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“Spaces of Normativity”

*World Heritage and the Heritage of the
World – Book Review; F. FRANCONI
and F. LENZERINI, The 1972 World
Heritage Convention: A Commentary,
Oxford, Oxford University Press, 2008*

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World Heritage and the Heritage of the World – Book Review;

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The World Heritage Convention¹ is a landmark for the protection of the cultural and natural heritage of mankind. Since its approval in 1972, it has become one of the most effective and important mechanisms for the protection of sites and monuments worldwide. And the book under review, the first commentary book to this instrument ever published, is a testament to thirty-five years of international practice under this instrument. Edited by Francesco Francioni (European University Institute), with Federico Lenzerini (University of Siena), this book offers valuable insights into the World Heritage Convention and its operation, bringing together contributors from several areas of the world, both academics and practitioners.

In this review, I intend to look at some of the core issues raised by the book.² I will first briefly describe the book and its organisation, using this as a framework for discussing some of the most pertinent issues regarding the World Heritage Convention and the system established by it. I will open this analysis by looking at the conceptual issues raised by the World Heritage Convention, including the notion of ‘outstanding universal value’, essential for the application of the instrument. Next, I will analyse the Convention’s reach and representativeness with regard to the internationalisation of heritage and the alleged *erga omnes* character of heritage obligations in international law. I will finally analyse the Convention’s interaction with other instruments for the protection of cultural and natural heritage and emerging areas of cultural heritage law, particularly the protection of cultural landscapes and of intangible cultural heritage.

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¹ **1972 Convention Concerning the Protection of the World Cultural and Natural Heritage**, adopted on 16 November 1972 by the General Conference of the UNESCO. Entry into force: 17 December 1975, in accordance with Article 33. The number of states parties is, as of August 2008, of hundred and eighty-five (henceforth, “World Heritage Convention” or “the Convention”).

² **F. FRANCONI and F. LENZERINI, *The 1972 World Heritage Convention*.**

I. Structure of the Commentary to the World Heritage Convention

The Commentary is divided into four parts: the first is an introduction to the work; the second is the actual commentary to the Convention; the third is the relationship of the Convention with other systems of heritage protection; and the fourth is the conclusions. Appendixes containing key documents for a better reading of the book follow. The way the book is structured, by first introducing the framework for analysis, followed by the actual commentary, and then bringing it back into the larger context of heritage preservation law, seems to be quite effective, as it reminds one that international instruments, while they must be understood in the light of certain concepts, must also be applied in depth, but without losing touch with the general structure of international law.

The book opens with an introduction to the significance and impact of the World Heritage Convention, by the book's lead editor, Francesco Francioni. In this introduction, he highlights the importance of the World Heritage Convention in internationalising the topic of heritage protection, which until that point was considered to fall within the reserved domain of states.³ He also points out the interaction of this Convention with the birth of the environmental movement, also in 1972, with the Stockholm Declaration on the Human Environment.⁴ The two main innovative features of the Convention are then highlighted; that is, the recognition of the link between nature and culture, and the introduction of the concept of 'world heritage', as indicating a manifestation of heritage of concern to the whole of mankind, and not only to a certain group.⁵

The second part of the book starts with a commentary to the Convention's Preamble, in which Francesco Francioni discusses the values that should guide the application of the Convention. He also discusses the insight into the origins of the Convention that can be drawn from its Preamble, which also help inform these values.⁶ Next, the two definitional articles of the Convention, the one defining cultural heritage (Article 1), and the one defining natural heritage (Article 2) are analysed by Abdulqawi A. Yusuf and Catherine Redgwell, respectively.

³ *Ibid.*, pp. 3-4.

⁴ *Ibid.*, p. 4.

⁵ *Ibid.*, p. 5.

⁶ *Ibid.*, pp. 12-21.

The term ‘cultural heritage’ in the Convention came into being as an umbrella term to encompass three different types of heritage; namely, sites, monuments and groups of buildings.⁷ Importantly, the Convention moved away from the idea of ‘cultural property’, contained in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict;⁸ thereby, introducing a version of ‘intergenerational equity’, a crucial concept for cultural heritage, as it strengthens the reasons for protecting heritage. The shift from ‘property’ to ‘heritage’ -further explored below-⁹ also allows for other elements to be taken into consideration; in particular, cultural connections between objects and certain groups, and the internationalisation of the issue, since the term ‘heritage’ suggests a much broader concern, as it addresses the whole of mankind, while ‘property’ addresses the proprietor alone.¹⁰

Catherine Redgwell’s treatment of Article 2 stresses the historical development of the notion,¹¹ before assessing the criteria for a property to fall under the scope of this article. She reaches the conclusion that the criteria established for natural heritage are not mutually exclusive, and that rather these criteria are analysed jointly and holistically.¹²

An interesting feature of this book is its separate treatment of cultural landscapes under the Convention, as a further commentary to Article 1, by Kathryn Whitby-Last.¹³ Even though this concept was not originally within the reach of the Convention, successive reforms to its Operational Guidelines have enabled the inclusion of cultural landscapes as a category worthy of protection.

Ben Boer comments upon the identification and delineation of world heritage properties,¹⁴ under Article 3 of the Convention. The process of identification, according to Boer, not only commodifies heritage, but also stresses the subjection of heritage to the control

⁷ *Ibid.*, p. 25.

⁸ **1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention**, adopted in the Hague on 14 May 1954. Entry into force on 7 August 1956, in accordance with Article 33. The number of states parties is, as of August 2008, of hundred and eighteen.

⁹ See *infra* Part II, Section A.

¹⁰ **F. FRANCONI and F. LENZERINI**, *The 1972 World Heritage Convention*, p. 27.

¹¹ *Ibid.*, pp. 64-66.

¹² *Ibid.*, p. 68.

¹³ *Ibid.*, pp. 51-62.

¹⁴ *Ibid.*, pp. 85-102.

of sovereign states.¹⁵ This sovereignty-based approach is at least partly reinforced by Guido Carducci's commentary to Articles 4 to 7, referring to national and international protection of cultural and natural heritage.¹⁶ He affirms that the duties under the Convention fall upon the state for the preservation of heritage, and that international protection is subsidiary and independent from national preservation.¹⁷

Next, Tullio Scovazzi analyses the provisions creating the World Heritage Committee and the World Heritage List (Articles 8-11).¹⁸ He analyses the mandate and composition of the Committee, which are vital in establishing the bureaucracy that has for the past three decades positively transformed the meaning of the World Heritage Convention. He then goes on to analyse the List and the criteria for inscription therein, stating that the evaluation of a certain property is to be done in light of international standards, as opposed to national or regional values, thus strengthening the internationalism of the instrument.¹⁹ Gionata P. Buzzini and Luigi Condorelli also analyse Article 11 of the Convention, from the perspective of exclusion of property from the List and the List of World Heritage in Danger.²⁰

Federico Lenzerini then examines Article 12, which refers to the protection of properties not inscribed in the World Heritage List.²¹ According to Lenzerini, this provision is rather ineffective, not only because it does not impose clear obligations, but mainly because it is difficult to assess the "outstanding universal value" of properties not inscribed on the Lists.²² Ana Filipa Vrdoljak next assesses the World Heritage Committee (Article 13),²³ as well as its Secretariat and support (Article 14).²⁴ Federico Lenzerini looks at the World Heritage Fund (Articles 15-16),²⁵ which according to him is one of the reasons why joining the World Heritage Convention is attractive to states, as they are bound to receive funds to

¹⁵ *Ibid.*, pp. 86-87.

¹⁶ *Ibid.*, pp. 103-145.

¹⁷ *Ibid.*, pp. 115-117.

¹⁸ *Ibid.*, pp. 147-174.

¹⁹ *Ibid.*, p. 161.

²⁰ *Ibid.*, pp. 175-199.

²¹ *Ibid.*, pp. 201-218.

²² *Ibid.*, pp. 205-207.

²³ *Ibid.*, pp. 219-241.

²⁴ *Ibid.*, pp. 243-268.

²⁵ *Ibid.*, pp. 269-287.

help conserve and restore their heritage.²⁶ The activities to support the World Heritage Fund (Articles 17-18) are examined by Lynne Patchett.²⁷

Anne Lemaistre and Federico Lenzerini look briefly at the several provisions on international assistance under the Convention (Articles 19-26),²⁸ and Vesna Vujicic-Lugassy and Marielle Richon look at the educational programmes encouraged by the Convention (Articles 27-28).²⁹ These provisions aimed at the promotion of ‘non-legal’ activities are very important for the success of heritage protection, because they are aimed precisely at making heritage protection operative in practice, be it for the present (through international assistance) or prospectively (through awareness raising and education).

State reporting (Article 29) is analysed by Ben Boer,³⁰ as is the federal clause of the Convention (Article 34).³¹ Federico Lenzerini looks at what he refers to as “final clauses” (Articles 30-33 and 35-38).³²

Part III of the Commentary, relative to the relation of the World Heritage Convention with other international treaties, opens with a brief report by Guido Carducci on the relation of the 1972 Convention with other UNESCO instruments on cultural heritage.³³ Catherine Redgwell describes the relationship to other instruments on natural heritage.³⁴ This part is perhaps one of the few shortcomings of the book as, in my opinion, the relationships between the World Heritage Convention and other instruments for the protection of cultural and natural heritage have been addressed rather descriptively, without taking into account their prescriptive effects, or the underlying theoretical tensions between these instruments. These instruments often have very different theoretical foundations, and the commentaries in this part fail to explore how these different foundations and the consequent effects they have on the texts of the instruments influence and mould this relationship, especially if one is looking for a unified whole that draws on multiple sources capable of addressing and resolving natural and cultural heritage issues.

²⁶ *Ibid.*, p. 271.

²⁷ *Ibid.*, pp. 289-304.

²⁸ *Ibid.*, pp. 305-324.

²⁹ *Ibid.*, pp. 325-334.

³⁰ *Ibid.*, pp. 335-343.

³¹ *Ibid.*, pp. 355-360.

³² *Ibid.*, pp. 345-353.

³³ *Ibid.*, pp. 363-375.

³⁴ *Ibid.*, pp. 377-397.

In Part IV, Francesco Francioni and Federico Lenzerini conclude the book by looking at the problems and prospects for the future of the World Heritage Convention.³⁵ They highlight the primary reasons for the success of the Convention and the system created by it, one of them being its immense visibility, since the Convention is known not only for those working on the field, but it is generally known worldwide.³⁶ Also, the fact that it involves local communities in the process of identifying, presenting and nominating cultural and natural heritage sites is important, as it reconciles local values and traditions with the universal significance of a particular site.³⁷ The ‘soft’ character of the Convention, in the sense of imposing flexible and open-textured obligations upon states, is also pointed out as a factor for its success.³⁸ The main problem the Convention meets in its application is its being based on an old-fashioned understanding of state sovereignty as a prevailing value in international law.³⁹ Another big issue is that of the prevailing approach towards “outstanding universal value”, which favours a more monumentalised, western perception of heritage, not always compatible with the value of cultural diversity that UNESCO has been trying to promote over the last years. This is at least reconciled through the operation guidelines, though, and one can thus expect a more “pluralistic” and “diversity-oriented” approach in the choosing and managing of World Heritage sites.⁴⁰

Finally, the appendixes include core texts that work as true ‘companions’ for those using the book. These are: the full text of the World Heritage Convention; the Operation Guidelines for its Implementation; and the list of states parties to the Convention.

II. Reassessing key concepts

After briefly outlining the structure and contents of the book, I would like to move to the analysis of some of the most important issues raised in it, starting with some of the key concepts involved in heritage law.

³⁵ *Ibid.*, pp. 401-410.

³⁶ *Ibid.*, p. 401.

³⁷ *Ibid.*, p. 402.

³⁸ *Ibid.*, pp. 402-403.

³⁹ *Ibid.*, p. 404.

⁴⁰ *Ibid.*, pp. 407-408.

A. Cultural and natural heritage: Heritage v. property

The Commentary addresses the conceptual issue of the shift from ‘property’ to ‘heritage’ in Yusuf’s commentary to Article 1. While I agree with the views expressed in his contribution, I would like to add some further elements to the discussion. The fact that the Convention uses the terminology ‘heritage’, instead of ‘property’, is indicative of an innovative approach to preservation of natural and cultural properties. Early international legal instruments protecting projections of culture came about through international humanitarian law, protecting cultural goods in times of conflict, and referring to them as “cultural property”.⁴¹ However, developments in the field reached a point at which the values attached to property needed to be modified in order for other social goals to be secured. While ‘property’ as a legal category offers interesting advantages, its use implied the setting up of a social policy to protect the possessor of the cultural object.

The traditional approach, however, came into conflict with the fundamental policy that was sought at a later stage of development of this area of law, as there was a shift from protecting individual interests to protecting interests of society in the preservation of cultural goods.⁴² The law had evolved to deem the value to be protected by norms to be “present and future generations”, or society as a whole, rather than the particular possessor of a certain object.⁴³ This idea of protecting the interests of future generations gradually led to a change in terminology, and the term ‘cultural heritage’ began to be used.

Critique of the use of the term ‘property’ goes beyond criticising the ultimate value to be protected. After all, in one way or another, the protection of objects is one of the aims of property law, with the difference that property law does not inquire who is to benefit from such protection. It protects the interests of the possessor, and, for the purposes of the critique outlined above, it may well be said that the possessor is society as a whole, and thus ‘cultural property’ would still work as a concept.

⁴¹ This development is outlined in **J. BLAKE**, “On Defining the Cultural Heritage”, *International and Comparative Law Quarterly*, 2000, at pp. 61-62.

⁴² **L.V. PROTT and P.J. O’KEEFE**, “‘Cultural Heritage’ or ‘Cultural Property’?”, *International Journal of Cultural Property*, 1992, at p. 309.

⁴³ *Ibid.*

Several scholars have raised the point that, particularly in the field of legal anthropology, ‘property’ is a Western concept, which does not necessarily address the needs of all peoples. There are several examples of societies that do not recognise property as a social possibility; rather than owning something, individuals belonging to these societies believe that they are owned by the environment around them, which is in certain cases nothing short of the embodiment of the deities that they adore. It seems natural that a religion does not allow one to own one’s object of adoration, or the reason for adoration -that is, that you adore some entity mightier than you- would cease to exist. Thus, if everything around me is a deity, and I cannot own a deity, I do not own anything.⁴⁴ This argument is closely related to the critique that using the term ‘property’ implies a commodification of cultural aspects of life, which should not be treated as goods in the marketplace.⁴⁵

The use of the term ‘property’ is thus misleading, to the extent that it is, in the end, associated with things whose value transcends their physical existence. One compelling example of this is that one of the fundamental aspects of property as a right, *ius abutendi*, cannot be exercised when dealing with cultural goods. *Ius abutendi* is the faculty that the owner of a thing has to destroy the object; this is rather difficult to accept when speaking of cultural heritage.⁴⁶

It is interesting to note, however, that, despite all this, the Convention is not meant to create a system that overrules national property law; much on the contrary, the provisions of the Convention operate *without prejudice to* national property legislation.⁴⁷ This reflects the sovereignty-based approach adopted by the Convention in its drafting, and it can somewhat harm the effort of internationalisation of heritage. As more and more states adapt their property laws to include exceptions related to heritage protection, though, the system again comes to harmony and the greater interest of protecting heritage is preserved.

⁴⁴ A real-life example of this is given in **L.V. PROTT and P.J. O’KEEFE**, “‘Cultural Heritage’ or ‘Cultural Property’?”, *o.c.*, at p. 310; who mention a famous Australian case, *Milirrpum v. Nabalco Property Ltd.*

⁴⁵ See **J. BLAKE**, “On Defining the Cultural Heritage”, *o.c.*, at p. 65-66; see also, for a general critique of commodification in Western law, **M.M. ERTMAN and J.C. WILLIAMS**, *Rethinking Commodification*, New York, New York University Press, 2005.

⁴⁶ See **L.V. PROTT and P.J. O’KEEFE**, “‘Cultural Heritage’ or ‘Cultural Property’?”, *o.c.*, at p. 310.

⁴⁷ **F. FRANCONI and F. LENZERINI**, *The 1972 World Heritage Convention*, p. 120.

B. The nature v. culture dichotomy

The alleged ‘nature v. culture dichotomy’ is perhaps one of the most important features of the World Heritage Convention. By dealing with these two types of heritage in separate articles, the Convention seems to draw a line differentiating both kinds. To talk of such a dichotomy is not sustainable, however, at least inasmuch as an attempt to refer to some sort of clear-cut separation. The inexistence of a clear distinction between cultural and natural heritage can be seen in the inclusion of the words “the combined works of nature and man” in the definition of cultural heritage in Article 1 of the Convention.⁴⁸

But the merging between culture and nature in protecting heritage is best illustrated by the notion of cultural landscapes, which -as we have seen- deserved a chapter of its own in the book,⁴⁹ and is further explored below.⁵⁰ For the present purposes, it suffices to say that the dichotomisation of nature and culture in the World Heritage system is at best a partial one, if not simply artificial,⁵¹ as the practice under the Convention has evolved towards a more holistic approach to heritage, focused on its significance, rather than the way it presents itself. The fact that the criteria for inscription on the World Heritage List are presented in a single list, rather than separate lists for cultural and natural heritage, is also very telling.⁵²

C. Outstanding universal value

The definition of “outstanding universal value” is not offered by the Convention, but only by its Guidelines (2005 version), and still in rather vague terms:

“Outstanding universal value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as whole”.⁵³

⁴⁸ *Ibid.*, pp. 48-49.

⁴⁹ See *supra* note 13 and accompanying text.

⁵⁰ See *infra* notes 79-86 and accompanying text.

⁵¹ F. FRANCONI and F. LENZERINI, *The 1972 World Heritage Convention*, p. 59.

⁵² *Ibid.*, pp. 73-74.

⁵³ *Ibid.*, p. 88.

The idea is also expressed by paragraphs 6 to 8 of the Convention's Preamble. According to Francioni, the term 'universal' "can be understood as defining the quality of a site of being able to exercise a universal attraction for all humanity and exhibit importance for the present and future generations".⁵⁴ It is not necessary therefore that the heritage at stake is representative of commonly shared beliefs or culture; it is sufficient that it appeals to our shared humanity, regardless of the way it does so, which can be different for each observer.

This understanding, however, has led to what has been pointed out as one of the key shortcomings of the World Heritage Convention and the entire system of heritage protection, which was either inspired or directly created by the Convention: the emphasis on the monumentality and aesthetic value of a manifestation of heritage, as opposed to its cultural significance (in the case of cultural heritage),⁵⁵ or to its importance to biodiversity and the ecosystem where it is inserted (in the case of natural heritage).⁵⁶

As Francioni points out, though, reforms undertaken within the World Heritage Committee, at least with regard to cultural heritage, are aimed precisely at correcting this imbalance, offering a more nuanced and culturally-sensitive approach, inspired by anthropology.⁵⁷ The criteria for natural heritage have also increasingly gained a stronger scientific base, except for some criteria on the "aesthetic importance" of "natural beauty",⁵⁸ which once again cross the bridge between nature and culture, and must also incorporate anthropological elements, even though a literal reading of its language suggests a more 'monumental' approach.

III. The reach and representativeness of the World Heritage Convention

A. The internationalisation of heritage

Even though when it was drafted the Convention had provisions leaving the principle of state sovereignty untouched, its practice has evolved in the direction of more international action for the preservation of heritage. This has partly shaken one of the basilar principles of

⁵⁴ *Ibid.*, p. 19.

⁵⁵ *Ibid.*, p. 29.

⁵⁶ *Ibid.*, p. 72.

⁵⁷ *Ibid.*, pp. 20-21 and 407-408.

⁵⁸ *Ibid.*, p. 73.

the Convention, but it is consonant with its evolutive interpretation and the current state of affairs of international law in the field.⁵⁹

Further, the definition of ‘outstanding universal values’, one of the core concepts of the Convention, highlights the international aspiration of the Convention and of heritage protection in general,⁶⁰ despite the seemingly sovereignty-based approach of the original drafting of the Convention.⁶¹ The very fact that sovereignty is identified as a shortcoming of the Convention⁶² indicates a predominance of internationally-oriented action for the protection and safeguard of heritage.

B. The *erga omnes* character of heritage obligations

The issue of the possible *erga omnes* character of obligations under the World Heritage Convention is considered in the chapter by Guido Carducci.⁶³ While acknowledging that there certainly is a collective interest in the protection of heritage at the intergovernmental and diplomatic level, he expresses doubt as to whether there is such an interest outside this specific context; which is necessary for creating a separate legal obligation.⁶⁴ He argues that there is no clear expression of a “collective interest” in the preservation of heritage in the Convention’s provisions, and that there are only modest arguments that attempt to substantiate such an idea, without actually accomplishing it.⁶⁵ He moves on to argue that the obligations in the Convention are aimed primarily at sovereign states, and the international community’s obligations are only subsidiary.⁶⁶ Even though he finds there to be arguments both in favour and against the existence of *erga omnes* obligations under the Convention, he cautiously concludes that the uncertainty on the matter means that only a decision on a specific case will be able to decide the controversy.⁶⁷

Gionata P. Buzzini and Luigi Condorelli, on the other hand, conclude that the obligations under the Convention are *erga omnes*, precisely because they attend to commonly

⁵⁹ *Ibid.*, pp. 5-6.

⁶⁰ *Ibid.*, pp. 88-89.

⁶¹ *Ibid.*, p. 86.

⁶² *Ibid.*, p. 404.

⁶³ *Ibid.*, pp. 132-145.

⁶⁴ *Ibid.*, p. 134.

⁶⁵ *Ibid.*, p. 136.

⁶⁶ *Ibid.*, pp. 136-137.

⁶⁷ *Ibid.*, p. 143.

shared interests.⁶⁸ The same reasoning -namely, that of attendance to commonly shared interests- has led Francesco Francioni to affirm elsewhere that there is an emerging customary legal obligation to protect cultural heritage.⁶⁹ While this discussion is far from resolved, I do believe there is at least an emerging customary obligation of respect towards cultural heritage, based primarily on the wide ratification of heritage instruments, and the almost unanimous international outrage over the wilful destruction of cultural property in Afghanistan a couple of years ago.⁷⁰ Even though it is difficult to use this to construe the *erga omnes* effect of the Convention, there seems to be a tendency in this direction.

C. The transformation of the Convention by administrative practice

One of the key factors for the success of the World Heritage Convention and the system created by it is certainly the World Heritage Committee, responsible for the creation, maintenance and evolution of the international activity related to the protection of cultural and natural heritage.⁷¹ This is one instance of an emerging phenomenon in international law, that of the transformation of international law by international organisations and the international civil service, as opposed to the traditional exclusivity of the state as a relevant actor of international law.⁷²

The role of the Secretariat is vital in this regard, as the Secretariat performs roles as diverse and important as management of the Convention, nominations for the Lists, reporting, reactive monitoring and deletion from the Lists, management of the representativeness of the lists, management of the World Heritage Fund, international assistance, dissemination of information, coordination with UNESCO and the bodies established by other Conventions dealing with cultural and natural heritage, and the World Heritage Emblem.⁷³ Such a wide range of activities falling upon a non-political body, coupled with the trust deposited on the advisory bodies to the Committee (IUCN, ICOMOS and ICCROM)⁷⁴ is telling of an attitude of more reliance on international organisations.

⁶⁸ *Ibid.*, p. 178.

⁶⁹ See F. FRANCIONI, *Au-delà des traités: L'émergence d'un nouveau droit coutumier pour la protection du patrimoine culturel*, Florence, European University Institute, Law Department, Working Paper, 2008, No 5.

⁷⁰ See, for an elaboration of this argument, R. O'KEEFE, "World Cultural Heritage: Obligations to the International Community as a Whole?", *International and Comparative Law Quarterly*, 2004, at p. 189.

⁷¹ F. FRANCIONI and F. LENZERINI, *The 1972 World Heritage Convention*, pp. 220-221.

⁷² See J.E. ALVAREZ, *International Organisations as Law-Makers*, Oxford, Oxford University Press, 2005.

⁷³ F. FRANCIONI and F. LENZERINI, *The 1972 World Heritage Convention*, pp. 249-259.

⁷⁴ *Ibid.*, pp. 261-264.

IV. The World Heritage Convention and today's heritage

A. Relation to other instruments

As I have mentioned, the Commentary seems not to capture all the richness of exploring the relationship between the World Heritage Convention and other instruments. While I address some of the two most pertinent issues -at least, in my view- in the following subsections, there is one general remark to be made at this point, and that is the importance of taking into consideration evolving accounts of the protection of cultural and natural heritage. For instance, more recent instruments relevant for the protection of natural heritage have moved away from a sovereignty-based approach to natural resources, at least in some instances:⁷⁵ this new approach could be used to re-interpret the World Heritage Convention and overcome the obstacle of sovereignty. Similarly, new instruments for the protection of cultural heritage value cultural diversity and cultural sensitivity over monumentality and western standards when considering manifestations of heritage;⁷⁶ this is important to help strengthen the Operational Guidelines and overcome the past practice under the World Heritage Convention towards a more inclusive and truly representative World Heritage List.

It is also interesting to note that in at least one instance other instruments (or their drafting history) have been used to shed light on the World Heritage Convention itself: when referring to the alleged ineffectiveness of Article 12 of the Convention,⁷⁷ Lenzerini indicated that the fact that a textually identical provision was excluded from the Draft of the Intangible Heritage Convention was telling.⁷⁸ This means that not only does the World Heritage Convention set up the bases upon which all heritage instruments are built, and thus informs their meaning; but also that the reverse is possible, thus making the set of instruments dealing with natural and cultural heritage a systematic, interconnected whole, aimed at offering the best possible protection to the heritage of mankind. I now move to analyse two specific issues

⁷⁵ See, for instance, **1992 UN Framework Convention on Climate Change; 1992 Convention on Biological Diversity; 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).**

⁷⁶ See, for instance, **2003 Convention for the Safeguarding of the Intangible Cultural Heritage; 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.**

⁷⁷ See *supra* note 22 and accompanying text.

⁷⁸ **F. FRANCONI and F. LENZERINI**, *The 1972 World Heritage Convention*, pp. 216-217.

relative to emerging areas of heritage protection law, cultural landscapes and intangible cultural heritage.

B. Cultural landscapes

Emerging legal frameworks for the protection of cultural landscapes, at least at the regional level,⁷⁹ have brought the topic of cultural landscapes to the top of the agenda in heritage discussions. My aim here is not to re-discuss the emerging literature on the field,⁸⁰ but rather to make one general remark on the relationship between the World Heritage Convention and the protection of cultural landscapes.

As it has been pointed out above, the notion of ‘cultural landscape’ did not originally fall within the World Heritage Convention⁸¹ and, at least to some extent, this notion crystallises the combination of culture and nature.⁸² Originally, cultural landscapes could have been included as natural properties -at least, apparently- under the 1977 Guidelines. They have come to be considered cultural properties, however, due to subsequent reforms to these Guidelines.⁸³ Even though there have been attempts to inscribe properties in the list as simultaneously cultural and natural heritage, only very few of these applications have been accepted; the most remarkable example being Machu Picchu, in Peru.⁸⁴ Cultural landscapes thus represent “the nature-culture continuum”.⁸⁵ But it is odd to note that, out of the thirty-seven properties of the World Heritage List inscribed as cultural landscapes, only three were inscribed by both their natural and cultural elements.⁸⁶ This seems to embody some residues of the nature/culture dichotomy that should by this time have been extinguished.

⁷⁹ See the Council of Europe’s **2000 European Landscape Convention**.

⁸⁰ See, for instance, **S. WILLIAMS**, “Beyond the Monuments”, *UNESCO Sources*, 1996, at p. 9; **S. MOHINDRU**, “Cultural Landscapes in Contemporary Planning Framework”, *ICOMOS 13th General Assembly and Scientific Symposium*, 2002, http://www.international.icomos.org/publications/ga_madrid.htm; **M. DRINGOLI**, “The Role of the Historic Landscape in the European Cultural Identity”, *Forum UNESCO University and Heritage*, 2005, <http://www.ncl.ac.uk/unescolandscapes>; **M.J. DE AZEVEDO MARCONDES**, “Paysages culturels: Concepts et critères de préservation”, *Forum UNESCO University and Heritage*, 2005, <http://www.ncl.ac.uk/unescolandscapes>; **R.L. BARSH**, “How Do You Patent a Landscape? The Perils of Dichotomising Cultural and Intellectual Property”, *International Journal of Cultural Property*, 1999, at p. 18.

⁸¹ See *supra* note 13 and accompanying text.

⁸² See *supra* notes 49-52 and accompanying text; **F. FRANCONI and F. LENZERINI**, *The 1972 World Heritage Convention*, p. 60.

⁸³ **F. FRANCONI and F. LENZERINI**, *The 1972 World Heritage Convention*, pp. 52-53.

⁸⁴ *Ibid.*, p. 54.

⁸⁵ *Ibid.*, p. 61.

⁸⁶ *Ibid.*, p. 62.

C. Intangible heritage

The Commentary only briefly outlines the relationship between the two instruments: the World Heritage Convention and the Intangible Heritage Convention. But it fails to explore the linkage between tangible and intangible cultural heritage, which has recently been the object of some scholarly attention.⁸⁷ While I do not aim at fully exploring this relationship here, it is important to note the interdependence and symbiosis between the two areas of cultural heritage: while the intangible heritage only gains expression through the physical existence of the tangible heritage, the tangible heritage is almost meaningless -except for its aesthetic value- without its intangible elements, without its history, its cultural background. As cultural heritage seems to move from an aesthetics-based type of appreciation towards a more cultural relevance-based approach, intangible heritage gains great importance in the field.

Intangible Cultural Heritage has been gradually taken into account by the World Heritage System in the reforms to the criteria for inclusion of manifestations of heritage under the 'cultural heritage' category.⁸⁸ The prevailing idea today, when speaking of the relationship between tangible and intangible heritage, is that one can no longer consider sites or monuments in isolation, but that they are complex and multidimensional manifestations of heritage, embodying both tangible and intangible elements. This new, expanded and culturally-oriented concept of heritage prevails, and helps in taking a holistic approach to both fields.⁸⁹

Even though these two fields are in close interconnection, the international instruments related to them create different legal regimes. The inscription of a manifestation of heritage as either tangible or intangible heritage requires a choice as to the aim of protection, and the possibilities each system offers. This determination is to be done on a case-by-case basis,

⁸⁷ See, for example, **M.H. ROBERTSON**, "The Difficulties of Interpreting Mediterranean Voices: Exhibiting Intangibles Using New Technologies", *International Journal of Intangible Heritage*, 2006, at p. 26; **N. ITO**, "Intangible Cultural Heritage Involved in Tangible Cultural Heritage", *ICOMOS 14th General Assembly and Scientific Symposium*, 2003, <http://www.international.icomos.org/victoriafalls2003/papers.htm>; **C. ANDREWS, D. VIEJO-ROSE, B. BAILLIE and B. MORRIS**, "Conference Report: Tangible-Intangible Cultural Heritage; A Sustainable Dichotomy? The 7th Annual Cambridge Heritage Seminar", *International Journal of Intangible Heritage*, 2007, at p. 124.

⁸⁸ **F. FRANCONI and F. LENZERINI**, *The 1972 World Heritage Convention*, pp. 30-31.

⁸⁹ *Ibid.*, p. 35.

though, and my intention is not to offer elements here to help making such a choice, but rather to point out this tension.

V. Concluding remarks: World heritage and the heritage of the world

The topic of the conservation of the world's cultural and natural heritage has gained increasing importance over the past three decades. This success is greatly attributable to the efforts of UNESCO and the World Heritage Convention, which have set up the foundations for a currently complex and multi-connected system for the protection of cultural heritage. As heritage protection becomes more and more internationalised, the international community must be ready for the challenge.

The plurality of sources from which elements for the protection of natural and cultural heritage can be drawn is a very positive feature of the system, because of its richness and comprehensiveness. Even in multiplicity, the system seems to find its way towards unified and consistent solutions, perhaps precisely because of the unifying axis of the World Heritage Convention. Its international call is an inspiring and powerful tool to safeguard what we as mankind should treasure the most, the heritage of the world.