh Architecture Research journal; coordinator of £1mil. Edinburgh Cast Collection project. Stoica is currently Lecturer in Architectural Conservation, Director PhD/MPhil in Architecture by Research, Depute Director of the Scottish Centre for Conservation Studies. She is co-investigator in cultural heritage research projects of Una Europa consortium of universities and is an expert member of the International Scientific Committee for Theory and Philosophy of ICOMOS, Forum UNESCO – University and Heritage, and co-founder of the Schools of Architecture + World Heritage network.

Claudia Tubertini is Associate Professor of Administrative Law at the University of Bologna, Department of Legal Studies, and Professor at the School of Specialization in Public Administration Studies. She is author of numerous publications on administrative organization, regional and local law. On the subject of cultural heritage, she has published essays, collective works, and has collaborated with the editorial staff of *Aedon. Rivista di arti e diritto on line*.

TABLE OF CONTENTS

Volume I

Section I – From Cultural Property to World Heritage

Volume II

Section III – Cultural Heritage and the 1972 UNESCO Convention in Europe and its State Contracting Parties

Un'anima per il diritto: andare più in alto
Collana diretta da Geraldina Boni

1. Costantino-M. Fabris, *Foro interno. Genesi ed evoluzione dell'isituto canonistico*, 2020.

2. Geraldina Boni, *La recente attività normativa ecclesiale:* finis terrae *per lo* ius canonicum*? Per una valorizzazione del ruolo del Pontificio Consiglio per i testi legislativi e della scienza giuridica nella Chiesa*, 2021.

3. *Libertà, dubbio, coscienza morale. L'eredità di un Maestro: Arturo Carlo Jemolo (1891-1981)*, a cura di Beatrice Serra, 2022.

4. *Dante e Diritto. Un cammino tra storia e attualità*, a cura di Federico Casolari, Alessia Legnani Annichini, Giorgio Spedicato, 2022.

5. Beatrice Serra, Intimum*,* privatum*,* secretum. *Sul concetto di riservatezza nel diritto canonico*, 2022.

6. *Forever Young. Celebrating 50 Years of the World Heritage Convention*, 2 Voll., edited by Elisa Baroncini, Bert Demarsin, Ana Gemma López Martín, Raquel Regueiro Dubra, Ruxandra-Iulia Stoica, 2023.

This open access publication gathers young and senior scholars of the Una Europa Universities to celebrate the first fifty years of the UNESCO 1972 World Heritage Convention (WHC). Financed as a Seed Funding Grant of the Una Europa Alliance, the WHC@50 project offers an interdisciplinary analysis of the WHC, the jewel of the UNESCO Conventions. By introducing the (r)evolutionary concept of World Heritage and involving the International Community as a whole in the preservation, valorization and transmission to future generations of cultural and natural sites and landscapes of outstanding universal value, the WHC is indeed one of the major treaty instruments of our age. We therefore hope, through the final results of the WHC@50 research cooperation activity, to contribute to the dissemination of the WHC knowledge, attracting the attention of academics, politicians, experts, officials and civil society, and contributing to the debate for strengthening the 1972 UNESCO Convention, suggesting solutions to overcome the problematic aspects of its implementation and activities.

Elisa Baroncini, Bert Demarsin, Ana Gemma López Martín, Raquel Regueiro Dubra, Ruxandra-Iulia Stoica

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