



WHC@50 – FOREVER YOUNG: CELEBRATING 50 YEARS OF THE WORLD HERITAGE CONVENTION

WHC@50 Seminar

***The Protection of Cultural Heritage Within the Framework of the UNESCO
World Heritage Convention
between International Obligations and Domestic Law***

Speakers: Prof. Dr. Niccolò Lanzoni, Francesco Paolo Cunsolo, Costanza Rizzetto and Marco Fusaroli

Chair: Prof. Dr. Elisa Baroncini, Department of Legal Studies, *Alma Mater Studiorum* – Università di Bologna

Convener: Francesco Paolo Cunsolo, Department of Legal Studies, *Alma Mater Studiorum* – Università di Bologna

Monday 21 November 2022 at 12h30-14h00 CET.

The WHC@50 seminar will be held on MS TEAMS by clicking the following link

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Abstract

The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention - WHC) occupies a special position in the international legal framework dedicated to the protection of culture. It established a link between the protection of cultural heritage and natural sites of extraordinary importance to humanity, creating a multilateral system of cooperation for the preservation of those assets inscribed in the World Heritage List (WHL), in order to guarantee their conservation and transmission to future generations. The WHC, in fact, embodies the advanced principle whereby certain parts of the cultural and natural heritage are of universal importance, and it is therefore up to the international community to cooperate for their preservation. This principle, if on one hand does not change the sovereignty of the territorial State over the assets inscribed in the WHL, on the other constitutes a strong limitation to its *domaine reserve*, which cannot be invoked to justify any use or regulation that could endanger the outstanding universal value of these world heritages. However this sort of equilibrium in which the WHC operates, between the respect of States' sovereignty and the international concern for the protection of exceptional cultural and natural assets, still arises today some important issues, despite the profound impact and the wind of change that the Convention brought to international cultural heritage law, as well as to other fields of international law.

This panel aims to present the contribution of the WHC to the expansion and enforcement of the protection of cultural heritage, analyzing with a critical approach its impact and value at international and national level. In this regard, the panel will focus on some relevant topics concerning the WHC: the ambiguous relationship between its obligations and customary international norms; the key role played by the Convention in some relevant international disputes, which underlined the linkage between cultural heritage and the protection of human rights. Attention will be paid to the delicate issue of the scope of the WHC, and how its legal



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framework interfaces with the doctrinal debate on universalism and cultural relativism. Finally, it will also be considered the criminal aspects concerning the protection of cultural heritage, with a specific focus to the most recent developments in the Italian legislation.

Some Reflections on the Ambivalent Relationship between the WHC and Customary International Law on the Protection of Cultural Heritage

Abstract: International protection of cultural heritage was first conceived under the umbrella of *jus in bello* to mitigate the destructive potential of war. This is understandable, considering that the greatest threats to cultural heritage tend to materialize in the context of armed conflicts. Against this backdrop, the adoption of the 1972 World Heritage Convention (WHC) represented a watershed, establishing State Parties' general 'duty' to ensure the identification, protection, conservation and transmission to future generations of their – very broadly defined – cultural heritage, and setting up a system of collective cooperation and monitoring geared towards this goal. Still, to which extent international law protects cultural heritage in peacetime is not entirely clear. Based on an investigation of international practice – especially, but not limited to, as developed within the WHC framework during the last 50 years – and case-law, this contribution aims at inductively reconstructing the scope of application of customary international law on the protection of cultural heritage in peacetime. In particular, the analysis will focus on those episodes in which States have justified the damaging to cultural heritage on the grounds of economic and social development, productivity and strategic administration of their territory. The purpose is to show how, despite greater awareness of this problem, States seem recalcitrant to clearly recognize prominence to the collective dimension of the protection of cultural heritage over the pursuing of their sovereign interests when the latter are at odds with the former.

Niccolò Lanzoni is post-doctoral research fellow in International Law at the Department of Legal Sciences. He is also adjunct professor in International Law at the Department of Cultural Heritage. He holds a PhD in International Law from the University of Bologna (2020) and has been admitted to the Italian Bar (2019). Previously, he held the position of adjunct professor and teaching tutor at the same university. He is also adjunct professor in International Law at the Higher School for Linguistic Mediators (CIELS) and guest lecturer at the Eastern Mediterranean University. A visiting scholar at the Heidelberg Institute para América Latina (2019), he served as research assistant for the Italian Defence College in the M/V 'Norstar' case (Panama v Italy). He has published in Italian, English and Spanish on general international law, international immunities, the law of the sea and the protection of the world cultural heritage.

The World Heritage Convention in International Adjudication

Abstract: The 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention - WHC) marked a turning point in the definition of the universal values characterizing the international community. By indicating that the cultural and natural heritage belongs to the humanity as a whole, and it is therefore not attributable to a single people and / or a single State, the WHC has become a central pillar in the international legal system. The consideration of the principles expressed by the Convention has played a major part in the resolution of some international disputes before the most important international fora, in particular the International Court of Justice (ICJ) and the international



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litigation on investments. Furthermore, its principles were referred to in some important cases before the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court (ICC), with respect to episodes of destruction of cultural heritage. The proposed presentation, starting from the analysis of the most relevant international jurisprudence, such as the ‘Temple of Preah Vihear’ case (Cambodia v. Thailand) before the ICJ, and the ‘Al Mahdi’ case before the ICC concerning the intentional destruction of the Timbuktu’s mausoleums, intends to investigate the impact of the WHC in the resolution of disputes before such international adjudicators. The purpose is to demonstrate how the WHC, despite it has never been at the centre of international disputes, has always played a key role in the enforcement of international norms and principles, especially regarding the prohibition of the use of force, the protection of human rights and the rights of future generations. Its contribution, in this sense, marked a strong intersection between the protection of world heritage and other fields of public international law.

Francesco Paolo Cunsolo is a third year PhD student in Cultural and Environmental Heritage at the University of Bologna, with a research topic on the intentional destruction of cultural property as an international crime. He holds a Master’s degree in human rights, migration and development (2012) and since 2014 he has been a teaching assistant for the chair of international law at the University of Bologna. He has published in Italian and English on several topics, including the UNESCO system and the protection of cultural heritage, international criminal law, international environmental law and the CETA agreement between EU and Canada. Parallel to his academic career, he has worked until 2021 for a non-profit association dedicated to the prevention of gender-based violence.

Which protection for cultural heritage beyond the World Heritage List? The World Heritage Convention between universalism and cultural relativism

Abstract: The cultural cleansing campaign carried out in Afghanistan by the Taliban in August 2021, as well as the attacks against the Confederate memorials coming along with the Black Lives Matter protests since May 2020, have shown how the intentional destruction of cultural heritage represents, at 20 years since the destruction of the Buddhas of Bamiyan, an unsolved issue within the framework of the World Heritage Convention (‘WHC’). Received with clamor by the public opinion, these acts have been mainly overpassed by the international community. As for the reasons of such an unwillingness, the non-inscription of the targeted cultural goods in the World Heritage List which, representing the UNESCO referential inventory of the cultural heritage of nations, grants effective international protection only to its inscribed property. According to art. 4 and followings of the WHC, in fact, the international protection of cultural heritage is conferred only to those elements considered of “Outstanding Universal Value” by the World Heritage Committee, competent to determine the historic, cultural, and artistic significance of the cultural property of States. All this, it appears, in spite of the concerns raised by part of the doctrine concerning the discretionary character of the evaluations of the World Heritage Committee. This, notably, with reference to the ‘western-oriented’ notion of cultural heritage ascribed to the UNESCO norm-set, as well as in the light of the ongoing doctrinal debate concerning universalism and cultural relativism.

Costanza Rizzetto is Ph.D. Candidate in International and Public Law, Ethics and Economics for Sustainable Development at the Department of Italian and Supranational Public Law of the University of Milan. She holds an LL.M. from the United Nations Interregional Crime and Justice Research Institute of Turin and a Double



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Master's Degree from the University of Milan and the University of Toulouse I Capitole. Her research interests include international human rights, international criminal law and cultural heritage law.

Undercover investigations in the context of crimes related to cultural heritage: present doubts and future solutions

In the light of the international framework following the 2017 Nicosia Convention – first true multilevel agreement aimed at providing criminal protection of cultural and artistic heritage – the contribution is meant to be highlighted the common thread that binds the national scenery to the supranational one: the tendential absence of specific acts that direct the fight against criminal phenomena regarding "cultural goods" on a procedural level. Indeed, the need to prepare an investigative arsenal, even of a high technological level, and a solid international cooperation, as unavoidable tools for an effective fight against the illegal activities underlying the circulation of cultural assets, represents a problem that cannot be avoided, then considering the counterpart represented by what would be the impact on the fundamental rights of the defendant. As, moreover, authoritatively observed, the relationship between the protection of cultural heritage and the criminal procedural system is a subject that is not really practiced in literature. While scholars of punitive law have reasoned for years around the criminal phenomena connected to cultural heritage, the procedural doctrine has proved more inclined to defend the "neutrality" of the rite with respect to the dynamics of criminal politics. Otherwise, close coordination between the two sides of criminal law science - substantive and procedural - always appears necessary in the criminal sectors characterized by a marked specialty, in particular, considering the effects of the edictal profiles on the application of the rules of the code of procedure. The needs of regulatory harmonization (at multiple levels) and an increase in the debate on the subject can be drawn from the application experience of European agencies (in particular the Europol 2021 report); in fact, the passage of illicit traffic from the "traditional" "physical" black market to the online marketplace often located on the deep web has emerged more and more frequently, in order to exploit the innumerable potential for anonymity that the network offers. In such a scenario, the issue of combating these criminal phenomena inevitably confronts that, much broader, of investigations in the digital environment (and related limitations), considering the need to face increasingly advanced forms of crime. On the basis of this, a first step was taken by the domestic legislator precisely with the aforementioned news: in fact, the undercover investigations were extended - a novelty that had also been the subject of the D.D.L. n. 646/2013 - the crimes of money laundering and self-laundering of cultural assets, while omitting, with respect to the past project, to expressly provide for the use, in such activities, of IT tools. Well, the purpose of the contribution is to analyze the possible adaptations of the investigative tools already contemplated in the national legal system and the innovations calibrated precisely on the peculiarity of the assessment of such forms of offense, not limiting the gaze to the domestic perspective only but extending the reflection on the supranational horizon.

Marco Fusaroli was born in Milan on 6 July 1995. He is a PhD student in Legal sciences for the scientific disciplinary sector IUS / 16 - Criminal procedural law at the Alma Mater Studiorum - University of Bologna. At the same, he is an expert in the subject at the chair of Criminal procedural law. His main research topics are: restorative justice, in particular the institution of conditional (or defined deserved) archiving; the national, European and international declination of the right of defence, with particular reference to the *nemo tenetur se detegere*; the deepening and study of the discipline of documentary evidence; the relationship between



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criminal proceedings and administrative proceedings in relation to the circulation of evidence.

Chair

Elisa Baroncini is PhD in EU Law and Full Professor of International Law at the University of Bologna. Co-Chair of the ESIL IG on International Economic Law, and Coordinator of the IEL Interest Group of the Italian Society (DIEcon), Elisa teaches International Law, International Economic Law, and International Law on Sustainable Development at the Bologna School of Law. She has been Visiting Professor at the China-EU School of Law, speaker and organizer of many international conferences, Visiting Researcher at the European University Institute. Elisa manages and participates in international and national research projects. She has been recently awarded the Jean Monnet Module “Re-Globe - Reforming the Global Economic Governance: The EU for SDGs in International Economic Law” and she is the Coordinator of the UNA Europa Seeds Research Project “WHC@50 - Forever Young: Celebrating 50 Years of the World Heritage Convention”. Member of the “Centro Interuniversitario sul Diritto delle Organizzazioni Internazionali Economiche” (CIDOIE), Elisa is also part of the Promoting Committee of the University of Bologna to honour the 1972 UNESCO Convention, and Member of the Scientific Committee of the Institute of Advances Studies (ISA) of the University of Bologna. In June 2022 she has been appointed by the European Commission TSD Expert for the dispute settlement mechanisms of the new generation of EU free trade agreements. She published extensively in Italian and English, and her main fields of research include: the reform process of the WTO dispute settlement mechanism; the relation between free trade and non-trade values; transparency in IEL; the new generation of EU FTAs and their enforcement; the participation of the European Parliament and the Commission in the EU treaty-making power; economic sanctions and IEL.

The WHC@50 Una Europa Seed Funding Project

In 2022 the **World Heritage Convention (WHC)** celebrates 50 years. Thanks to its 194 State Parties, the WHC represents a major tool for International (Cultural Heritage) Law, a powerful promoter of cultural identity, and a formidable boost for national economies.

The **Una Europa Seed Funding Project “WHC@50”** aims to retrace how the WHC was conceived, to present its current formulation and application in practice, to illustrate its meaning for the preservation and enhancement of world heritage governance, to analyse its strengths and weaknesses, and to indicate its needs for reviews and reforms.

By combining the **insights of jurists, political scientists, historians, architects, and economists**, WHC@50 embarks on a multi-perspective analysis through a series of eight WHC@50 seminars. All these seminars are open to scholars affiliated to the UNA Europa partner universities.

WHC@50 Scientific Committee

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