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**Landscape as Heritage:
Negotiating European Cultural Identity**

Monica Sassatelli (Editor)



EUROPEAN UNIVERSITY INSTITUTE
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Edited by
MONICA SASSATELLI

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Abstract

This collaborative Working Paper is the final and re-elaborated product of a workshop held at the EUI, organised in the framework of a working group on Cultural Heritage. It is meant as a document of ongoing debate and research around the theme of landscape, and of a redefinition of the theme itself as an object of inquiry and policy of which the recent European Landscape Convention (ELC, Council of Europe, 2000) is at the same time a cause, an effect, and a symbol. The approach and ambition of this working paper is to draw together different disciplinary approaches to landscape, conceived *as heritage* and therefore connected to the construction and meaning of cultural identities. Vice versa, the perspective is that of unveiling the consequences for identity construction of conceiving heritage *as landscape*. This overall objective has been articulated in three sections, in which the contributors have both offered their specific disciplinary expertise, and tried to explore different approaches.

The first part addresses the definition of landscape as heritage by drawing on both recent theorising and current institutional developments at the European level. The second part tries to expose the relationship of identity and landscapes, both constructed and contested, focusing on the relationship of territory to the collective imagining of communities in Europe. The third part, the most disciplinary oriented, considers how landscape became a legal object. Conclusive remarks by one of the fathers of the ELC stress both the institutional perspective of the COE and the need for a constant dialogue between disciplines and between academics and policy makers with regard to landscape.

Keywords

Landscape; identity; European identity; heritage; landscape policies; landscape law.

Introduction

This collaborative Working Paper is the final and re-elaborated product of a workshop held at the EUI, in its turn collaboratively organised in the framework of a working group on Cultural Heritage.¹ It is meant as a document of ongoing debate and research around the theme of landscape, and of a redefinition of the theme itself as an object of inquiry and policy of which the recent European Landscape Convention (from now ELC; Council of Europe, 2000) is at the same time a cause, an effect, and a symbol. The approach, and ambition, of this working paper is to draw together different disciplinary approaches to landscape, conceived *as heritage* and therefore connected to the construction and meaning of cultural identities. Vice versa, the perspective is that of unveiling the consequences for identity construction of conceiving heritage *as landscape*. This overall objective has been articulated in three sections, in which the contributors have both offered their specific disciplinary expertise, and tried to explore different approaches.

The first part addresses the definition of landscape as heritage by drawing on both recent theorising and current institutional developments at the European level. The specific relationship that the discourse of landscape bears to identity is investigated by a philosopher, Raffaele Milani, and a lawyer, Kathryn Last. At times they seem to exchange their disciplinary approaches in the effort to pin down how a complex, value-laden and historically nuanced concept such as landscape can be pivotal for designing new policies where the well-being, sense of place and self, and participation in the democratic process of citizens would be central. This part also serves as an introduction to how the discourse of European identity/ies negotiates different visions of its relationship to cultural heritage.

The second part tries to expose the relationship of identity and landscapes, both constructed and contested, focusing on the relationship of a particular territory to the collective imagining of communities. Monica Sassatelli directly addresses the current and expected effect on identities of the ELC, looking at some examples of local implementation. Colin Kaiser explores how the layering of landscapes has created conflicts and is being used to facilitate post-conflict reconstruction, intercultural and intergenerational dialogue in the case of the Former-Yugoslavia.

The third part, the most disciplinary oriented, considers how landscape became a legal object. It examines the legal grounds (mainly, public interest), and extent to which landscapes are protected, as well as exploring the concepts of landscape used in legislation, which are operative and differ from those used in other social sciences. These issues are tackled in the papers of Gian Franco Cartei and François Lafarge, concentrating respectively on a comparative approach between some key national cases and on the international and European level.

Finally, what was in the workshop a final session of discussion, cogently introduced by Riccardo Priore, one of the fathers of the ELC within the Council of Europe, is here crystallised in his re-elaboration of those comments, which stresses both the institutional perspective of the COE and the need and attempt to foster a constant dialogue not only between disciplines and very diverse situations related to national traditions, but also between academics and policy makers.

-Monica Sassatelli, Editor

1 The workshop was held on 10 June 2005. The contributors would like to acknowledge the chairs and discussants of the Workshop, and other members of the Working group who actively participated in the organization of the workshop: Francesco Francioni, Bruno de Witte, Ana Vrdoljak, James Kaye, Matthew Mcgeever, Jasper Chalcraft, Emanuela Orlando and the staff of the Robert Schuman Centre.

I. Theorising Landscape and European Cultural Identity

The Idea of Landscape and the Perspectives of a Common European Policy

Raffaele Milani

Aesthetics of Landscape

The sight of a beautiful landscape has always fascinated us but our judgement of it changes together with the language we use to describe it.

What do we think of when we think of the aesthetics of landscape? We certainly think of a feeling and a judgement of taste related to nature, ethics, freedom, the artificial, imitation, the imagination and sensory experience. At the same time this map of relations is informed by reflections on what is ancient and what is modern, on what appears to be lasting and what proves to be improvised or ephemeral, but it is also informed by the meaning of human work from the garden to cultivations, as well as a criticism of the observing eye: is it the individual that activates the beauty of the things around him/her, or do these things reveal their beauty independently of the individual?

During the 18th Century all these themes formed a systematic intermingling within which a categorical spectrum of taste was found: beauty, grace, the sublime, the picturesque, the *je ne sais quoi*, the neo-Gothic. These complex ideas together with the great historic-stylistic models such as the classic, the baroque, the rococo, and the romantic were closely connected with the reception of landscape and with the sentiment of nature. Every landscape in fact belongs to man, his activity, his freedom, and his being a maker who creates, modifies, constructs and transforms by means of art and technique. We know that a work of art, as distinct from a natural effect, is the work of man. However, landscape too can itself be considered the result of art, the effect of man's doing, acting and feeling through freedom. Landscape is a manifestation of human freedom in nature, as J. Ritter declared (1963) or, as Simmel argued in 1913: 'Landscape is nature that reveals itself aesthetically'.

In the middle of the 20th Century Martin Schwind (1950) observed that landscape could be considered as the art of a people, and as the expression of its culture and spirit. A comparison can be made with the work of art produced by a single man or a team, but in a more complex manner. This consideration is useful also for the European area in which we discover the result of continuous cultural interactions between different peoples over the centuries. We have witnessed different modifications of the sites, together with numerous transformations of the forms and of representation of nature. We can see an important exchange between tradition and innovation, thus the landscape appears as an interethnic and transcultural result. When we speak about an aesthetics of landscape, we mean the different beauties of the territory, and refer to a possible work of art.

The landscape is a work of art because it is the object of man's work and skill and, at the same time, because its arrangement appears as a natural product of forms. The things around us live on man's feeling. We perceive, imagine and shape at the same time. In enjoying and contemplating, we become artists who perceive the landscape as an aesthetic experience. Thus the aesthetics of landscape as such cannot avoid the analysis of movement viewed as one of the qualifying aspects of nature, the artist of the cosmos, together with man, the artist of feeling. The landscape in fact presents itself according to mutable events shaped by the seasons, meteorological elements, winds and the action of the elements: earth, water, air and fire. Nature is the creator of mutable events. A very clear idea of its aesthetic contemplation comes from Schopenhauer (*Chapter XXXIII: Isolated Remarks on Natural Beauty*). He explicitly declares: 'a beautiful view is therefore a cathartic of the mind, just as music according to Aristotle is of the feeling, and in its presence one will think most correctly' [*Eine schöne Aussicht ist daher ein Kathartikon des Geistes, wie die Musik, nach Aristoteles, des Gemütes, und in*

ihrer Gegenwart wird man am richtigsten denken]. These reflections are influenced by several passages in paragraph 39 of *The World as Will and Idea* where the sentiment of the sublime and of the variety of nature in the representation of our mind is discussed. The cathartic effect and the principle of annulment are valuable in aiding our understanding of the very quality of feeling and contemplating.

Any parcel of land can become an archaeological site for our contemplative spirit. This is true because the spirit of contemplation allows us to perceive and search for the hidden presence of history and culture, to discover enduring evidence of the ineffable beauty of the forests, fields and rock formations. In this sense, human beings create the world, we are demiurges; originally, we were farmers and gardeners. In the Hebrew Bible humanity is the custodian of the house of God and protector of his lands.

The Greeks had no word for landscape, but used a variety of expressions and terms that revealed a profound love for nature and the 'spirit of the place'. In Homer there is a perception of the beauty of the landscape (*Homeric Hymns*, III, 225-228) and the idea that a place could be thought of as space from which to observe the surrounding scenery (*Odyssey*, X, 146-147; 97-98). I do not think that we can call the Greek landscape 'proto-paysage' as A. Berque (1995) has done by making a distinction between societies in which the landscape is an explicit value and those societies in which it is implicit. A recent form of representation, landscape is in fact an ancient idea pertaining to the feeling of wonder aroused by meditation (M. Heidegger, *Grundfragen der Philosophie. Ausgewählte 'Probleme' der Logik*, 1936-7). Plutarch shows us that nature is alive when Pan is alive; the screeching owl is Athena, the mollusc on the shore is Aphrodite; the gods live in their biological forms. However, he also notices a change: crags, thickets and localities also become symbols. In the mental representation of the ancients, we find a mixture of religion and nature, as Strabo also makes clear.

The dialectical relationship between the ancient and the modern always reappears, although it is being threatened by globalisation: the beautiful in nature arouses the feeling of something that is forever in the past, of a loss that modern humankind has replaced with feeling and idealization. In antiquity every place was the kingdom of a god. Every site was the object of a cult or memorial operating through the layers of successive cultures. Caves, trees, shorelines and rocks were the sites of oracles. Myths and legends provide us with the framework for such a fusion by describing places enchanted by an aura of mystery.

The ancient places of worship were selected on the basis of their geological features as well as that indefinable something; these were sites dear to the gods where they could build their terrestrial homes. Thus Apollo, an oracle associated with the beauty of the sun, is rich in allusions and mysteries that make his shrines powerful and attractive. This is also true of the myths of the 'great mother' with her physical attributes: oaks, springs, caverns and grottos. From these arguments we can say, as Martin Schwind (1950) would, that our landscape is a 'cultural landscape' in which we find traditions and innovations. The image of the landscape admired as a product of 'natura naturans' is, on the contrary, an image of 'natura naturata'. At the end of the 1980's M. Dufrenne interpreted the two concepts in the light of a new anthropology.

Different approaches suggest the complexity of the idea of a landscape European identity. They can design an identity of multiplicity, an identity of differences. The landscape provides the form and the image of human knowledge. The identity of the Europe as the abode of peoples, who shaped and represented the surrounding environment, may therefore be seen in the realms of *poïesis* and the symbolic.

On the basis of the theory of landscape examined above, experience indicates that an environment that provides us with aesthetic satisfaction is also a healthy and sound environment to live in. We may start from this contradiction to look at nature as the result of culture and history, namely, as the natural and/or urban landscape. In this case, we view it from a phenomenological and relational aesthetic perspective, thus going beyond the limits of a merely objective or subjective definition of natural beauty—which is indeed so varied and diverse. This vantage point becomes even more effective when analyzing the environmental change dynamics, in other words, when we realize that a natural

landscape image—i.e. a landscape made up of ‘places’ (the places that identify memory and cult)—is today mixed up with another type of landscape, which instead appears to be made up of ‘non-places’. The phenomenological perspective proves to be helpful for the understanding of the intersection and transformation of places and non-places.

This critique of the ‘non-places’ could be read as the starting of improvement strategies to create new architectural arrangements. In this case Augé would not see correctly the forms of the neo-industrial exploitation of the space extended between cities and countries. The development of the contemporary context can be read and interpreted from another point of view, as to take into account not just the transformation of places but the tragedy or agony that nature itself is confronted with, due to environmental disasters, or to hydro-geological damage provoked mainly by man. While the tragedy of nature occurs in certain places, at the same time, somewhere else, nature conservation projects are enacted. As a matter of fact, two opposite forces are at play: on one hand, destructive forces (wars, natural disasters) and, on the other hand, reshaping constructive forces (landscape architecture, restoration of cities, etc.). This may seem paradoxical but it is true: violence and aggressiveness on one hand, peace and harmony on the other hand. Yet, destruction today only leads to ruins and debris, being totally insensitive to memory and time. No ruins exist that can make us think of an illusion of eternity or be evocative of a melancholic or nostalgic aura, as might have been the case in the 18th century. They simply are the remains of an outburst of violence to be eliminated and an empty space to be filled in. In this kind of observations, the point of contact between places and ‘non-places’ is characterised by suffering and atrocity, a fit of destruction that derives from war, terrorism and speculation.

The aesthetic experience that we achieve in nature with the perception of the landscape is completely perturbed in the post modern age. But natural beauty exists in Europe as a result of myth, culture, history. And this is what we have to safeguard as technological changes are concerned. In this way, we do not lose the quality of the identity of the places to preserve and protect.

Yet, where does the image of the natural landscape come from? When we talk about nature we refer to all those things that surround us and that are laden with human, cultural and historical values, as has always been stated. Simmel observed that the configuration of the world after the Middle Ages, upon the decline of symbolic thinking, for the first time disclosed to us the landscape of nature. It is no surprise, therefore, that in the Middle Ages or in ancient times it was not possible to seize the meaning of landscape, in the sense of the significance of details linked to one’s state of mind. As a matter of fact, it was not until the 15th-16th centuries that the formal independence of the spiritual act of landscape translated into landscape painting. Simmel also added that only recently has aesthetic form succeeded in finding richness and reconciliation in the landscape in relation to nature; whereas, the recent development of society, technology and morality has caused a rupture in human culture. Landscape remains substantially linked to nature, to its unity and wholeness, in spite of its restrained focus on the individual perspective. When we observe and admire a landscape, we move towards an enhancement and purification of the process through which landscape is perceived as a work of art, beyond its relationship with painting. Just like artists would do, although to a more limited extent, observers act and cut out the immediately given, chaotic and boundless world to enhance all this as a self-standing meaningful unity, first by taking a distance from the world but then rejoining it. Simmel goes on to say that art derives from life, from the existing phenomena that give form to things. In his view, a landscape should no longer be regarded as a sum of individual natural objects, but as a work of art at its inception. Given this concept and perspective, the act of vision blends itself with the act of feeling. The unity of the various elements revolves around the *Stimmung* principle of landscape. *Stimmung*, being a psychic process, is a property of landscape itself, which means that the landscape has already transformed itself into a spiritual form. The unitary representation of the object and the feeling that accompanies it blend together: landscape is nature that reveals itself aesthetically. This may also be applied to Simmel. But we must to extend, deepen and renew this thought of natural landscape in the light of history, anthropology and culture.

In Defence of Landscape

Here is our point of view and idea of nature: nature is to be regarded as a natural and cultural landscape; as the result of man-made action, work and imagination; as a mental and psychological state. That is why destroying a landscape means seriously affecting the very heart of the historical and human community. If a defence of landscape and of the environment is to be seen as a social commitment, then 'a project of the human world' emerges. The reasons are many:

1) Each landscape is an ethic reality, field of action, experience of common human life, and a reality of transformation and of decision. Its essence belongs to practical philosophy.

2) Man is able to modify the environment in different ways. This choice is linked to his existence. The manner in which man acts and lives creates a project of human intervention, which means imagining a different reality. Man is capable of organizing and planning because he thinks about acts that transform existing situations into desired results (Venturi Ferriolo, 2002)

3) The project is aimed at transforming reality and is connected with the idea, more or less defined, of something that we intend to do or to undertake. This decision regards the choice of the methods by which the project may be realized. The world can be modified in the course of time by the intervention of man, therefore the reality in which we select and organize the elements can be changed. In this reality man's actions unfold.

4) Landscape belongs to man and man is its only true craftsman. As result, the landscape is a possible reality arising from the relationship between man and nature. The lesson of the Ancients is written in the varying kinds of beauty of every landscape and of every single garden. Landscapes and gardens are the irreversible results of transformation and effects of freedom (Assunto, 1973). Landscapes are in fact the fruits of human freedom that gives form, creates, modifies, builds and transforms through art and technique.

5) Landscape, considered as realm of contemplation, is produced by freedom; moreover is the result of art and the effects of the work and of the imagination of man. Martin Schwind declared that every landscape is a work of art comparable to any human creation, but far more complex: while an artist paints, a poet writes, the whole population creates its own landscape which becomes a deep memory of its culture: 'landscape leaves its imprint on the spirit of the people'.

6) Landscape as an art creates a site with distinctive characteristics and imagined in many ways and through different theories. The interplay between art and nature, and between nature and culture moulds landscapes of varying forms.

7) The conscience of human freedom is ancient, it comes from the origins of the agricultural civilization. The farmer was the free man who, living inside the landscape, belonged completely to nature, as united with the cosmos. For example, Sophocles, in *Antigone*, exalts the work of the farmer. In his discussion of the necessary arts, in *De natura deorum*, Cicero mentions the work of man who, with his hands, creates cities, walls, houses and temples.

8) The aesthetic experience presumes the inseparability of the contemplation of landscape from the life inside. To contemplate does not mean the refusal of doing. On the contrary, it prompts us to do and to do well, because we have seen and thought well. Landscape is nature modified by man, through the course of history. Landscapes are human products and, in this respect, though the technique differs, they are similar to paintings, sculptures and buildings.

Here is our point of view and idea: nature is to be regarded as a natural and cultural landscape; as the result of man-made action, work and imagination; as a mental and psychological state. That is why destroying a landscape (that is not territory, space, environment) means seriously affecting the very heart of the historical and human community. For this reason we should think of the Europe territories as a variably composed identity, aiming at a hypothesis of preservation, focusing the principles of the civilization founded on memory, tradition and intercultural and transcultural exchanges.

The prospects of a Common European Policy start from the principles declared in the Convention of Florence in 2000, as far as the formation of local cultures and culture heritage contributing to human well-being and to the range of problems of the identity are concerned. The project of a balanced relationship between the social needs, the economic activity in general, and environmental sustainability of an entire range of senses which gives the landscape a major role in the future of our civilization, thus promoting the need for preservation and the inevitability of the new *poiesis*.

In the wake of this, particular importance is attached to the perception and the action of the peoples, and to the defence of the landscape and the natural environment from which comes the necessary awareness that can be spread in the schools. We can envisage an education to the values of landscape that is parallel to the education to the values of environment.

Among with these objectives, and with an eye to an even greater qualification of the landscape, we can prepare a true critique of the landscape that can bring about useful interpretations for a transformation of the relationships adequate to the landscape as garden and soul of humankind.

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Heritage and Identity: the Challenge of Landscapes to the Nature/Culture Dichotomy

Kathryn Last

The preamble to the European Landscape Convention states that landscape ‘is a basic component of the European natural and cultural heritage, contributing to [...] consolidation of the European identity’ (ELC, Preamble). In this paper I will examine some of the key concepts underpinning this statement and will argue that the consolidation of European identity is unlikely to occur through the preservation of landscape. I will also argue that the concepts of landscape and heritage have a different meaning in the European Landscape Convention than in the UNESCO Convention for the Protection of World Cultural and Natural Heritage 1972.¹

Turning first to the issue of the consolidation of European identity through the preservation of heritage, before we can understand the relationship between heritage and identity, we must formulate a conception of heritage. However, defining heritage is a complex task almost as difficult as defining landscape.² Wagner has argued that ‘heritage’ is ‘the term we give to *a particular complex of remembering*, whereby the term ‘complex’ is also meant to capture the ideational character of a physical representation [...] which heritage can take in the form of buildings, sites, [and] practices’ (Wagner, 2000: 16) and, of course, landscapes.³ The concept of heritage, in his view, reflects the relationship between identity and remembering. As such, heritage is ‘a dynamic and defining part of the construction of an identity’ (Wagner, 2000: 22). This relationship is reflected in the 1974 Commission Recommendation Concerning the Protection of the Architectural and Natural Heritage, which states that heritage ‘reflects Europe’s cultural identity’.⁴ It can also be seen in the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, where it notes that ‘cultural heritage is an important component of ... cultural identity.’⁵ Indeed, Muir has stated that landscapes are ‘a significant component of the overall heritage which endows communities and nations with their identity’ (Muir, 1999: 37), a sentiment echoed by Lowenthal, who regards landscape as ‘a compelling symbol of national identity’ (Lowenthal, 1993: 6).

However, Lowenthal’s remark points to a potential problem with the European Landscape Convention’s conception of the role of heritage in the formation of identity: although heritage is associated with identity, it is most often associated with national identity. Wagner notes how ‘As a modern endeavour, the question of identity found its answer in the idea of the nation’ (Wagner, 2000: 17). However, this focus on the nation can create difficulties when trying to construct a ‘European identity’, an issue raised by Wagner who notes the ‘unresolved tension between the universal and the particular in the identification of Europe’ (Wagner, 2000: 14). Although Weber perceives heritage as ‘the key component of the multiple identities that shape Europe’ (Weber, 2000: 5) they are national identities. Indeed, Weber goes on to point out that, ‘the local sphere may be the level at which the individual needs for a sense of identity and belonging find expression’ (Weber, 2000: 6). As

1 Hereafter referred to as the World Heritage Convention.

2 Heritage is, according to Eidsvik (1993: 43), ‘a little understood concept’. On landscape see Olwig (1996).

3 See, for example, Scottish Natural Heritage, Sustainable Development and the Natural Heritage: The SNH Approach, 1993, page 1, which includes landscape within its definition of heritage.

4 Commission Recommendation Concerning the Protection of the Architectural and Natural Heritage 75/65/EEC, OJ L 021, 28/01/1975 P. 0022-0023, paragraph 1.

5 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage 2003, preamble. Similarly, the UNESCO Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions states that cultural goods (which are often viewed as constituting heritage) ‘convey identities’: UNESCO Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions CLT/CPD/2004/CONF-201/2, July 2004, preamble.

Lowenthal has said in the context of Great Britain, 'Heritage normally connotes English, or Scottish, sometimes British, seldom European' (Lowenthal, 1993: 3). Although heritage is given prominence in the definition of European identity, Wagner argues that 'the notion of such a European identity is quickly laid to rest by the insistence on "difference" and the proclamation of the existence and contribution of all the national and sub-national "cultures" to the making of Europe' (Wagner, 2000: 14).⁶ This perhaps reflects the view of Kielmansegg, that: 'collective identities are created, stabilized, and reproduced by communities based on communication, experience, and memory.' Europe, he argues, 'is not a communication community, barely a community of shared memories, and only in a limited sense a community of shared experiences' (quoted in Wagner, 2000: 9).

In order to overcome this, heritage has often been proposed as the answer to the construction of a European identity and this is clearly reflected in the preamble to the European Landscape Convention (Clark and Drury 2000, 114). Landscape can play a key role in the formation of identity and Schama argues that 'national identity [...] would lose much of its ferocious enchantment without the mystique of a particular landscape tradition' (Schama, 1995: 15). Similarly, Meinig contends that landscapes 'are part of the iconography of nationhood, part of the shared set of ideas and memories and feelings which bind a people together' (Meinig, 1979a: 164). However, landscape is poorly placed to perform the role of consolidating European identity because, of all types of heritage, it is one whose significance is regional rather than pan-European. This is partly a consequence of the fact that: 'differences in perceived landscape values have been found when there were significant differences between cultures ... and their respective native landscapes' (Laurie, 1975: 107). It is also why Lowenthal emphasises that 'Europe's landscapes [...] remain compelling icons of *national* identity' (Lowenthal, 1994: 30).

The second issue I wish to address is the implicit dichotomy between culture and nature in heritage discourse, what Jones refers to as a 'false distinction' (Jones, 1993: 18), and the implications of this for the preservation of landscape. According to Wagner, the relationship between heritage and identity is symbiotic. He argues that identity and heritage are contingent upon one another, that there is 'no identity without an act of remembrance of some origin(s) and that, which is remembered as origin(s), is constructed into the identity's heritage' (Wagner, 2000: 17). Heritage indeed plays a key role in formulating identity, and 'for identity to be meaningful it needs a source which provides legitimacy to what is in essence a voluntaristic act: the positing of an identity' (Wagner, 2000: 16). I would submit that heritage is not as intrinsically tied to identity as Wagner suggests. His focus is on remembrance and the past, yet heritage also connotes a conception of the future. It is not simply about our inheritance, but also what we will pass on to future generations, an idea implicit in the drive to 'preserve' heritage. In this way, heritage can be argued to exist outside the realm of identity. Although identity may be intrinsically related to heritage, the construction of heritage is not necessarily dependent upon identity.

The conception of heritage as contingent upon identity leads to an emphasis on 'cultural heritage' and the marginalisation of 'natural heritage'. This is evident in Wagner's emphasis on culture as a mediator between heritage and identity. Culture, he contends, is the 'perspective, the *gaze*, which connects the present moment of identity to the past moment of heritage by giving heritage a presence in that present moment' (Wagner, 2000: 16). Similarly, the UNESCO Universal Declaration on Cultural Diversity notes in its preamble that '*culture* is at the heart of contemporary debates about identity' (emphasis added). Although 'heritage' is a rather elusive and protean concept, its parameters arguably extend to nature as well as culture.⁷ Indeed, the European Landscape Convention refers to 'natural heritage' in its preamble.

6 This is resonant of the critique of the concept of 'world heritage' by Musitelli who notes the 'difficulty of clearly articulating the relationship between universality and cultural diversity' (Musitelli, 2002: 328).

7 For example, s.1 of the Natural Heritage (Scotland) Act 1991, which refers to the 'natural heritage'.

Yet this focus upon culture is pervasive. It can be seen in the discourse on landscape where a number of authors have argued that landscapes are a purely cultural phenomenon.⁸ For example, Muir states that ‘with the exceptions of [...] a few retreating wilderness areas, landscapes are cultural products so that their preservation and maintenance would concern the conservation of a culture rather than of a countryside’ (Muir, 1999: 44). Cosgrove has also asserted that any human intervention in nature involves its transformation to culture (Cosgrove, 1989). This is a consequence of the identification of landscapes as heritage because of their relationship to remembrance and history. For example, Muir argues that ‘The association between landscape and history converts landscape into heritage’ (Muir, 1999: 42). We see again the emphasis on the past as a constitutive element in identifying heritage. However, it is submitted that there are factors other than simply history that constitute landscapes as heritage.⁹

Landscapes represent both cultural *and* natural heritage. Lowenthal’s view is that the word landscape ‘subsumes three vital concepts: nature as fundamental heritage in its own right; environment as the setting of human action; and sense of place as awareness of local difference’ (Lowenthal, 1994: 4). Landscapes are therefore not merely manifestations of culture; they are also areas of nature. Our conception of landscape is, according to Nys, ‘linked to the manner in which the European mind conceives of and construes the relationship between human society and nature’ (Nys, 2000: 68). Although some would argue that our conception of nature is culturally determined (Simmons, 1993) deep ecologists would challenge such a social constructionist standpoint, which creates a nature knowable only through human cognition, and view nature and culture as distinct. Thus although many commentators regard landscapes as cultural heritage, it is arguable that they are also natural heritage. Indeed, in discussing the evolution of the concept of landscape, Jones notes that at one point ‘the words nature and landscape became almost synonymous’ (Jones, 1993: 22).

Interestingly, the legal approach to the protection of landscapes has often been to focus on their natural heritage value. The World Conservation Union, which had its origins in the protection of flora and fauna, has shifted its perspective from nature reserves to encompass landscapes as part of the natural heritage (Eidsvik, 1993: 45). It seems that landscape can therefore be seen as natural heritage in addition to cultural heritage, as ‘an interface between nature and culture’ (Lucas, 1992: 2).

The disjuncture between approaches to landscape perhaps reflects Muir’s point that there are different ways of perceiving landscape: ‘On the one hand there is the conventional practice of regarding landscape as a material or tangible portion of a natural and cultural environment. On the other hand there is the treatment of landscape as a way of seeing’ (Muir, 1999: xiv).¹⁰ Although much of the discourse on landscapes adopts the latter approach, the approach taken by legal instruments has tended to focus on the former, relying on tangible characteristics to identify landscapes worthy of preservation because these are easier to enumerate. Furthermore, the natural as opposed to cultural aspects are often given precedence because of the tendency to rely on scientific, ecological criteria. So although sociological discourse classifies landscapes as cultural heritage, legal mechanisms often treat them as natural heritage.¹¹ For example, the World Heritage Convention, which protects both cultural and natural heritage, protected landscapes as ‘natural heritage’ until recently. The concept of heritage in the Convention clearly distinguishes culture and nature and Musitelli notes the ‘artificial distinctions between natural and cultural goods’ in the Convention (Musitelli, 2002: 329).

This distinction can be seen as a product of Enlightenment thinking and the idea of man moving from a state of nature towards civilisation and culture. It has been argued to stem from Descartes’ work on rationalism, which separated the physical from the conscious. However, this dichotomisation

8 See for example the collection of essays edited by Cosgrove and Daniels (1981).

9 Meinig examines a number of different values attributed to landscape (Meinig, 1979b).

10 This echoes Tuan’s view that ‘Landscape is... a construct of the mind and a feeling’ (Tuan, 1979: 89).

11 See, for example, s.1 of the Natural Heritage (Scotland) Act 1991 and s.45 of the Deer (Scotland) Act 1996.

has lead to a reification of cultural expression as a 'superior' form of heritage, in preference to natural heritage. This is evident in the fact that cultural heritage was often preserved earlier than natural heritage, unless the natural heritage was of economic value.¹²

The view of nature that is perpetuated by this approach is one of wilderness, untouched by man: nature is non-social and non-human. This sentiment relates to the perspective that regards humans as separate from nature and nature as something to be controlled and manipulated for human use.¹³ Such an approach leads to the characterisation of landscapes as a cultural phenomenon, because most landscapes show evidence of human interaction with the environment. Nature, according to this view, is a primeval state out of which we have evolved and is a matter of curiosity for scientific study. Thus, the identification of natural heritage focuses upon geological, biological and ecological criteria. Emphasis is placed upon the scientific interest of nature and originally approaches to its preservation were simply about creating sanctuaries where man's influence could be excluded.¹⁴ This approach to nature ignores the fact that 'most ecosystems are anthropogenic. In other words, the physical and biological landscape is a human product' (Barsh, 1999: 17). Taken to its extreme, the consequence is that the definition of nature is severely limited and approaches that focus upon the cultural aspects of landscapes ignore their status as nature and perpetuate this nature/culture dichotomy.

This dichotomy also implies a conception of cultural heritage as deracinated from its environment, as merely an accumulation of individual artefacts and monuments. Indeed, Wagner has identified such an approach in the present practice of the Council of Europe with 'the reduction of "cultural heritage" to the preservation ... of monuments ... and practices associated with national traditions' (Wagner, 2000: 9). Furthermore, the emphasis on the tangible manifestations of culture leads to allegations of elitism¹⁵ and a preference for 'high culture'.¹⁶

The dichotomy is pervasive and the consequence of cleaving culture and nature is that the preservation of landscapes cannot easily be reconciled within existing legal regimes, because of the evolution of distinct legal regimes for the protection of cultural and natural heritage. This is particularly evident in international law, which distinguishes between natural landforms, cultural monuments, moveable cultural property and the performing arts. The primary international legal instrument dealing with both culture and nature is the World Heritage Convention. However, even this perpetuates the nature/culture dichotomy by requiring sites to qualify as either a natural or cultural

12 For example, the English game laws, which preserved certain species for the king to kill. The concept of preservation came about with the rise of historicism (Hunter, 1981: 31). As a consequence, preservation could be seen as a challenge to Enlightenment thinking and the idea of perfectibility and improvement. Despite this, the legal approach to preservation can be seen not as a challenge to this Enlightenment approach but to perpetuate the Enlightenment dichotomy between culture and nature.

13 This can be contrasted with the view of nature espoused by deep ecology.

14 Occasionally nature will be preserved for aesthetic reasons, but these are often secondary to an area's scientific interest. The development of nature protection in Great Britain highlights this distinction between science and amenity (see Sheail, 1976).

15 The elitism has, of course, decreased over the years. For example, in Great Britain, early efforts at preservation of cultural heritage concentrated on only the oldest and rarest buildings and structures such as prehistoric and Roman remains, ruinous abbeys and castles. From the late 1930s, this was followed by an increasing concern at the fate of great houses and more recently, concern has extended to whole towns and districts and also to rural vernacular and everyday townscape (British Tourist Authority, 1980: 3).

16 This has been evident in approaches to ethnographic collections in museums, which are often not perceived as 'art'. Such an attitude was clearly shown by Lord Francis Hervey in the debates on the Bill for the Preservation of Ancient Monuments 1875, when he declared in relation to Stonehenge: 'England was once inhabited by barbarians [...] who stained themselves blue, ran about naked, and practised absurd, perhaps obscene, rites under the mistletoe. They had no arts, no literature; and when they found time hanging heavily on their hands, they set about piling up great barrows and rings of stone. Were these the monuments [...] to preserve?' Parl Debs (series 3) vol 223 col 886 (14 April 1875).

site.¹⁷ It was 1984 before so-called ‘cultural landscapes’ were considered for inclusion on the World Heritage list,¹⁸ and when assessing whether a site possessed outstanding universal value in order to qualify as a World Heritage Site the criteria were separate for cultural and natural heritage until 2003.¹⁹

A reinterpretation of the Convention was necessary in order to accommodate cultural landscapes. In 1992, the World Heritage Committee at its sixteenth session adopted guidelines concerning their inclusion in the World Heritage List. However, the means of accommodating their protection depends on the particular type of landscape and the definition of ‘cultural landscape’ is fraught with difficulties, particularly because of the necessity to avoid Eurocentric conceptions. The Cultural Landscape Foundation identifies categories including: historic designed landscapes, historic vernacular landscapes and ethnographic landscapes. These are broadly synonymous with the three categories identified by UNESCO: landscapes designed and created intentionally by man, organically evolved landscape^s and associative cultural landscapes.²⁰ Note that there is no room here for ‘natural’ landscapes, because the recent approach of the World Heritage Convention has been to treat landscapes as cultural.

The first category is the clearly defined landscape designed and created intentionally by man.²¹ This includes garden and parkland landscapes, which are traditionally protected as manifestations of cultural heritage.²² The second category is the organically evolved landscape,²³ defined as a landscape

17 ARTICLE 1 For the purposes of this Convention, the following shall be considered as “cultural heritage”: 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 of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

ARTICLE 2 For the purposes of this Convention, the following shall be considered as “natural heritage”: 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 conservation; Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

18 World Heritage Newsletter No 1 February 1993.

19 The criteria were merged by the 6th extraordinary session of the World Heritage Committee (decision 6 EXT.COM 5.1).

20 World Heritage Centre, Operational Guidelines for the Implementation of the World Heritage Convention WHC 05/2, 2 Feb 2005, p 84. The definition in article 1 of the Council of Europe Recommendation No R (95) 9 The Integrated Conservation of Cultural Landscape Areas as Part of Landscape Policies is: specific topographically delimited parts of the landscape, formed by various combinations of human and natural agencies, which illustrate the evolution of human society, its settlement and character in time and space and which have acquired socially and culturally recognised values at various territorial levels, because of the presence of physical remains reflecting past land use and activities, skills or distinctive traditions, or depiction in literary and artistic works, or the fact that historic events took place there.

21 This is equivalent to the Cultural Landscape Foundation’s Historic Designed Landscape. This is defined as a landscape that was consciously designed or laid out by a landscape architect, master gardener, architect, or horticulturalist according to design principles, or an amateur gardener working in a recognized style or tradition. The landscape may be associated with a significant person(s), trend, or event in landscape architecture; or illustrate an important development in the theory and practice of landscape architecture. Aesthetic values play a significant role in designed landscapes. Examples include parks, campuses, and estates. <http://www.tclf.org/whatis.htm>

22 For example Lednice-Valtice Cultural Landscape in the Czech Republic, which was added to the list of World Heritage Sites in 1996 as a cultural site. <http://whc.unesco.org/exhibits/cultland/categories.htm>

23 This is equivalent to the Cultural Landscape Foundation’s historic vernacular landscape. This is defined as a landscape that evolved through use by the people whose activities or occupancy shaped that landscape. Through social or cultural attitudes of an individual, family or a community, the landscape reflects the physical, biological, and cultural character of those everyday lives. Function plays a significant role in vernacular landscapes. They can be a single property such as a

that ‘results from an initial social, economic, administrative, and/or religious imperative and has developed its present form by association with and in response to its natural environment.’ This is split into two sub-categories. There are relict landscapes in which an evolutionary process came to an end at some time in the past but where their significant distinguishing features are still visible in material form. There are also continuing landscapes which retain an active role in contemporary society closely associated with a traditional way of life, and in which the evolutionary process is still in progress.²⁴ It is such landscapes that often constitute both cultural and natural heritage. The third category is the associative cultural landscape,²⁵ whereby powerful religious, artistic or cultural associations of the natural element exist. Their special significance could have been acquired ‘thanks to some iconographic tradition that has reproduced their image across the centuries or thanks to descriptions—in books, films or music—in the works of one or more artists representing cultural monuments’.²⁶ In the past, such landscapes were designated as natural sites because of the absence of evidence of human interaction with the landscape. Yet now they are classified as cultural sites and their status as natural heritage is effectively denied.

Even though a broader range of landscape types are now encompassed by the Convention, the dichotomy between culture and nature remains pervasive. In the operational guidelines on the Convention, landscapes are defined as ‘*cultural* properties’, which represent the ‘combined works of nature and man’.²⁷ This continues to perpetuate the idea of culture as superior to nature, whereby these landscapes represent an evolution of the base natural heritage into a manifestation of culture through human interaction with the environment. Of the 37 properties on the World Heritage List that have been classified as cultural landscapes, only three are included for their natural as well as their cultural significance,²⁸ even though the operational guidelines state that attention should be paid to the full range of values represented in the landscape, both cultural and natural.²⁹

The emphasis on culture is in some ways an inevitable consequence of the definitional apparatus of the World Heritage Convention. Arguably the mixed cultural and natural heritage values of many landscapes are irreconcilable with the definition of natural heritage in article 2 of the Convention. This 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 conservation; [and] Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.’ Thus, their accommodation within article 1 is unsurprising because it includes within the definition of cultural heritage ‘works of man or the combined works of nature and of man, and areas ... which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.’ However, the categorisation of landscapes as cultural is problematic when considering the

(Contd.) _____

farm or a collection of properties such as a district of historic farms along a river valley. Examples include rural villages, industrial complexes, and agricultural landscapes. <http://www.tclf.org/whatis.htm>

24 An example of this would be the Rice Terraces of the Philippine Cordilleras.

25 This is equivalent to the Cultural Landscape Foundation’s ethnographic landscape. This is defined as a landscape containing a variety of natural and cultural resources that associated people define as heritage resources. Examples are contemporary settlements, religious sacred sites and massive geological structures. Small plant communities, animals, subsistence and ceremonial grounds are often components. <http://www.tclf.org/whatis.htm>

26 World Heritage Committee 24th Session WHC-2000/CONF.204/WEB.3 page 18.

27 World Heritage Centre, Operational Guidelines for the Implementation of the World Heritage Convention WHC 05/2, 2 Feb 2005, para 47.

28 Uluru-Kata Tjuta National Park in Australia, the Pyrénées-Mont Perdu in France/Spain, and the Tongariro National Park in New Zealand.

29 World Heritage Centre, Operational Guidelines for the Implementation of the World Heritage Convention WHC 05/2, 2 Feb 2005, p. 85.

associative landscape. Different sectors of society may place emphasis on different aspects of a landscape, perhaps one emphasising cultural traditions associated with the site and another emphasising the natural heritage value of the area.

In this respect, the European Landscape Convention is revolutionary, stating that landscape 'is a basic component of the European *natural and cultural* heritage' (ELC, Preamble; emphasis added). As the explanatory report on the Convention points out, it applies to 'natural, rural, urban and peri-urban areas. It is not confined to either the cultural, man-made or natural components of the landscape.'³⁰ It is the first legal text explicitly to recognise the dualism inherent in landscapes. As the explanatory report states, the definition of landscapes in article 1 'underlines that a landscape forms a whole, whose natural and cultural components are taken together, not separately.'³¹ The Convention recognises Clark's point that 'our environment has a cultural dimension, which cannot be separated from nature' (Clark, 2000: 106).

This approach is to be welcomed as the first attempt in a legal regime for the preservation of heritage to address the full range of elements that constitute landscape as heritage. By recognising both the cultural and natural heritage values that attend landscape, the European Landscape Convention is moving away from the approach of the World Heritage Convention, which rests upon the nature/culture dichotomy, towards a more nuanced construction of heritage. However, the goal of the European Landscape Convention to consolidate European identity is unlikely to be realised because the cultural and natural heritage values associated with landscape tend to be national or sub-national and are thus linked to a national or sub-national identity rather than a European identity.

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II. Identities in Landscape: Constructed and Contested

Landscapes of Identity: The European Landscape Convention in the Construction of a European Identity

Monica Sassatelli

I imagine the good Herodotus undertaking again his circumnavigation of the East Mediterranean. What surprise! Those golden fruits, within dark green shrubs, that are said to be typical of the *Mediterranean landscape*, the oranges, lemons and tangerines: he has no memory of having seen them in his life... Bly me! They are Oriental, imported by the Arabs. And those strange plants with curious shapes, pointed, blossoming spears, with strange names: cactus, agave, aloe, how widespread they are! But he never saw them in his life. Bly me, they are American. And those big trees with pale leaves that, however, have a Greek name, Eucalyptus: he, the Father of History, never saw one anywhere, in known lands... Bly me, they are Australian. And those palms? Herodotus saw them before in oases in Egypt, never on the European coast of the blue sea. Never, even the cypresses, those Persians (Febvre, 1940: 29).

Introduction

As some of the main technical steps towards European integration are completed, there is a growing discursive emphasis on more encompassing ‘cultural’ matters in the definition of Europe. A metageographical notion of Europe (Lewis and Wigen, 1997) as a cultural unit stemming from the history of the European Nations and their long-standing cross-fertilisation has spread throughout across public debate and social sciences. ‘Identity’ has become the new keyword, allowing a much greater spectrum of meaning—and confusion—than integration itself¹ (Stråth, 2002). Under the menace of an undifferentiated ‘space of flows’, which Europeanization is sometimes seen as promoting, being itself a kind of policed globalization, ‘places’ regain their aura: hence the rediscovery of the local (landscape), de-provincialised by the direct connection to an equally auratic notion of ‘European’, this time seen as benign (Urry, 2000). The recent introduction of landscape as object of intervention and policy at the European level is part and parcel of this new emphasis.²

As with cultural intervention in general, the Council of Europe (COE) seems to be seizing the issue well before the European Union, with the promotion of a European Landscape Convention (ELC) bringing together both European natural and cultural heritage under the first treaty entirely devoted to landscape.³ The rationale informing this recent convention (signed in 2000 and entered into force in

1 If academically and institutionally this substitution is three decades old (as testified by the 1973 EC Declaration of European Identity), it is only more recently that the concept has become increasingly mobilized in a wider public debate, as the heated controversy about the inclusion of a reference to the Christian heritage in the European Constitutional Treaty shows.

2 Even though landscape policies are an emerging and marginal sector, and will stay so compared to major policies, they bring together cultural and environmental policies—that is, the policy aimed at, respectively, formatting the compliant fully socialised (and cultivated) citizens and at dealing with their ‘survival units’, the ever expanding context relevant for physical survival and well-being—therefore they provide a key perspective to study policy as a means of governance and, more specifically, the conceptual map through which a European subjectivity is constructed.

3 Actually, the ELC emerged, as we will see, within a network of other agencies active at the European level, and with an initial support coming from the EU. The relationships of the different agencies involved—and the little attention at the distinction between them paid by actors involved, especially local ones—is indeed a very relevant theme, although not a central one in this article.

the first ten ratifying countries in 2004)⁴ and as laid out in its Preamble, is that the landscape is a constitutive element of local cultures and of the European natural and cultural heritage, that it contributes to human well-being and to the consolidation of European identity. This carries a strong claim for the existence of both a specifically European attitude to landscape as a cultural construct and process, and of this attitude itself as being one of the main components of ‘European’ identity, thus needing fostering and protection. The discursive field generated by this new attempt at defining European identity provides a viewpoint on current dominant representations of Europe, and the opportunity to observe them at the various agency levels it mobilizes.

The peculiar combination of the protection of diversity and promotion of unity (the well known adagio of ‘unity in diversity’) finds here an extremely clear formulation which deserves attention. The landscape as experience of the unity of the nature/culture dynamics emerging through a plurality of specific characters is presented as the very concretisation of the ‘unity in diversity’ formula, where differences become assets rather than obstacles, a formula whose success is at the basis of a promotion of a European specificity without exclusivist overtones itself. A critical consideration of the ELC’s implied assumptions and function is the focus of this article, grounded in an analysis of both this new discursive field and examples of emerging implementing practices of the Convention.

Landscape as Identity, Identity as Landscape

It is usual to place the preoccupation and consideration of landscape within the modern Western tradition, from Jacob Burckhardt’s observation of the Renaissance discovery of the aesthetic dimension of landscape—sustained by the development of landscape painting as different art historical analyses have pointed out—to the Romantic theme of landscape as a compensation for modern man’s estrangement from nature.⁵ Also in recent ‘technical’ approaches that make of landscape the object of intervention and policies, the idea of landscape is resolved in terms of identity, a (problematic) concept borrowed here from the social sciences. Landscape, it is said, it is a factor of a group’s social and cultural identity. Therefore it prompts protection but also a concern for avoiding prevarication of ‘indigenous’ definitions: whatever it may be in different contexts, there seems to be widespread agreement that landscape is best conceived as a *pattern of intention*, to paraphrase Baxandall (1985) or an *open work*, to use Eco’s expression (1962), that is, something that cannot be defined according to the objective/subjective distinction, being the result of active perception, that cannot be reduced to a single, fixed definition based on a list of specific characters.

Interestingly, the concept of identity also has similar problems (Brubaker and Cooper, 2000). If in public discourse and official documents it is often used as a self-evident, explanatory term, for social scientists it is instead something to study and problematise. In particular, the analytical concept of identity has been reformulated recently in constructivist terms: identity is now multiple, fluid and, above all, constructed. Current approaches tend to shift the emphasis from a check-list of essential elements, drawn from the past, that can easily lead to conflict and exclusion, to the active process of construction, to its subjects, their strategies and rhetoric. From Benedict Anderson’s imagined communities (1983) onwards, identity has been progressively de-essentialised, in the intellectual field.

Although this cannot be said to be the case at more general, public and political, levels (and is certainly not unchallenged in academe either), the Europeanization discourse can be seen as an instance of this process. European institutions are, willy-nilly—because of the need to incorporate the diversity of nations, making an asset of it and not an obstacle, and because here this painstaking process of imagining the Community is under everyone’s scrutiny—adopting this strategy. In order to

4 For details about ratifications and signatures see the contribution of R. Priore in this Working paper.

5 The theme of the modern European ‘invention’ of landscape has been developed, after Burckhardt, by A. Riegl, in various essays by G. Simmel (see Sassatelli, 2005), and later by J. Ritter. For a critical analysis of this tradition, see M. Venturi Ferriolo (2002) and R. Milani (2001). For a social history of landscape in art see A. Cauquelin (1989).

do so they have elaborated a complex rhetoric that can be synthesised in the well-known formula ‘unity in diversity’.

These concerns regarding definition are also present, as we shall see, in recent interventions towards landscape as an object of public policy. In fact, a first observation regarding the connection between identity and landscape and the specific form this takes within European institutions and local initiatives lies in the fact that through the idea of landscape it is possible to articulate the ‘diversity of common heritage’ because, according to the current definition, diversity is an element of all landscapes, and not only between landscapes, but within landscape. Because landscape, anthropology reminds us, is a cultural process where: ‘place and space, inside and outside, and image and representation cannot be arranged further into a set of equivalences or exact homologues of one another, with landscape as their sum. This is because there is not “absolute” landscape: the salience and relationship between place and space, inside and outside and image and representation are dependent on the cultural and historical context’ (Hirsch, 1994: 23).

Spreading a New Language for Landscape: the ELC as a New Set of Opportunities and Constraints

If the definitions of landscape are very diverse, so are the policies. To speak actually of landscape *policies* might be too much: in many countries this is a novelty introduced by the ELC. Because landscape is not traditionally an object of policy, talking of landscape policies implies talking of policy expansion and transfer. To have an idea of how this is happening at European level we can turn to cultural and environmental fields—those that, combined, are more directly linked to landscape. It has been noted that European policies in these fields have developed unofficially, outside of the various ‘Treaties’ scope. As they have long been outside the competencies of EC institutions, and as they address themes seen as ‘sensitive’ for national interests, a peculiar policy style has been adopted that entails the promotion of a social demand ‘from below’, through the commissioning of technical reports, the negotiation with subjects concerned to reach a point of balance, the diffusion of the solutions through informal networks and standardized monitoring procedures (Mazey and Richardson, 1995; Regonini 2001). This ‘demand from below’ means that local agencies now participate in a context of international networks that have put them beyond their local boundaries.⁶

It is in response to such a ‘social demand’ that the ELC claims to have been designed and introduced. In spreading its new language for landscape, the ELC drafters are very attentive to representing the networks and discourses informing the ELC. What the final text of the ELC includes is very revealing. Great importance, and much text, is devoted to the context of the ELC itself, both discursive and relational. This may seem an abstraction but is in fact very concrete: both a long series of previous conventions, declarations, initiatives, etc. touching on landscape are meticulously listed, and, in the explanatory report, the process of drafting the ELC, and the various bodies involved, are narrated. Thus we learn how the direct ancestor is the Mediterranean Landscape Charter, an initiative of a few Mediterranean regions, and that the initial prompt for the ELC came in 1995 from the EU, in particular from the European Environment Agency’s *Dobris Report*. Hence the final claim: ‘In view of these recommendations and the growing social demand, the CLRAE decided to draw up a draft European Landscape Convention for adoption by the Council of Europe’s Committee of Ministers’.

6 This creates an effect that, according to the conceptual tool-kit of the neoinstitutional approach in the science of organization, can be defined isomorphism (Powell and DiMaggio 1991). However this approach has been criticised for being too deterministic, denying agency. The way I’ve addressed this is through the old analytical distinction form/content. That is, looking for how contents within the common frame or form (iso-morphe), contents, that do not derive in any mechanical or obvious way from it, find an opportunity to develop. This is why I have chosen to concentrate on some local instances of Europeanization, because it is here that formal solutions such as ‘unity in diversity’ are filled with content.

The ELC's actual dispositions are clearly the result of negotiation and different voices, like so many other European documents. Landscape is defined as 'an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors (ELC; Article 1a)'. This broad, at a glance rather anodyne and consensual, definition does contain interesting elements that characterise it. It aims at setting *boundaries and relationships* rather than *contents and essences* of landscape. The emphasis is on the fact that perception or experience is not an accessory element, coming after the existence of landscape, but is instead constitutive of it. This choice opens the way to the idea that landscape is relational, both as a result of the nature/culture interaction and as it emerges under an intentional gaze. This emphasis on the active and repeated experience can then be seen at the root of what is often presented as the real 'innovation' of the ELC, the idea that *all is landscape*, not only those of acknowledged outstanding beauty: 'this Convention applies to the entire territory of the Parties and covers natural, rural, urban and peri-urban areas. It includes land, inland water and marine areas. It concerns landscapes that might be considered outstanding as well as everyday or degraded landscapes (Art 2)'. This inclusive definition thus shifts the attention towards *diversity*, both of landscapes and, as a consequence, of the treatment they deserve. This cannot remain limited to conservation, but has to include protection, management and planning.

The reference to diversity is particularly important as it leads to the legitimating root of the ELC, European identity, as we read in the Preamble: '[T]he landscape contributes to the formation of local cultures and... it is a basic component of the European natural and cultural heritage, contributing to human well-being and consolidation of the European identity'. If the appeal to identity seems abstract and difficult, there is a ready-made solution in the 'unity in diversity' formula, explicitly recalled in Art 5a: '[Each Party undertakes] to recognise landscapes in law as an essential component of people's surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity'. In the idea of landscape, decades of construction of the idea of European identity as 'unity in diversity' seem to find their 'natural' place.

This concern for diversity, in Europe and European institutions as elsewhere, has taken many forms, from liberal multiculturalism—that merely masks with good manners a certain intolerance for diversity (and that can easily lead to xenophobia, as recent theories, and practices, of the clash of civilizations)—to post-modern *pastiches*, for whom 'anything goes', but nothing is important. In the European context this seems to be heading to a further alternative, that seeks a (difficult) equilibrium between the extremes, making of difference a richness without abandoning a social and relational common horizon (Delanty, 2004). This is far from being peculiar to the ELC, but it does find in landscape a significant 'family resemblance', that is a further confirmation and affirmation of this type of European identity.

From the point of view of a network and discourse analysis, the ELC is the synthesis of hundreds of documents and meetings, before and after its signature; this repetition is what makes it relevant. Notice that preliminary documents, declarations, drafts, etc. are rigorously *public* and available from the COE web site: this is because the point is precisely the spread of a 'language', which is a language of identity. Of course there is always an 'urgent cause', e.g. the decay of the rural landscape leading to wider reflections on landscape and the factors of its transformation. However the real outcome, and objective, is the building of a 'community', the networking itself, that stands as practical demonstration (and legitimisation) of the Europeanization it propounds.

The ELC towards Implementation: Notes from Fieldwork⁷

This emerges clearly in the words of someone that, in his capacity as director of the *Servizio Paesaggio* [Landscape Office] of the Region Emilia-Romagna, has followed the development of the

⁷ This is part of my ongoing research for which case studies of pilot implementation actions of the ELC are being conducted with fieldwork techniques (extended observation, informal and formal interviews, document analysis).

ELC since its inception: speaking of the integration between different policies that the ELC supports, he claimed:

I do believe that this is an unavoidable passage, we see it on a daily basis. I mean, if we want to act on landscape we have to work towards integration, and this we are doing implementing the philosophy of the ELC, because our new action on landscape today is derived from the ELC, that is [...] this idea to spread the policy of landscape as quality in the different sectors. There is a sentence in the ELC that speaks precisely of the integration of policies because also at European level it is acknowledged that the transformation of landscapes derives from non-coordinated actions of the various sectors, agriculture and the rest. Another point to highlight is that even those sectors that may not appear to be transformative for landscape, are instead very transformative, such as, precisely, agriculture. This may be linked also to a EU policy previously based very much on subsidies [...] protectionist, and with little connection to the reality of the different European countries, standardized. This has caused a deep transformation of the rural landscapes in the EU, and in fact the ELC has been firstly thought of as a reaction to that. From the preparatory works it is clear that the ELC emerged from the deep transformation in the rural landscape, and it has been elaborated from below, from the local governments... These Conventions, these new laws obviously produce a cultural evolution, also among the experts.

The relevance of the ELC as a symbolic policy—that is, one that deeply affects ideas and beliefs—is in the very expression ‘implementing the philosophy of the ELC’. The integration of sectors is one of these ‘new’ ideas promoted by the ELC. The ELC is seen above all as a new opportunity, and a new rhetorical instrument to be used within local debates and internal struggles for agency. The ELC’s origin ‘from below’ and its rhetoric of European identity as a result of diversity are therefore often stressed. Following the ELC, the policy of landscape is European, and thus common, as far as some framework principles and methodologies, but does not go as far as producing a common definition of European landscape. In the expression European Landscape Convention, ‘European’ is a specification of Convention, and not of landscape. This, of course, leaves open the problem of definition rather than solving it.

The solution is again a ‘formal’ and ‘practical one’ (promoting a similarly formal and practical Europeanization). This formal solution lies in that—as official documents, academic text and the words of involved experts confirm—the ELC, in this early phase, is above all about exchanging expertise and creating networks at European level, so that landscape becomes a common concern, however diverse definitions and traditions might be, and remain. This is confirmed when we look at some examples of implementation of the ELC. In particular these are, at the central level, the creation of an *Observatory on the implementation of the ELC*, and, locally, networks, projects and pilot actions that present themselves as addressing such implementation.

Revealingly, the *Observatory on the implementation of the European Landscape Convention* (OELC), due to start its activity in 2006, is actually itself a local initiative of the Cilento and Vallo di Diano National Park (Campania Region, Italy). However, the Congress subsequently suggested gradually extending its scope to cover all the European regions. Such an extension, we read in the official documents concerning it, ‘would be justified because regional authorities have institutional responsibilities in terms of landscape development and frequently have to take urgent action to deal with landscapes located outside the protected areas’ (CG/DEV (10) 6 prov). The OELC’s aim is to provide for co-ordination, assistance and technical and scientific support for the regions in implementing their specific institutional responsibilities as regards the landscape. The regions, but also municipalities, interest groups, associations, etc. are thus targeted by the OELC.

This specific and local origin however may be partially responsible for the critiques that the very idea of an *Observatory on implementation* at the current stage has encountered during several preparatory meetings for the ELC. As more than one informant attending many of them reported, to numerous people, and in particular to representatives of those countries where the very concept of landscape for public policy is a total novelty, this appears as a premature move.

However this approach has prevailed, the OELC will start its activity. This proves that, at least in part, the point of implementation is the networking of different experiences itself, and that no more ‘substantial’ homogenisation is either expected or wished for. That this is the case is confirmed by the nature of pilot actions for the implementation of the ELC across Europe. In fact these seem to address mainly the creation of international networks, the identification of trans-frontier landscapes (object of a specific disposition in the ELC), the promotion of awareness campaigns and public participation in landscape issues. Moreover it seems that it is in particular in the framework of EU programmes that actions inspired by the ELC find place. This is the case of two projects that can be analyzed as case-studies: *European Pathways to the Cultural Landscape* and *Landscape Opportunities for Territorial Organization*.

European Pathways to the Cultural Landscape is a three year project (2001-2003) funded by the EU Programme Culture 2000. It is a network of 12 partners of ten different European countries, and one of the aims is precisely to render the network and partnership permanent through projects. In synthesis, it is the creation of a common forum for discussion and co-operation with regard to landscape, in particular through meetings, staff exchange and shared projects. The specific objectives are the understanding of cultural landscapes, marginal landscape in particular. In the final report of the project, entitled *Pathways to Europe’s Landscape*, the ELC is explicitly recalled, together with a claim that: ‘we believe that landscape is a central part of the European common heritage and culture, and that it “belongs” in a very real sense to all citizens of Europe’ (Clark *et al.*, 2003, n.n).⁸ It is worth citing as this common and ‘distinctly European’ character is explained in the following:

Our regions are all very different: from mountain to marsh, from the Atlantic to the Baltic, from forest to farmland. Yet we have found that this variety (and the even richer diversity of our cultures, languages and food, or ‘taste-scapes’) is matched by an equally rich common heritage that unites our landscapes and makes them very recognisably and distinctively European. We discovered that this combination of diversity and unity was a powerful force for increased mutual understanding, respect and friendship, just as too was our exchange of experience and expertise. We firmly believe that the landscape can be a strong and vital part of European unity, and we think that our project ... is a symbol of European partnership and shared culture (Clark *et al.*, 2003, n.n).

Asked to elaborate further this theme of identity, one of the creators of this project has replied during interview:

Landscape is the place where people live, therefore by definition it is linked to identity. But identity has become more complicated than in the past, due to the greater mobility of people [...] It is not as simple as it used to be (or at least was thought to be) only one or two generations ago. It is not any longer sufficiently described with terms like *Heimat*, as it used to be in the past in Germany. It has become more complicated and multi-layered. But a sense of identity is crucial for the sustainable management of landscapes. Only with a sense of ownership and pride will people care for the landscape and work for it. Only with a good knowledge about the specific aspects of a certain landscape can it be managed in an intelligent way, preserving individual aspects in landscapes undergoing rapid and deep change. The European aspect to me is a necessary anchor point within globalization, building a Europe which has not only common economic interests but a common cultural, social and political framework. Europe in all its diversity nevertheless has a relatively well defined geographical outline and more important common historic and cultural denominators. These are reflected in the landscape, which is a result of human influence and therefore a cultural entity which cannot be separated from its history and cultural background [...] [T]he projects and their European integration helps to strengthen the sense of identity, ownership and pride in the people living in the landscapes. First of all this is the sense of identity on a very local and regional level, but to some extent even a European identity is formed through the pride people take in the European interest stated in their landscape.

8 Interestingly, the UK, that has not signed the ELC, during one of the COE meetings related to the ELC, has referred to its participation in this project as a proof of its commitment to the ELC approach to landscape.

The point is thus not whether the Europeanist rhetoric is used instrumentally, but the fact that as well as a lobbying instrument the new language of landscape promoted at European level is, to use again the revealing words of the interviewee, ‘a platform to meet like-minded people’.⁹ Landscapes are many and different, but it is in an attitude to them and towards diversity itself as a constitutive part of them that one can envisage a common element, which can be referred to as an element of identity. Obviously, this does not refer to any essence of specific landscape (or identity), that is local, but to relations of recognition, between individuals, territories and institutions.

Similar themes emerge and are specified in my other example, the project *Landscape Opportunities for Territorial Organization* (LOTO). This is a three year project (2003-2005) funded by the EU initiative Interreg III B. This is interesting because Interreg is aimed at territorial development, is financed under the European Regional Development Fund (ERDF) and is, allegedly, designed to ‘strengthen economic and social cohesion’. It does so charting a map of Europe that delineates specific areas, thus promoting the formation of large groups of European regions, that at the same time transcend the national context and valorise specific local features. Interreg III is a territorial, rather than sectorial, programme, based on the strategic relevance given to natural and cultural heritage for territorial development, as expressed also in the European Spatial Development Perspective (Potsdam 1999). For instance in the Central Adriatic Danubian South-Eastern European Space (CADSES), under priority 3.3, projects are financed aimed at ‘Protecting and developing landscape’.¹⁰ It is in this framework that the project LOTO is being carried out.¹¹ The project provides this self-presentation:

As emphasized by the ESDP and the European Landscape Convention, the different landscape characterization of the territories is a resource to safeguard. Given that the territory is constantly developing, transformations of the landscape cannot be avoided, but it is important for them to be guided with awareness. On the other hand, whoever designs or plans the territory does not easily have access to tools that can be used to resolve the problem. The project intends to provide tools that govern the evolution of the landscape through the knowledge of the dynamics of transformation, intending the landscape itself as a reference framework for any project of an accurate and territorial scale, aimed at directing the territorial planning/design tools in a complementary manner. So, we propose identifying a method of interpreting the landscape that could be a shared operative reference to guide and verify the territorial transformation choices.

But again, it is in the direct words of one of the involved individuals, responsible for the project on behalf of the region Emilia-Romagna, that we see the real expected and desired outcome of the project, that is, networking itself:

LOTO has been conceived to start experimenting the implementation of the ELC at the level of some regional experiences. Especially through the construction of a methodology for interpreting the landscape that can support planning and project-making. The different partners have chosen different areas of investigation and, as far as we are concerned we have addressed the issue of valorisation. [...] The idea is to exchange different visions with the European partners. As I said,

9 This means that both approaches to EU programmes and their rhetoric, instrumental and otherwise, are present, as my interviewee stressed very openly: ‘The reference to identity in general and to a European identity particularly are real and important parts of the project. But of course they are also used to secure funding with the EU and phrasing is prescribed by the application guidelines. I do not see that as a contradiction or a problem, as our own interests and those of the EU meet here without any need to force the matter. In our own regional project Europe plays a very important role for the identification of the local people with their own landscape as well as our project’.

10 Apart from the one analysed here, LOTO, two more projects have been approved and financed within Interreg IIIB-CadSES, priority 3.3, so far: the project SURE (Successful Restoration and Rehabilitation Accompanying Infrastructural Interventions) proposed by the Austrian Federal Research Institute for Agriculture in Alpine Regions, Department of Ecological Restoration Austria and the project REKULA (Restructuring Cultural Landscapes), proposed by the German Internationale Bauausstellung Fürst-Pückler-Land.

11 The project leader is the Regione Lombardia (Italy). The partners are: Ministry for Cultural Heritage and Activities; Regione Umbria, Regione Marche, Regione Emilia Romagna, Regione Veneto (Italy), Regione Istria (Croatia), Ministry for environmental and spatial planning (Slovenia) Technical University of Munich (Germany), Istituto Urban Project (Romania).

the experiences at European level are the most diverse, there are countries that participate in LOTO that have never dealt with the management of landscape, I'm thinking here of Romania, or instead that do it in a particular way, such as the University of Munich, that deals with landscape in terms of landscape ecology. Because another problem with landscape is multiplicity, and thus each discipline tends to appropriate it and develop it according to a certain vision. With LOTO we wanted to contribute to the reflection with regard to which activities should be tried out, activities that would not be confined to planning and regulation. We think this is one of the elements that have to become key in the new policies of landscape.

In this type of project the European rhetoric of the 'construction of a common European space' is realized *de facto*, although that space acquires its legitimisation only by allowing diversity. Vice versa, each specific, diverse, instance finds a place there only if it accepts to be one among many, that is, if it accepts the form of 'unity in diversity'. The scenery of European landscape policies is thus one characterised by a Europeanization that carries at the same time a common form—*isomorphism*—and diversified local contents. This does not mean or imply accepting without criticism the EU's own rhetoric that makes everyone a 'partner', denying power struggles and differentials of forces, but it does point out the windows of opportunities that are open to different subjects.

Concluding Remarks: a Shared Landscape?

We should not forget that to enlarge the traditional notion of cultural heritage in order to encompass that of landscape implies a reformulation in terms of the latter, landscape, of the connection of heritage to a group's or community's identity. Every new extension of a policy's scope implies not only a quantitative increase, but a general reformulation of what was part of the policy before, that is a rethinking of the policy's legitimisation, objectives and means. In other words, not only landscape changes being included in a new discursive field, but also the specificity of landscape feeds-back on what can be said and done within the policies that now include it. This concerns not only what identity, but what *type of* identity can be fostered through it. One could say that landscape had been so far integrated in policies as (a peculiar) heritage, and that now, thanks to the centrality given to it, the possibility of the reverse appears: it is heritage that becomes reformulated in terms of landscape—from landscape as heritage, to heritage as landscape, so to speak. The otherwise highly exclusivist and monumentalist discourse of heritage as quintessential expression of a unitary and pure culture, often instrumentalised as a form of 'cultural diplomacy' in international relations, appears now under the sign of the plurality and openness that are constitutive features of landscape as it is currently defined.

The ELC aims at making landscape a shared concern, rather than an ignored or contested (among different approaches and expert cultures) issue as it mostly is now. Whether it will succeed or not, it certainly has already become a further actor in the construction of Europe, at the discursive level, as a rhetoric of European identity and, at the practical level, creating a 'European space' promoting networks, trans-frontier landscapes, and so on. This approach established at the European central level, thus finds implementation at the local level, which similarly adopts the logic of participation and integration of different actors. We can describe this trend as one leading towards *isomorphism*, made of a shared professional culture, adjustment to the standardized and highly formalized requirements necessary to adhere to EU programmes, and also of a certain mimetic repetition of the Europeanist rhetoric.¹² For regions, but also for cities and other local centres of governance, the European dimension represents a relevant political opening, a bearer of new opportunities, and of constraints that have to be respected in order to grasp them (Le Galés 2002). However, one of the characterising features of the European constraints to convergence is that they are very strict from the point of view of form—hence *isomorphism*—but, having to sustain their own rhetoric of 'unity in diversity', they are also almost indifferent to contents, whose plurality and heterogeneity is considered valuable.

12 Thus, there are all the elements to speak of the three types of *isomorphism* usually identified: normative, coercive and mimetic.

Therefore, behind isomorphism, or within it, different subjects can appropriate and fill the windows of opportunities open to them with their own contents. This is why Europeanization is something that is at the same time very much widespread and possible to observe only taking into consideration local contexts. Whether it was introduced as a rhetorical gimmick or not, the ‘unity in diversity’ seems to be the landscape that regions and cities are outlining in Europe.

Clearly, in principle the idea of landscape can sustain both an essentialising discourse and a constructivist one, but not at the same time and in the same fashion. The epigraph chosen for this paper, with its ironic tone, shows, I believe, that theoretically at least, Europe has gone past the essentialising option at least since after the two World Wars, that showed how nefarious the consequences of an allegedly homogeneous, passionate, communal national identity could be. Through landscape, and the direction landscape policies seem to be taking, we see that, if a European identity is to exist, it could be, following Manuel Castells’ distinction, not a predictable *legitimizing identity*, a normative and normalizing allegiance but a *project identity*, the conscious result of a process of social construction.¹³

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13 It is obvious that there are explicit attempts at fostering an identity as a legitimizing device for the project of European integration on the part of the institutions. However, the results of those attempts are far less clear. According to Castells legitimizing identities, such as national ones, are today either disarticulating or transforming into communal identities, as a resistance reaction to that disarticulation, that we can appreciate in the recrudescence of nationalisms. It is thus to project identities that we should turn, even though its development for Europe is an open question, as we can see in Castells concluding remarks: ‘So, by and large, there is no European identity. But it could be built...It would take a process of social construction that I have identified ...as *project identity*[...]. There are embryos of a European project identity. And, probably, only if these embryos find political expression will the process of European unification ultimately be accomplished.’ (Castells, 1998: 365)

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Contentious Landscapes in Bosnia and Herzegovina

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Landscapes are not self-evident. They are burdened with meaning, which comes through the projections of men upon them. This also means that they are not unified: any one landscape can be fractured into as many landscapes as there are groups who perceive it. Sometimes, as landscapes undergo extreme change, they project back an overwhelming and burdensome meaning, which obscures other potential meanings. This double movement is evident in the countries of the former Yugoslavia that experienced the wars of the 1990s. While I have had a lot of experience throughout the former Yugoslavia, I would like to talk here about Bosnia, as the country that I know best, for having worked there for over seven years, both during the 1992-95 war and after it.

In Bosnia the landscape is full of different historical cultures, but I will address here mainly those that have played a role in the 1990s, and which continue to play a role. I will start with the multi-cultural landscape, and then describe some of the accelerated changes it has known in the past. I will bring in the socialist-period landscape of memorials. Then I will turn to the creation of new landscapes during the recent war. I will mention a few examples of how aspects of a more distant past are perceived in the landscape. Finally I will note how it might be possible to integrate and pacify the landscapes that have emerged from the recent war and the evolving perceptions of the past.

The first of these landscapes is *the physical aspect of a multi-cultural country*, which Bosnia surely was, and still is today, though with far greater geographical consolidation of its different peoples than in the past. Bosnian Serbs, Muslims and Croats seemed to favour specific types of houses (hipped roofs for Muslims, the so-called 'Hungarian roof' for Serbs). Towns were characterized by different types of districts, especially the Muslim *mahallas*, even if they always maintained a kind of fluidity: all national groups lived in the Austro-Hungarian apartments and villas, and the traditional 'Bosnian house', a variant of Turkish domestic architecture, could be lived in by Serbs and Croats as well as by Muslims. Villages tended to be more mono-national than the towns and cities of the post World War II period. In villages and towns, sacral buildings assumed an important role in pointing out who lived in a given space or area, minarets obviously denoted a Muslim presence, and belfries the presence of Serbs or Croats. But even if there were no such buildings, the houses would usually give away who lived in a particular place.

One might think that this 'real' landscape was the result of the slow accretions of time. In fact, it often changed both quickly, and radically. A few years ago, while working for the International Criminal Tribunal for the Former Yugoslavia in western Bosnia, I came across an account by an imam about the mosques and villages in the county of Kljuc. The imam mentioned villages which had been Muslim villages, but which had disappeared, some after the occupation of Bosnia by the Austrians, some after World War II, to be occupied by Serb settlers. I could find no physical traces of these Muslim villages, but I could assume that the imam had often talked about them to his people; accordingly, beneath the recent by-national aspect of the county there was another county, which was 'really' Muslim. At other times the landscape suddenly changed, and the traces of this change remained. In Bosnia the 1930s was not a time of prosperity, but it was one of national affirmation and tensions. It was marked by the edification of new mosques and churches, and tall new minarets beside mosques that previously had the traditional short minaret in the roof, or sometimes no minaret. In the 1970s and 1980s there were similar building campaigns throughout Bosnia, on a vaster scale than in the 1930s, and during the war I was struck by the number of unfinished sacral buildings. The effect of this campaign, and certainly its purpose, was to better differentiate, to the naked eye, who was present and who was powerful. World War II also modified the multi-cultural landscape, though possibly not as much as the last war.

In recent times this ‘multi-cultural’ landscape had also received strong injections of another nature. The socialist regime had also sought to leave its mark upon the landscape: the rural sites of battles with the forces of occupation in World War II were often laid out with visually striking monuments, not to mention museums. Where no memorial centre was erected there would still be small monuments, by the side of a road, in a field, on a hill, with the names of the dead and a pithy description of what had happened, or what was supposed to have happened. In cities—such as Sarajevo or Mostar—there would be more ambitious landscaped memorial parks. Several generations of young ‘Yugoslavs’ would be bussed to these memorials and steles. The landscapes would also be fixed in memory by a plethora of movies about the partisan struggle, so that anyone moving about the countryside would be sure to recall what had happened there, if only because he had seen it in the cinema. In the Krajina—which is to say the border zones of both Bosnia and Croatia—you can encounter the ruins of Orthodox churches in fields: these churches were burned or mined in the Second World War by Occupation forces, or by the Ustasha, but not reconstructed. Hence these too were part of *the Yugoslav memory* in the landscape, and part of the education of the new Yugoslav citizen. In addressing the landscapes in the aftermath of the recent war, this earlier environment must also be remembered.

The bloody ‘ethnic cleansing’ of the 1990s was first and foremost about the presence of real people. The objectives were to physically remove people from a territory that was perceived to belong *really* to one people, or which was considered necessary for the security of that people. The vast campaign of the late spring and early summer of 1992 by Serb forces in Bosnia was not the first such campaign. Serbian military and paramilitary forces had ethnically cleansed Slavonia and the Krajina in Croatia in 1991, and Serbs were the victims of similar counter-ethnic cleansing at the same time, and then again in 1995. ‘Ethnic cleansing’ would be continued by Bosnian Croats and Bosnian Muslims against Serbs, and also against each other during the Bosnian war. But the Serbian campaign of 1992 in Bosnia was on a particularly ambitious scale, and the smaller campaigns of Croats and Muslim forces would never reach its intensity or comprehensiveness. By the end of 1992 over fifty per cent of the people of the country were either internally displaced or refugees who found shelter abroad.

Removing people physically usually was accompanied by attempts to ensure that they would not return. In the countryside this meant the massive burning of villages, and sometimes mining of houses. The removal of the telltale landmarks, like minarets, and sometimes the more resistant church towers, was something that took place particularly in the early stages of the ‘ethnic cleansing’ alongside burning.¹ In the second round of destruction many sacral buildings would be mined. In Bosnia unfinished mosques without minarets were usually left alone, because they could not be seen from afar. This means that, especially in the Serb and to a lesser extent in the Croat-controlled areas, rural landscapes were decapitated of the tallest tell tale signs of other national groups. From afar the country seemed to revert to a peaceful, secure *mono-national landscape* with a few church towers: closer up it was choked with ruins.

In the towns the pattern of destruction was different, because the objectives were different. People would leave, and their houses would often be taken over by refugees or internally displaced persons.

1 It is unfortunate that the truly massive destruction and damaging of places of worship, especially Islamic, has given rise to exaggerations on the part of locals and internationals that risk leading one day to revisionism and denial of what actually happened. The reality was sufficiently atrocious, and decisive in reworking the cultural landscape. For example, in six counties in the Bosnian Krajina that I worked on in 2001-2002 for the International Tribunal I could determine that 29% of the mosques, masjids and mektebs had been effectively destroyed (razed to the ground or structurally so weakened that they would have to be pulled down). Another 48% were badly damaged: unusable, but repairable. This meant a minimum of 77% destroyed or unusable Islamic sacral buildings, which I believed could be put as high as 85% when other buildings (totally rebuilt or poorly documented) were taken into consideration. Only 7%, usually unfinished buildings, had received very minor or no damage. Roman Catholic places of worship were less severely damaged: 13% destroyed, 48% badly damaged but repairable, with 27% receiving minor or no damage. My figures for Islamic buildings were unacceptable to those who claimed that ‘total destruction’ had in fact taken place, but who had not bothered to check the reality on the ground. As time passes and reconstruction takes place even the recent past quickly becomes obscure.

In many towns in the areas controlled by the Serbs mosques and Catholic churches were mined, and often bulldozed. This was especially the case for the old Ottoman foundations, which usually antedated Orthodox establishments; often lesser or more recent mosques would simply lose their minarets and be burned, and their ruins remained. In some towns modest Catholic churches or chapels would not be touched. Generally the cemeteries, unless they were close to the destroyed buildings, were untouched. The objective of this kind of destruction, especially of the older and more imposing sacral buildings, was more evidently historical: *Croats and Muslims, though present, as was attested to by their cemeteries, had left nothing of particular value during their passage in the area.* The remodelling of the landscape, especially in the towns, was accordingly the rewriting of the past, and the revision of the cultural significance of the peoples who had lived in that past.

In Bosnia (and this was to be the case later in Kosovo), the enterprise of removing the traces of other peoples from the landscape was not carried out completely, on account of the evolution of the wars and the intervention of the international community. What was to be done with the devastated villages may simply have been an incompletely sketched project: there were not enough internally displaced people to fill the ruined villages, and one cannot easily turn city people into country people. Perhaps those who planned the ‘ethnic cleansing’ did not even conceptualize further than the act of destruction, at least in the countryside.

The socialist landscape of memorials too suffered, mainly at the hands of the Croats, who destroyed monuments and removed plaques: for these monuments seemed directed at the forbidden past of World War II, and the failure of the Croatian NDH state, whose failure was effaced by the creation of an independent Croatia in 1991.

To summarize for the war period, it could be said that landscapes were profoundly remodelled by ‘ethnic cleansing’. *Vast ideal landscapes, devoid of the others, and diminishing the values associated with these others, came into being.* Were those landscapes of ‘purified’ statelets to persist they would become part of the instruction of younger, ‘ethnically cleansed’ generations of a new mythic past, and a new citizenship. The partial success of the enterprise has loaded the landscape with tragedy, menace, and great negative potential for the future. It is to this post-war period that I now wish to turn.

There can be no restoration of a multi-layered, multi-cultural landscape without people. The reconstruction of an Ottoman mosque in a country town without Muslims is a symbolic act that may serve to correct a reading of history; it is not the reconstruction of a society. Obviously it is for this reason that the international community, and some national groups insist strongly on return of refugees and IDPs as the means to recreate at least part of what the old society was. It follows that, when there are returns, as in Bosnia, there is an attempt to recreate the symbols of presence: in the last five years the minarets of mosques have reappeared in areas that underwent severe ethnic cleansing, while the villages are also repaired, and to some degree at least, reinhabited by an ageing population. In some towns mosques have been built on the sites of their predecessors, but returns have been weaker than in the countryside. At the same time that landscapes are reappropriated, other landscapes, where refugees and internally displaced persons have not returned home, but have found a new home, they have become consolidated, with new churches or mosques where there were none in the past. Now building has become a declaration. Some landscapes cannot not be appropriated, nor turned into multi- or even mono-cultural landscapes because people do not return. Although I left Bosnia in 2003, and although some places returned to a semblance of life, there were great swathes of territory where people did not return, and accordingly areas of crumbling and overgrowing ruins. Moreover, there are large tracts of land in the frontline zones that are still mined, and which will be off bounds for many years.

The post-war landscapes can only be non-threatening to the degree that the peoples once again live with each other, and do not suspect each other or their leaders. One of the results of destruction was the ‘ethnicization’ of cultural and sacral heritage that previously had been perceived as commonly shared landmarks, such as the Old Bridge of Mostar, the National and University Library in Sarajevo, and even the Ferhadija Mosque in Banja Luka. When such landmarks are rebuilt *against the people* in

whose names crimes were committed, then they become factors of aggravation and new division. The enormity of the destruction, and the deliberate targeting of ‘symbols of presence’, or ‘symbols of common life’ on a large scale have made the landscapes far more contentious than one would want them to be.

The landscapes have become the home of other memorials to the war. The ad hoc cemeteries and mass graves, which we all remember during our work in the country, have to a large extent disappeared (although the original locations are all remembered by local people), and they have been replaced by new cemeteries and memorials. The great memorial to the massacres in the Srebrenica pocket at Potocari is not yet a symbol of reconciliation, and will not become one until the victims all find a last resting place there. In a new pacified Bosnia it will hopefully become a place of reflection, but it will become that only when other problems are worked out. In parts of Republika Srpska country schools, big and small, now have outdoor memorials to dead students, sometimes with their photographs. In Herzegovina Catholic crosses have been raised, or raised again on hills, provoking new tensions. For now the messages are ambiguous, because the reconstruction is ambiguous, and because the suffering was yesterday.

There are other messages in the Bosnian landscape besides those that are associated with the war, but the problem is how to read them. Nationalist regimes, or currents with articulate intellectuals, have ways of appropriating earlier cultures and societies.

The single most striking example is provided by the medieval tombstones known as *stecak* (in the singular, *stecci* in the plural), which are numerous throughout rural Bosnia, especially in Herzegovina. These are usually regarded as the single most unique Bosnian heritage, and the outstanding contribution of Bosnia to European tangible heritage. Bosnian Muslim intellectuals regard the *stecci* as the tombs of the members of the schismatic Bosnian Catholic church (Bogomils), about whose extent, nature, and even existence there has been a long scholarly controversy. For these intellectuals the Bogomils converted en masse to Islam, which is also the subject of historical discussion. A more neutral scholarly viewpoint holds that the people buried under the tombstones were undoubtedly Christian, but that it is next to impossible to determine what their exact church affiliation was. One’s reading of the medieval Bosnian landscape, and indeed the ‘real’ nature of the country, depends to some extent on one’s attitude to the *stecci*.

Other attitudes turn around the *stecci*. In Sabici, near Sarajevo, the UNESCO office was involved in helping the restoration of a *stecak* site that had been disturbed by UN forces during the war and by uncontrolled building afterwards. This site was right beside a Muslim cemetery, and the local Muslims asked the Sarajevo Institute for the Protection of Monuments to move the *stecci* further away from the cemetery, noting that the people buried under the stones were not ‘our people’. In other words, the landscape lived by local people did not necessarily correspond to an intellectual vision of it. At the Radimjla *stecak* site in Herzegovina, there has been opposition to the planned building of a monument to the Bleiburg massacre of Croats by partisan forces, which took place in 1945 just inside the Austrian border. When it was complained that the proximity of the monument to the *stecci* would disturb the site, a Catholic bishop pointed out that the area was saturated with burial sites of victims of the partisans. In fact, one of these turned up a few years ago only a few hundred metres away from the *stecci*. Accordingly, appeal on behalf of one landscape provoked appeal to a landscape that existed simultaneously with it in people’s memories.

It has been difficult to preserve cultural landscapes after the war. Measures taken to preserve one historically rich but ethnically cleansed rural area—which I will not name here—consisted of drawing a protection zone in such a way as to deny one national group any building within it, but allowing another national group to build anything on its periphery: in other words the apparent defence of heritage was a cover for what could be considered to be an ‘ethnic’ enterprise. When the Commission to Preserve National Monuments (Annexe 8 of the Dayton Agreement) was established in 1996, it was next to impossible to bring the local members to discuss much other than destroyed sacral buildings or

cultural monuments that had come to be associated with a particular national group. Fortunately this has changed with the passage of time.

In Bosnia it is difficult to use the landscape to consolidate a common identity as long as the society cannot resolve other problems first: until then it risks being only be an source of extra tension. The reading of history, and not just recent history, as the example of the *stecci* reveals, is one key to the pacification, and re-integration into a shared vision, of rural and urban landscapes. But recent history weighs heavily: 'ethnic cleansing' has left too many memories, in destroyed buildings and monuments, in the places of killing, and in the removal, and only partial return, of Bosnian citizens. It is partly for this reason that international interest in the restoration of individual monuments must broaden to take into consideration the different elements of history in the landscape, if it is to make a useful contribution to the restoration of life together in the country.

Certain directions will be more fruitful than others. The resolution of fundamental political problems is beyond the grasp of those addressing landscapes. Academic history risks remaining mired in nationalist interpretations for years to come. Teaching 'World Heritage' along UNESCO lines is only of limited interest in Bosnia, where there are still no World Heritage sites (in Kosovo it would be even more problematic, where the only such site is the Orthodox Monastery of Decani). The ostensible appeal to 'multi-cultural heritage' is more fraught with partisan political overtones than many internationals realize. There are, however, means of delineating integrated landscapes by appealing to a wider range of factors than those I have evoked here. In the months before I closed the UNESCO Sarajevo office in 2003 I began working on the preparation of a 'local history reader' with the members of the Bosnian UNESCO Associated Schools Project. This appealed strongly to all elements of the local landscape, *including the historical economic landscape*, both rural and urban, to various functional aspects, including totally ignored heritage such as Austrian train stations, the *gendarmeries* of the Kingdom of Yugoslavia, and the little rural schools of the socialist period. Moreover, one can go beyond the mythic socialist landscape of Second World War if one bothers to draw attention to the main substantial surviving element specific to that period: the fortifications built by the German occupation forces to control vital rail communications. In the local, proximate, and very real landscapes will be found the tissue of daily life, and the reality of life together. If the Bosnians can address the familiar, I think that they will be able to avoid at least some of the pitfalls of the abstract 'multi-cultural' world that much of the international community has sought to impose upon them.

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III. Legalising the Protection of Landscapes

National Landscape Statutes: A Comparative Analysis

Gian Franco Cartei

The branch of law that relates to landscape has undergone different developments in different European countries. The existing variations can be exemplified by briefly analysing three nations.

In Spain the Constitution does not specifically mention the protection of landscape. There exist only some principles which refer explicitly to the concept. Just think of Article 45, according to which ‘Public officials will watch over natural resources guaranteeing that a rational use of them is effectuated with the aim of protecting and bettering the quality of life and always defending and restoring the environment...’

The defence of landscape has usually been included in legislation dealing with urban planning laws or in that related to natural parks. The significance of this is that in Spain cultural landscaping has been understood in terms of nature conservation.

Much more recently, some regional laws have been formulated to safeguard landscape within the context of territorial legislation. One notable example is the 2004 Law 4 established in Catalonia.

The influence of the European Landscape Convention is apparent when we read Law 4—even the very definition of the word ‘landscape’ itself is pertinent: ‘An area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors (Article 29)’.

The objective of the law, in fact, is set up in favour of the protection, the management and the organization of landscape, and the scope of its application includes, beyond rural areas, even urban ones (Articles 25 & 26). The explicit goal is that of integrating landscape into urban, environmental and economic policies (Article 27). With this in mind, it was provided that territorial planning would be orientated and integrated into the protection of landscape (Articles 30 & 33).

France also does not mention landscape in its Constitution. But it is worthy to mention that recent constitutional legislation (2005-205; 1 March 2005) modified the Constitution inserting the *Charte de l’Environnement*. Even though this charter refers to the environment, it appears clear that this would affect also the protection of landscape. It is sufficient, actually, to recall Article 2 (‘Every individual has the obligation to take part in the conservation and improvement of the environment’) in order to understand that this reference is to the environment in a physical sense and, so, also applies to landscape.

From the French charter, however, it seems that it would not be possible to derive any conclusion regarding the concept of landscape and those instruments employed for its protection.

Other information is provided from legislation. In France, judicial recognition of a landscape is connected to the development of urban and environmental laws. Concerning landscape, these laws have treated previously some norms contained in urban legislation (see *Code de l’Urbanisme*), in laws referring to the discipline of architecture (Law 3; January, 1977), and in legislation dealing with national parks.

Landscape has been sponsored by legislators as the object of autonomous protection only by Law 8 (8 January 1993; 93-24; see Morand-Deviller, 1994: 588).

This law is directed to consider the tutelage of outstanding areas and the importance of their landscape interest, and it is founded on three types of regulation. The first provides that the State might adopt ‘Guidelines on behalf of the protection and the evaluation of landscape’ and with which

determined, fundamental principles for the control of territories are to be formulated. Secondly, each and every intervention upon a territory must be accompanied by a document which will demonstrate that the construction and/or restoration about to be realized is compatible with the intrinsic values of the landscape. Finally, the law requires that all activities must undergo a very vigorous control.

It is a good idea to underscore the fact that the 1993 law is not truly an organic law dealing with landscape in so far as it is a collection of norms which have to be inserted within other legislation. Its interpretation, then, is not uncomplicated and this might explain the reason for its failure (Morand-Deviller, 2004).

Contrasted with other European nations, Italy's legal tutelage of landscape is rather outdated. The need for a specific judicial discipline surfaced, in fact, when the 411 Law of 1905 was drawn up with the purpose of preserving the Ravenna pinewood.

This law was considered important because it foresaw that which would characterize the general line taken for all the legislation that followed its incorporation. In particular, it was distinguished by the fact that it opted for a model that took into consideration the importance of monuments, and it was aimed at the conservation of aesthetic and cultural values.

These traits have also left their marks not only on the 778 Law of 1922, but equally so on the 1497 Law of 1939. As Benedetto Croce (at that time Minister of *Pubblica Istruzione*) affirmed, the tutelage of landscape, or landscape protection, signified the guardianship of natural beauties which are consequently associated with the protection of all artistic concerns.

We may observe that at the base of the interest to supervise landscape was not actually the conservation of their fundamental natures *per se*—or even their environments' integrities—but the notion of the affinity between art and nature that mainly occupied the thoughts of the lawmakers. It should come as no surprise, therefore, that the 1939 law, which remained in force until 1999, was founded on the same principles of the legislation regarding those aspects pertaining to historical and artistic cultural heritage.

The 1939 law catalogued a series of edifying entities such as *villas*, parks and gardens. The legislation as well took note of areas with noteworthy historical and artistic relevance. It made use of the natural beauty perspective exclusively. The task of individualizing these natural beauties was charged to the administration which was responsible for respecting the criteria established by the law.

What is truly novel for the subject matter surrounding landscape was revealed in the 1948 Italian Constitution. Article 9 duly provided (and still provides) the following: 'The Republic safeguards landscape and the historical and artistic patrimony of the Nation.'

The question that has dominated the thoughts of lawmakers and institutional leaders has been this: what is the exact judicial significance of the term *landscape*? What is meant by this word? The interpretations offered over the years have been numerous and conflicting.

Some theorists judged the expression too generic and denied that it could reflect an authentic judicial standard. Others, on the other hand, sustained that the Italian Constitution referred to a process of interaction to which they attribute the work of mankind and nature. In a landscape, it would fall into each part of the territory, whether city or countryside, and its tutelage would pertain to every activity performed within the territory (Predieri, 1969).

A third concept maintained that the constitutional norm reflected the meaning already contained in the 1939 law. According to this view, the word *landscape* would be synonymous with *natural beauty* and its regulation would be the same as expressed in the 1939 law. The consequences of this approach are the following: 1) landscape should be understood in the context of an aesthetic conception; 2) the idea of a landscape has a limited objective insofar as it does not rearrange the order of nature; and, 3) the regulation of a landscape is based on its conservation (Sandulli, 1976).

The last proposal is the one that has prevailed over the years. The Italian Constitutional Court has declared that a landscape ought to be interpreted as a protection of ‘an aesthetic and cultural importance relating to beautiful landscapes.’¹ And that viewpoint has not changed radically ever since the 1985 Law 431 was enacted.²

It is essential to note that the 1985 law had introduced some innovations. The most important was that the law stipulated general categories of areas or natural beauties (coastal territories, mountains, rivers, lakes, parks, etc). These were further subjected integrally or directly to conservation. The fundamental element, afforded by the identical law, was the approval of the regional planning of a territorial and the control of its environmental character.

With the 1985 Law 431 the concept of a landscape had been mutated: from the standpoint of a considered natural monument standing alone, known specifically for its beauty, it was then altered to be subjected to the tutelage of the territory which was characterized by its expansion; from that of conservation, it was altered to mean planning; and from the abstract conception of natural and artistic interest, it was altered to mean an evaluation of all that was present in the territory.

In each case, some element has pooled the 1939 law with that of 1985: these provide that when a property right is subject to the protection of a landscape, this will be under the auspices of a particular judicial discipline. The property owner has not the right to modify at will, but must seek administrative authorization. The administration will decide to approve or deny the permission in accordance with an aesthetic compatibility evaluation considering the proposed modification and the intrinsic character and worth of the asset.

The disciplinary characteristics of a landscape have been integrally maintained by the *Testo Unico* concerning landscape and artefacts and which was drawn up in 1999.

Apart from the elements of continuity harmonized with an earlier convention, the novelties introduced by the *Codice sui beni culturali e del paesaggio* of 2004 are worth mentioning. It is important to observe that here there appears a strong influence of the European Landscape Convention especially on matters referring to cultural subjects.

The *Codice* defines a landscape as ‘an homogeneous part of the territory whose qualities derive from nature, from human history or from reciprocal interrelations’ (Article 131). From this, there emerges a concept of territory in which the stance taken is that of an area whose character is the result of the interaction of natural and human factors.

Secondly, the *Codice* envisions that the landscape is object of a landscape planning extended throughout the entire regional territory. The landscape planning has an objective very much more wider in scope and which not only regards conservation, but also compatible transformations, methods of recuperation and evaluation interventions (Article 135).

That which is particularly original is to be found in the tasks and contents of the plan itself. In the past, as we have mentioned before, there was the prevalent idea that a landscape would be constituted by the unique natural (1939 law) or territorial (1985 law) beauty of the site. The foundation of the discipline for the entire previous century was based on the notion that a landscape existed before any intercession on the part of human beings. This was not created. It was only discovered and conserved.

With the *Codice* the standpoint was modified: the cultural landscape is not only beautiful, and it is not only discovered. It might also be degraded and constructed or reconstructed by human beings.

¹ 29 December 1982, 239, in *Le Regioni*, 1983.

² 27 June 1986, 151 & 153, in *Foro italiano*, 1986, c. 2689.

Article 143 stipulates that the planning of a landscape refers—above and beyond territories of outstanding landscapes—even to those ‘damaged and/or degraded.’ For these, the plan ought to provide for their restoration with the aim of ‘realizing new-found landscape values.’

The contents of the plan are articulated clearly. They make available for each and every territorial ambit landscape ‘objectives of quality’ that can be forecasted, beyond conservation, and also offer a well-matched urban plan of development.

It is expected, moreover, that the plan, beyond the territorial characteristics, contains those elements which effectuate the transformation of the territory, the specification of general rules and regulations for use in the territory, and the individualization of those necessary measures needed to integrate landscape into town planning policies as well as in any policies with possible impact on landscape.

Another peculiarity introduced by the *Codice* and which we may consider rather essential is that the plan of the landscape can single out areas that might be subjected to protection. This means that the power to pinpoint autonomously areas and zones of tutelage given to individuals who are responsible for regional planning might be different from those based on the principles laid out by the 1939 and 1985 laws.

The *Codice* of cultural artefacts and landscape is not just innovative. To an extent it makes use of concepts and instruments already employed in the past. However, it amends profoundly the discipline and appreciates very much the principles inherent in the European Landscape Convention.

The cultural landscape concept in the *Codice* reflects a bearing still more eclectic in scope and it goes beyond the ever-present standards of natural beauty and environmental conservation. It embraces an ample perspective of the real interests related to a territory, and it conveys the notion of a dynamic support model guaranteeing landscape protection according to a norm based on integration and coordination with other planning methods.

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Landscapes in International Law and European Law

François Lafarge

Introduction

Apparently, landscapes don't seem to be very concerned by international law and European law. There are two main reasons for this situation. First, is it difficult for the law in general and not only for International law or European law to grasp the notion of landscape. This difficulty is not only true for international law and European law but also for domestic law. Second, landscape is linked with fields which are of clear national competence like regional planning, town planning, infrastructures, and so on. Nevertheless nowadays no field completely escapes from international law or European law. It is the aim of this short paper to investigate to which extent international law and European law are now more and more related to landscapes.

The paper is divided in four parts. The first part will present the instruments in force related to landscapes (soft law will not be considered). The second part will focus on the definition(s) of landscape offered at international or European level. The third part will examine the notion of landscape protection according to international law and European law. The fourth part will consider to which government level international and community law recommend to allow responsibilities to identify and to protect landscapes.

Relevant International Law and European Law

EC Law

The European law relevant instruments are first the TEC and second the legislation. In TEC, two series of articles are indirectly related to landscape: article 151 TEC (Culture) and articles 174 to 176 (Environment). The relationship with landscape is very indirect and based on the assumption/interpretation that landscape is included in culture and/or in environment.

But, aiming at landscapes, the most interesting part of EC Law is legislation, even if EC law in this field is very ambiguous.

Two groups of EC legislation have to be distinguished. The first is agricultural legislation to which a special attention as to be paid. Three phases are to be considered. The first phase of European agricultural policy began from 1958 and lasted at the end of eighties. It was aimed almost only at quantitative production and efficiency. Council Regulation (EEC) No 797/85 of 12 March 1985 *on improving the efficiency of agricultural structures*, modified, is a good example of this approach. It had a deep negative impact on European landscapes (Thomson, 1993: 541). The second phase began at the end of the eighties and the beginning of the nineties, with the 1988 reform of structural funds. More attention was paid to the side effects of productive agriculture and instruments were adopted in order to limit them.¹ Significantly the Council Regulation (EEC) No 2078/92 of 30 June 1992 *on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside* made a clear relationship between agriculture and landscape. A third phase started with the adoption, in 1997, of Agenda 2000 adopted by the European

1 Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs; Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures, modified; Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

Councils of Berlin (1999) and Göteborg (2001): agriculture was linked to rural development. Issues like environment and, to a minor extent, landscapes were considered. They became access criteria to European funds (like Guarantee Fund, Regional Development Fund, Structural Fund) allotted to support agriculture.²

The second ground of EC Legislation related to landscape is a residual group including impact assessment directives,³ the *habitat* directive n.92/43⁴ and the directives related to public participation in the environmental decision making process (lastly directive n.2003/35).⁵

International Law

International Law offers a wide range of conventions directly or indirectly related to landscapes. These conventions can be divided in four groups.

The conventions of the first group focus precisely on landscapes or at least contain provisions specially dedicated to landscapes.⁶

Some other conventions (second group) pay attention to landscape related aspects of other assets. Mainly, these conventions deal with the protection of cultural assets,⁷ the protection of natural assets⁸ and the protection of both cultural and natural assets.⁹

Other conventions (third group) provide for the taking into account of landscapes in other policies.¹⁰ To this respect, two European conventions recognize the landscape protection criteria in the creation and the management of natural parks.¹¹

Some developments will also be consecrated to the first Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 Paris, 20 March 1952 (fourth group). The European Court of Human Rights is the ultimate jurisdiction in

2 See for example Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)

3 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment; Council Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

4 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

5 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice.

6 Benelux Convention on Nature Conservation and Landscape Protection, Brussels, 8 June 1982 (this convention may have had a limited practical impact but was a conceptual turning point); Convention on the Protection of the Alps, 5 November 1991; Protocol to the Convention on the Protection of the Alps Concerning Environmental Protection and Landscape Management, 20 December 1994 ; European Landscape Convention, Florence, 20 October 2000 ; Framework Convention on the Protection And Sustainable Development of the Carpathians, 22 May 2003.

7 Convention for the Protection of the Architectural Heritage of Europe, Granada, 3 October 1985.

8 Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, 2 February 1971, as amended in 1982 and 1987; Convention on the Conservation of European Wildlife and Natural Habitats, Bern, 19 September 1979; Convention on the Protection of the Alps, 7 November 1991; Annex V to the Protocol on Environmental Protection to the Antarctic Treaty Area Protection and Management, 18 October 1991.

9 Unesco's Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 6 November 1972; Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean, to the Convention for the Protection of the Mediterranean Sea against Pollution, Barcelona, 10 June 1995.

10 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998.

11 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Madrid, 21 May 1980; European Charter of Local Self-Government, Strasbourg, 15 October 1985.

Europe to determine the balance between private property and public interest. And protection of landscape is mentioned as being of public interest by the third recital of the European Landscape Convention.

Notions of Landscape in International Law and EC Law

The shaping of the notions of landscape at international and European level can be analysed distinguishing a starting point and a two steps evolution.

Starting point: Conceptual Dependence

The starting point was that landscape was conceptually dependent upon other notions such as nature, aesthetics, or environment. Of course, this tripartite scheme was not always so clear and the notions were a little bit meshed together in some instruments. Nevertheless, until the very last developments in international and EC law, international and European instruments followed, at least roughly, one of the three notions.

The first conceptual dependence regards nature. Dependence is very clear in the Convention on the Conservation of European Wildlife and Natural Habitats (1979) whose article 1 aims to conserve wild flora and fauna and their natural habitats. Same observation about the European directive 43/1992 known as *Habitat Directive*.¹² The Habitat Directive is intended to help maintain biodiversity in the Member States by defining a common framework for the conservation of wild plants and animals and habitats of Community interest.¹³ Same dependence could be demonstrated in many other instruments: first in the Council of Europe Conventions dedicated to the trans-frontier cooperation, specially in the case of creation of trans-frontier natural parks,¹⁴ second in the Convention for the Protection of the Alps,¹⁵ third in the Protocol concerning Environmental Protection and Landscape Management to the previous convention,¹⁶ fourth in the Protocol (to the Barcelona Framework Convention) Dedicated to Specially Protected Areas and Biological Diversity in the Mediterranean,¹⁷ and fifth in the Annex V to the Protocol on Environmental Protection to the Antarctic Treaty.¹⁸

The second conceptual dependence is related to aesthetics. Such dependence is obvious in conventions aimed at the protection of heritage like the World Heritage Convention and the Convention for the Protection of the Architectural Heritage of Europe. Both conventions doesn't use the word landscape but site and especially natural sites. One of the definition of natural sites in the World Heritage Convention is that of 'precisely delineated natural areas of outstanding universal value

12 According to article 1 (b) natural habitats are defined as 'terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural'.

13 The Directive establishes a European ecological network known as 'Natura 2000'.

14 The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (1980) proposes Outline agreements, statutes and contracts between local authorities. Two of this agreements deal with landscapes: Model agreement on the creation and management of transfrontier parks and Model agreement on the creation and management of transfrontier rural parks

15 This convention makes very clearly that landscape is never considered alone but is always connected to nature. See especially Article 2 (2) ((f)). In the area of conservation of nature and the countryside: 'the objective is to protect, conserve and, where necessary, rehabilitate and natural environment and the countryside, so that (...) the variety, uniqueness and beauty of nature and the countryside as a whole are preserved on a permanent basis' (Emphasis added).

16 See articles 1, 2 and 9.

17 Whose recital 2 stresses 'the importance of protecting and, as appropriate, improving the state of the Mediterranean natural and cultural heritage, in particular through the establishment of specially protected areas (...)' See also articles 4 (d) and 8 (2); (Emphasis added).

18 Article 3 of this Annex provides for the category of Especially Protected Antarctic Areas defined as 'Any area, including any marine area, may be designated as an Antarctic Specially Protected Area to protect outstanding environmental, scientific, historic, aesthetic or wilderness values, any combination of those values, or ongoing or planned scientific research'.

from the point of view of science, conservation or natural beauty' (article 2 (3)). The aesthetic criteria is also clearly mentioned elsewhere in this convention (for example article 1 (3)). In the convention for the Protection of the Architectural Heritage of Europe, sites are defined as 'the combined works of man and nature, being areas which are partially built upon and sufficiently distinctive and homogeneous to be topographically definable and are of conspicuous historical, archaeological, artistic, scientific, social or technical interest' (article 1(3)).

Finally, the third conceptual dependence is the one to the notion of environment. In some international conventions and European legislation, landscape is considered as a part of the environment. This is the situation for example of the European directives on Impact Assessment (n.337/85 and n.42/2001). Projects submitted to impact assessment have to be checked to not only towards 'usual' environment issues but also toward landscape considerations.¹⁹ The Convention on Public Participation in Decision Making Process makes the same assimilation, that is landscape as part of environment.²⁰ Public has to be involved not only into 'usual' environment issues but also into landscapes issues.

First step: conceptual autonomization

The first step witnesses a process of conceptual autonomization of the notion or the notions of landscapes. This can be demonstrated analysing other series of examples.

First, in the case of nature, the human dimension is now much more taken into account as the main factor of landscape creation. More exactly emphasis is added on the interaction between man and nature. This anthropization of landscape was already present in the criteria of the World Heritage Convention. But the sites protected under its auspices were mainly pure natural sanctuaries, with no or very limited human intervention. The human factor is clearly put at the first place in the 1982 Benelux convention related the conservation of nature and to the protection of landscapes. The definition of landscape given by this convention states that 'landscape may be considered as the reflect of the community attitude towards its natural context and the way under it acts on it', article 1 (2) ((3)).²¹

The phenomena of conceptual autonomization is even more striking in the case of aesthetics. I will consider only one example. The European Landscape Convention introduced in its definition of landscape the degraded landscapes. According to article 2 '(the convention) concerns landscapes that may be considered outstanding as well as everyday or degraded landscapes'. The moorings with the 'traditional approach' of landscape as 'nice', worth to be protected and enjoyed pieces of nature or anthropogized nature are clearly cut.

Second step: assimilation of landscape as *cadre de vie*

This last example leads us to the second step of evolution of landscape notion in international law and European law. Landscapes are no more considered as portions of territory deserving protection for one of the reasons we examined below. They are considered as the physical daily life context of people, notion summarized using the English expression of *surroundings* (European Landscape Convention, Article 5 (a)), even if the French expression of *cadre de vie* is perhaps more evocative.

19 See for example annex I (f) and annex II (2) of directive 42/2001.

20 See article 2 (3) ((a)) where 'landscapes and natural sites' are considered as 'elements of the environment' among 'air and atmosphere, water, soil, land, biological diversity'.

21 The full definition of 'landscape' given by this convention is worth quoting : '*partie perceptible de la terre définie par la relation et l'interaction entre divers facteurs: le sol, le relief, l'eau, le climat, la flore, la faune et l'homme. Au sein d'une unité paysagère déterminée, ces phénomènes donnent lieu à un schéma issu de la combinaison d'aspects naturels, culturels, historiques, fonctionnels et visuels. Le paysage peut être considéré comme le reflet de l'attitude de la collectivité vis-à-vis de son milieu naturel et de la manière dont elle agit sur celui-ci*'.

To my view three arguments can be advanced in order to demonstrate this assimilation.

First, the *cadre de vie* issue is becoming more and more important in the European directives on agriculture. As it was said below, from the end of the 1990 onwards, the European agriculture policy is considered in a wider context; the so-called rural development. And *cadre de vie* issues are a relevant part of the rural development as conceived by the European Union.

Second, the European Landscape Convention considers the landscape as ‘area, whose character is the result of the action and interaction of natural and/or human factor’ and which are ‘perceived (as such) by people’ (article 1 (a)). That means that landscapes are such only because they are the support of daily life of the population living in it. It recalls the Latin etymology of landscape in Italian and French (*paesaggio, paysage*). There are two parts in these words, *pagus* and *ager*. *Pagus* is the peasants village and *ager* is the field the peasant population of the village is using/cultivating. Etymologically in French, Italian and in other Latin languages, the landscape is the *cadre de vie* of rural populations.

Third, the development of public participation into decision making process in the field of environment is totally congruent with this new approach. The aim of all existing instruments in this field at both European and international level is to make people more involved in the public choices affecting, from the point of view of the environment, the places they live in, their *cadre de vie*.²²

Protection of Landscapes in International Law and European Law

The notion of landscape protection in international law and in European law followed, to some extent, the same path followed by the notion of landscape itself.

But the evolution of the notion of landscape protection was nevertheless never so spectacular as the evolution of the notion of landscape.

Two reasons hindered the development in this field. First, international law and European law are always very cautious when private property is concerned. They prefer restraint and to rely on national limitations. Second, international law and European law don't enable international or European bodies in charge of following the implementation of their provisions by the member states with the power to override national lack of protection. In other terms, competent supra national bodies cannot decide to protect a landscape without the state consent. A limited exception has been introduced in the European Habitat Directive enabling the Council, upon Commission proposal, to list a site matching the protection criteria and not listed by the member state.

Nevertheless the evolution is divided in two phases.

Sanctuary protection

Very synthetically, the first conception of landscape protection was the freezing of the areas matching the *ad hoc* criteria. Mainly, protection was restricted to precisely delineated areas in which a high level of protection has to be provided. Many human activities were forbidden. The other has to be authorized.

This approach was obvious in case of international or European provisions conceiving landscape through nature or aesthetic criteria (World Heritage Convention, Convention for the Protection of the

22 According to article 5 (c) of the European Landscape Convention, each party undertakes ‘to establish procedures for the participation of the general public, local and regional authorities, and other parties with an interest in the definition and implementation of the landscape policies (...)’. Same concern is also expressed for example in the Protocol Concerning Environmental Protection and Landscape Management, 20 December 1994, to the Convention on the Protection of the Alps, 5 November 1991, article 1.

Architectural Heritage of Europe, Protocol to the Barcelona Framework Convention dedicated to Specially Protected Areas and Biological Diversity in the Mediterranean).

One of the concrete manifestations of this approach are the provisions related to the reconstruction of damaged landscapes as before. It is very clear in the Convention for the Protection of the Alps, both in the framework convention itself (article 2 (2) ((f)))²³ and its Protocol Concerning Environmental Protection and Landscape Management (articles 1 and 2).

Dynamic protection

Nevertheless a more dynamic approach of landscape protection has been introduced. This approach can be summarized as the enlargement of the geographical/thematic coverage of the protection balanced by a more or less diluted protection.

A first element of such new approach is the introduction of management issues in the landscape protection. This is clear in the European landscape convention where alongside with 'landscape protection' (which is not defined as being the protection of a sanctuary),²⁴ 'landscape management' is also defined.²⁵ Management, to which the notion of valorisation is often associated, means that purely conservative activities have to be balanced with activities following a more economic dimension. To this regard, economic activities, especially the traditional ones, can be maintained or reintroduced if they have a low impact on the main features of the protected zones. In the same direction more visitors may be allowed into the area and the authorities in charge of the zone can develop a more profit oriented policy.

A second element of the new dynamic approach of landscape protection is the so-called integrated protection. Integrated protection is a notion difficult to grasp. It has a long story starting in the soft law adopted by the Council of Europe in the mid seventies and cautiously introduced into the hard law from the eighties onwards. Broadly, it means that landscape issues and landscape protection have to be taken into account in other policies.

Integrated protection has been consecrated both at international and European level (Kiss, 2005: 261). At international level, the Convention on the Conservation of European Wildlife and Natural Habitats states that 'each Contracting Party undertakes, in its planning and development policies and in its measures against pollution, to have regard to the conservation of fauna habitat' (article 3 (2)).²⁶ There is also a clear statement in the European Landscape Convention according to which 'each party undertakes to integrate landscape into its regional and town planning policies and in its cultural, environmental, agricultural, social and economic policies, as well as in any other policies with possible direct or indirect impact on landscape' (article 5 (d)).

At European level, integrated protection is now recognized at the highest normative rank, i.e. in the Treaty (article 175 TEC in the case of environment and article 151 in the case of culture). In European law literature, integrated protection is known as cross sectional clause or policy binding clause.

23 Regarding the area of conservation of nature and the countryside 'the objective is to protect, conserve and, where necessary, rehabilitate and natural environment and the countryside, so that ecosystems are able to function (...)'. (Emphasis added).

24 Article 1 (d): 'Landscape protection means actions to conserve and maintain the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and or from human activity' (Emphasis added).

25 Article 1 (e): 'Landscape management means action, from a perspective of sustainable development to ensure the regular upkeep of a landscape, so as to guide and harmonise changes which are brought about by social, economic and environmental process'.

26 See also Article 4 of the Protocol Concerning Environmental protection and Landscape Management to the Convention for the Protection of the Alps.

Nevertheless, integrated protection presents weak points. First, as all the transversal notions, it is fragile. Second, integrated protection very often lacks of precision. More specifically, in case of conflict between landscape and other public interests, provisions introducing protection often fail to indicate priorities.²⁷ This is obvious in conventions having a large geographical coverage (like the Convention for the protection of the Alps or the Framework Convention on the Protection and Sustainable Development of the Carpathians). Outside especially protected areas (which are mentioned only at article 11 of the Protocol Concerning Environmental protection and Landscape Management to the Convention for the protection of the Alps) protection offered to landscape is at the best equal to protection granted to other public interest or even private interests (articles 4, 7, 8 and 9 of the Carpathians Framework Convention) or a the worst inferior to it : article 9 of the above mentioned Protocol recognize that landscapes can suffer *inevitable damages*, granting only formal conditions as impact assessment.

Allocation of Responsibilities to Identify and to Protect Landscapes

International law and European law related to landscapes also made a significant evolution in another field: the allocation of responsibilities to identify and to protect landscapes.

Under the first conventions dealing with landscapes, states where the only political level considered for being in charge of the provisions implementations. I was not an acknowledgment that the State was the better level to identify and to protected landscape. It was only an usual public international law way of doing. The reserves related to the federal nature of some member states has to be interpreted in this meaning only. The Convention on Wetlands of International Importance and the Convention on the Conservation of European Wildlife and Natural Habitats only mention the Contracting Parties, i.e. the States,²⁸ and the World Heritage Convention made a clear statement according to which 'each 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 referred to articles 1 and 2 and situated on its territory, *belongs primarily to the State*'.²⁹

The ongoing evolution doesn't lead to an acknowledgement of responsibilities to sub national bodies. It leads to oblige the Contracting States to develop a true subsidiary approach, this is to identify the most relevant level of implementation and to transfer to it or at least to share with it the competencies. The most relevant level can be the national level, but also the regional or even the local. The starting of this evolution was broadly the European Charter of Local Self-government (1985).³⁰ It is only at article 4 of the European Landscape Convention that subsidiarity is clearly mentioned: 'Each Party implement this Convention [...] according to its own division of powers, in conformity with its constitutional principles and administrative arrangements, and respecting the principle of subsidiarity, taking into account the European Charter of Local Self-government'.

27 Article 11 of the protocol even ask landscape planning being in tuning with general planning.

28 See for example article 1 of the Convention on Wetlands of International Importance (1971) 'Each Contracting Party shall designate suitable wetlands within its territory (...)' and article 3 of the Convention on the Conservation of European Wildlife and Natural Habitats (1979) 'Each Contracting party shall take steps to promote national policies for the conservation of wild flora, wild fauna and natural habitats (...)'.
 29 Emphasis added. Even if the purpose of this article was to avoid any interference of the international level and especially the Unesco toward national level, it also can be considered as a deterrent toward a more decentralized protection at the national level.

30 Article 5 of the Protocol Concerning Environmental Protection and Landscape Management to the Convention for the Protection of the Alps also introduced a king of subsidiarity provision but perhaps vaguely to have an impact.

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Concluding Remarks

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A Social Demand for Landscape Policies

Europe's innumerable landscapes are the expression of the diversity it has expressed throughout its history. The wounds, scars and deformities they exhibit are clear signs of the break up of the European social fabric following the major transformations that have marked the twentieth century. These signs are particularly evident in those regions which suffered from severe war experiences, including intentional destructions, massive killings and migrations, and which very often produced the so-called *conflictual landscapes*. But these signs are not less evident when landscapes are determined by a form of peaceful, everyday economic development that remains oblivious to the appearance of the areas it affects. In these areas, people have come to realise that the quality and diversity of landscapes are dwindling under the impact of a wide range of factors and that this trend is adversely affecting the quality of their daily lives. In Europe, these landscapes are damaged by unchecked urban sprawl, mushrooming out-of-town shopping centres and advertisement hoardings, the sometimes absurd growth of transport infrastructure and energy-producing facilities, unsustainable tourist resorts, streamlined farmland, abandoned rural areas, spreading forests and wasteland, forest fires, illegal quarrying or derelict mining areas. All this disfigures and standardises landscapes, substantially reduces their diversity and distinctive features, weakens their inhabitants' identity and sense of belonging and keeps foreign visitors away.

The transformation from static to mobile societies, aided and abetted by new communication technologies, is tending to break the bonds between people and places. It poses a threat to local communities' geographical roots and speeds up the process of *deterritorialisation*. That is probably why today people have started seeking positive values in the countryside, but also in urban areas, with which they can identify. Hence the direct interest in the landscape, reflecting a more profound unease probably linked to the spread of globalisation and its contrasting effects, in which standardisation and modernisation go hand in hand with growing distortions and inequalities. Seen from this standpoint the spectacular growth of interest in the landscape is much more than just an aesthetic foible of an over-indulged society, but rather an indication that people wish to re-establish their links with their place of residence, which are breaking up under the pressure of modern-day life. The interest in landscape is therefore an aspect of local communities' relationship with their immediate surroundings and is in large measure the product of the contradictions in contemporary social and economic development. What is revealed is the non-sustainability of this development, and its inability to continue over time without threatening the heritage of resources we can pass on to future generations.

In response to this situation, and to the social demands that have been created, there has to be as much local input as possible in all areas of public decision making. Establishing a close relationship between public policy and local resources is a precondition for sustainable and balanced development. If government decisions are to lead to something more than outside exploitation of local resources there has to be a 'territorial added value'. The local political community must measure up to its responsibilities, which calls for a concerted effort from the entire European political class. In accordance with the subsidiarity principle, local and regional authorities must play a part in drawing up and implementing landscape policies. Giving such policies a firm local foundation offers those concerned an opportunity to express their human and social potential—based above all on their knowledge, traditions and local cultures, coupled with a direct and profound understanding of their localities—in a democratic setting. The result is likely to be a more effective and sustainable use of resources, whose diversity must be respected. Viewed in this way landscape policies can help to defend and enhance the values that underlie local identities and counter the trend towards bland

uniformity and standardisation triggered by current transformations. However, the values that go to make up identity have to be reconciled with the inflow of alternative social and cultural values and other sources of ‘contamination’ present in society. The defence of local identities must not lead to self-centeredness and exclusivity, and local societies must not be encouraged to close their minds to outside influence in the name of a landscape-inspired cult for preserving one’s territorial roots. Europe’s marvellous patchwork of landscapes must therefore be a resource for the future rather than a symbol of past inertia. The diversification of cultural policies and traditions at local and regional level cannot be allowed to mutate into isolation, separateness and a closing of minds. Landscape policies must help to celebrate diversity and encourage a willingness to enter into dialogue and exchange ideas, and to accept a constant redefinition of the reference values that make up identity.

In order to make this process easier, where landscape is concerned, the lawmaker’s primary task is not to recognise the significance or beauty of a particular landscape, but to acknowledge, and consequently protect, a complex asset, namely every citizen’s need to: establish a tangible and feeling relationship with the land, derive spiritual and physical benefits from this relationship, take part in determining the landscape features of the area they live in. This complex ‘Landscape asset’ thus consists in subjective terms of people’s capacity to establish a tangible and feeling relationship with the land and in objective terms of the areas perceived through this relationship. People do not always live in a setting of remarkable beauty, yet every citizen is entitled to a high-quality landscape, not only those who are privileged to live in or visit outstanding landscape areas. The law will perform a *watchdog function*, ensuring that the landscape aspect of an area cannot simply be ‘struck off’ without due regard for the interests of the community concerned.

A Response: The European Landscape Convention

As international lawmaker, the Council of Europe has recognised landscape as one of the basic components of European citizens’ heritage and identity. In practical terms, however, the Council of Europe has also realised that landscapes are one of the prime factors in people’s living environment and that damage to them have a very adverse impact on the quality of their daily lives. Identifying landscapes as a key component of people’s local, regional, national and European heritage and identity and recognising it as an essential factor in the quality of day-to-day life has encouraged the Council of Europe to try to translate the landscape asset into legal principles recognised by all European states, in the form of an international convention.¹ The main purpose of this convention is to provide a suitable framework for the changing social, political and legal approach to landscape and thus offer Europe’s people a body of international legal guarantees to meet their demands with regard to landscape and their living environment. The intention is also to fill a legal vacuum because European legal instruments on environment, spatial planning and cultural heritage lack a specific and comprehensive reference to the protection, management and planning of Europe’s landscapes. These instruments are of limited geographical scope and address only some aspects of the landscape issue or approach it from the standpoint of the protection and management of other territorial concerns. An international convention is a dynamic legal instrument which evolves together with the subject matter of its provisions. It is essential that an international instrument dealing with landscape assets and concerns should keep pace with their changing nature. If it is not legally binding and lacks an appropriate monitoring system, it is liable to remain a dead letter, a series of rather feeble recommendations which, in time, are likely to lose their relevance to the problems they seek to solve.

1 This aim was also supported by the European Union’s European Environment Agency, which published its report ‘Europe’s environment: the Dobris assessment’ after the first European Ministerial Conference on the Environment (Dobris, June 1991) and in Chapter 8 expressed the wish that the Council of Europe should take the lead in drawing up a European convention on landscape. In 1995 the IUCN published ‘Parks for life: actions for protected areas in Europe’, which advocates implementing an international convention on rural landscape protection in Europe, involving the Council of Europe.

In 1994, with these facts and ideas in mind, the Congress of Local and Regional Authorities—the Council of Europe body representing the area-based authorities of the Organisation’s 46 member States—took the lead in drawing up a European Landscape Convention (ELC) for adoption by the Committee of Ministers. In doing so it faced up to its responsibilities and rose to a challenge. The Congress members are elected representatives in charge of towns or cities and the surrounding areas, which means that they are politically committed to improving the quality of citizens’ lives in those areas. The Congress was convinced that official landscape activities should cease to be a restricted field of study or sphere of action handled exclusively by a few specialist scientific bodies. Landscape should become a mainstream political and social issue because it contributes very significantly to the wellbeing of Europe’s people. It is a matter for every citizen and lends itself to democratic treatment, particularly in terms of local and regional democracy. While referring to cultural and environmental concerns, the Congress’ initiative pursued basically social aims, which may have been the key to overcoming the conceptual difficulties raised firstly by the definition of landscape and its multifaceted and multidisciplinary nature, and secondly by its subjective and objective aspects. Based on a preliminary draft prepared by the Congress, the ELC was adopted by the Committee of Ministers on 19 July 2000; it was opened for signature on 20 October of the same year and it entered into force on 1 March 2004. The Convention is today in force in 19 European States. Twelve other countries have already signed it (situation on 1 September 2005).

During the discussions leading up to its adoption, the ELC was rightly seen as one of the social and cultural alternatives to the financial and economic approach that resulted in the establishment of the single market and the single European currency. In recent years the process of European construction has been chiefly geared to legal and economic requirements. The initiators of the process considered with some justification that the political union of Europe could only be achieved with commercial and economic ties as the starting point. However, the political pressure generated in the European Union’s member States by the prospect of the single currency and in many central European countries by the prospect of joining the Union has thrown the whole process of building Europe out of balance. That is probably why, several senior political figures have pointed to the need for a broad European goal that will meet people’s social and cultural aspirations. The ELC is probably a response to that demand because it concerns people’s deepest aspirations—those connected with their heritage and identity. The demand that a growing number of European citizens is addressing to public authorities so that everyday landscapes are properly protected, managed and planned clearly indicates that these landscapes represent an essential part of people’s local identity but also, conceived as a common asset, of their sense of belonging to the European community.

The ELC has offered the foundation for a general consensus on the concept of ‘Landscape’ and it probably secured agreement on this topic, while avoiding doctrinal disputes whether the landscape is the domain of the biologist, the ecologist or the nature conservationist, or exclusively the province of archaeologists, historians, cultural heritage conservators or whatever. The ELC gives a specific definition of the term ‘Landscape’ [*‘Landscape’: a piece of territory, which may include coastal and/or inland waters, as perceived by populations, the appearance of which is determined by the action and interaction of natural and human factors (Article 1)*] which falls into two easily identifiable parts: the first referring to an objective dimension, i.e. territory, the second to the subjective aspect, i.e. people’s perception of territory. This definition is based on the idea that the landscape must be recognised and protected independently from its value and features. When it refers to the concept of landscape, the ELC does not refer to particular landscapes but to an ideal (and now also legal) asset. The national laws will have to treat this asset as other environmental assets, i.e. air or water. From a scientific, but also, legal point of view—even though this can be considered a pleonasm—it is not wrong to add the adjective *cultural* when referring to the definition of landscape. However, from a practical point of view, this adjective can let think that there are landscapes which are not *cultural* and which, for this reason, do not deserve legal recognition or protection. In other words, when one refers to *cultural landscape*, it can be understood that the word *cultural* is intended to stress a particular value which can not be identified in landscapes which are not qualified as such. The ELC therefore

implies the distinction of the very concept of 'Landscape', conceived as a logical category or a legal asset, from tangible landscapes. These landscapes can have a more or less strong natural or cultural dimension but, in order to avoid misunderstandings, they should be never confused with the concept of 'Landscape'.

The ELC includes two major innovations stemming from the new social, political and legal conception of landscape mentioned above. Firstly, it applies to both ordinary and outstanding landscapes. It is intended to cover all parts of European territory, from cultivated or natural rural areas to urban and peri-urban areas. It will not be confined to either the cultural or artificial features or the natural features of landscape, but will cover them all, together with the relationships between them. Secondly, the ELC places the accent on people's involvement in the perception and changing appearance of landscape. It emphasises the importance of heightening public awareness to encourage people to take part in decision-making likely to affect landscape in their local areas. That is also why, on the basis of the *subsidiarity principle*,² public decisions on landscape issues will have to be taken at the level closest to the inhabitants.

On the basis of the ELC's principles, public authorities will have a twofold task. Firstly, they will have to inform and educate the public about the spiritual and practical benefits of the sensory perception of territory, thus creating a *right to landscape*. Secondly, they will have to draw up a whole series of standards on the protection, management and planning of the perceived territories (i.e. landscapes) of all the areas under their authority, thus creating *landscape law*. Legal recognition of landscape concerns, with a view to establishing a *right to landscape* and forming a body of *landscape law*, can help to satisfy people's deepest needs. If those needs are encouraged, acknowledged and protected by the authorities, deeply felt ties can be forged between people and territory, and this in turn can foster *landscape awareness* and a *territorial culture*. This culture is a prerequisite for preventing the damage to land which is caused by satisfying people's material needs alone, and for promoting a quality of life based on people's environmental aspirations in general. *Landscape awareness* and a *territorial culture* already exist in some European regions, whose inhabitants have thus been able to identify with the surroundings in which they work and spend their leisure time. This identification, which may be both local, regional, national and European, has increased their feeling of individual and collective identity and their sense of belonging to a particular community. As already mentioned, acknowledging landscape concerns does not only help to maintain natural and cultural diversity; it is also beneficial to people's physical and mental health and meets their need to express and fulfil themselves in their local surroundings. This fulfilment is conducive to sustainable development because the quality of landscape is a key factor in the success of social and economic undertakings.

Implementation of the European Landscape Convention

The Convention's entry into force opened the way to the *democratisation of the landscapes*, by linking them—whenever possible—to the local and regional communities directly concerned, and a new dimension for international public action to improve the quality of life of these communities throughout the Council of Europe's member States. However, its adoption, opening for signature and entry into force in the States that have already ratified it by no means set the final seal on governments' landscape activities. The work has barely started and that its completion is intimately bound up with the implementation of the European political project of which the ELC is simply the authoritative legal expression. This project is undoubtedly an ambitious one, indeed some have even called it *revolutionary*. The terms are not unjustified, given that what is sought is a major shift in the relationship between citizens or the public and their local areas, based on the principles embodied in

2 This principle is indirectly defined by the Council of Europe's European Charter of Local Self-Government, which provides in Article 4.3 that 'Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy'.

the ELC. For the project to succeed, national authorities must ensure that, like a liquid flowing through a complex structure, the Convention's principles penetrate the very innermost workings of society. Without the co-operation of national, regional and local authorities, the liquid in question will remain in its exalted European container, where it will be put on display by a small number of particularly inspired or zealous politicians and officials. Yet this liquid is no magic potion, but simply a form of sap which, if it is to bring life, must be allowed to flow and become a resource accessible to all. This sap must course through the veins of the civil, administrative and institutional structures of the states that make up our continent. Based on the *subsidiarity principle*, it must reach the very roots of our complex society and inspire those who still treat their natural surroundings exclusively as a means of satisfying their own material interests rather than as an essential source of environmental balance, public health, sustainable development. Clearly then national governments' first step must be the ELC's ratification and correct implementation. Before that, public authorities must avoid taking positions for purely short-term electoral purposes that contravene the Convention's letter and spirit and put at risk the developing awareness of the landscape in the national community concerned.

In most of the Council of Europe's member States direct responsibility for landscape matters lies with regions or local authorities, in the latter case sometimes as a regionally delegated responsibility. Local and regional authorities must be alerted to the importance of their role. With the Convention's entry into force, the time has come for local and regional authorities to assume their responsibilities. Given the difficulty of the task, it is important that authorities should be able to exchange information in a spirit of co-operation and to their mutual benefit, and that their decisions should also be based on the knowledge and experience of the academic world and the voluntary sector. The multidisciplinary nature of the information needed for the successful protection, management and planning of the landscape in accordance with Convention principles calls for the development of significant scientific and technical resources. It is clear that, despite their political commitment, many European local and regional authorities lack such resources. Some however do have access to them and in a spirit of trans-frontier and inter-authority solidarity could share them with less developed areas, in consultation with the scientific and NGO's bodies. Such links will require a certain amount of co-ordination and organisation if the Convention is to be properly and fully applied, hence the need for a single European body responsible for helping local and regional authorities to combine their landscape knowledge and skills.

That is why, as recently suggested by the Congress, national and European institutions should support initiatives aimed at establishing a European network of local and regional authorities for the application of the ELC. This network would offer regions and local authorities co-ordination, assistance, technical and scientific support in carrying out their landscape responsibilities in accordance with the principles of the Convention. It would help to improve regional and local authorities' decision-making capacities in their respective spheres and in conjunction with central government, particularly in the areas of planning and authorisation procedures. The network should also be constantly aware of the need to educate the public and officials about the landscape, according to the provisions of the Convention. The network should have an open structure accessible to all. The results of its work should be shared by the maximum number of local and regional authorities concerned in practical landscape protection/management/planning activities, in conjunction with relevant academic and voluntary organisations and bodies. More particularly, the network would be principally concerned with preparing documents on the identification and assessment of landscape units, setting landscape quality objectives and decisions concerning landscape protection/management/planning. Scientific support would involve data analysis, updating and processing and the development of scientific co-operation programmes concerned with comparison, evaluation and the dissemination of findings. These activities would be supplemented by programmes and projects for informing, educating and training those concerned in this field. In addition to its scientific and technical aspects, the network could also serve as a forum for dialogue between the local and regional authorities concerned and help them to co-ordinate their landscape policies. By co-ordinating their own activities the authorities could also establish a more harmonious dialogue with

central governments. The network could also complement the intergovernmental activities being undertaken by the Conference of Contracting Parties responsible for monitoring the application of the Convention. By co-ordinating local and regional authorities' action on the ground, the network should help to increase the effectiveness of governments' and intergovernmental activities. It could also contribute to the European co-operation in the Convention, particularly activities involving trans-frontier co-operation. Similarly, it could publicise activities associated with the Council of Europe's Landscape Award, an initiative which is particularly aimed at territorial authorities.

In order to send out a clear message to national governments willing to implement the ELC, the Council of Europe and European Union's competent structures must make it clear that from both environmental and cultural heritage standpoints the ELC implementation represents a priority. In this respect, their activities should retain the transversal and multidisciplinary nature of the ELC so that the knowledge and skills of the government representatives required to make the system work are a source of strength rather than of division and confusion. Without such a cross-disciplinary and flexible approach to institutional relations, the dynamic European process sought by the Convention could simply remain a dead letter. If these conditions are met, the ELC could become a living reality whose organs would continue to supply it with fresh energy. Respect for these principles would help to sustain the force of the landscape ideal that underlies the European Landscape Convention and is the source of and irreplaceable guide to success in all aspects of this field.

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