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**A 100 years institutionalized cultural heritage protection:** from the institutionalized international coopération intellectuelle to the human right to cultural heritage

**100 anos de proteção institucionalizada do patrimônio cultural:** Da cooperação intelectual internacional ao Direito Humano ao patrimônio cultural

Lando Kirchmair

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DOSSIÊ TEMÁTICO: ART LAW AND CULTURAL HERITAGE  
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# A 100 years institutionalized cultural heritage protection: from the institutionalized international coopération intellectuelle to the human right to cultural heritage\*

## 100 anos de proteção institucionalizada do patrimônio cultural: Da cooperação intelectual internacional ao Direito Humano ao patrimônio cultural

Lando Kirchmair\*\*

### Abstract

Almost 100 years ago, the *Commission Internationale de Coopération Intellectuelle* (CICI) was founded in 1922. Its goal and mission was to enhance peaceful cooperation between peoples via educational and cultural means. Although this Commission shared the fate of the League of Nations, CICI's successor, the *United Nations Educational, Scientific and Cultural Organization* (UNESCO) was more successful, laying the groundwork for various international agreements on the protection of cultural heritage. This article provides an overview from the beginnings of institutionalized cultural heritage protection in times of peace almost 100 years ago up until today, where so far both UN special rapporteurs for cultural rights have proclaimed a human right to cultural heritage. While this article concludes that such a specialized human right might still be in the making, sketching the evolution of cultural heritage protection from 100 years ago until the 21<sup>st</sup> century might allow also for an outlook on the future of cultural heritage protection.

**Keywords:** Commission Internationale de Coopération Intellectuelle. Cultural Heritage Protection. Human Right to Cultural Heritage. International Organizations. UNESCO.

### Resumo

Quase 100 anos atrás, a Comissão Internacional de Cooperação Intelectual (CICI) foi fundada em 1922. Seu objetivo e missão era aumentar a cooperação pacífica entre os povos por meios educacionais e culturais. Embora esta Comissão compartilhasse o destino da Liga das Nações, sucessora da CICI, a Organização das Nações Unidas para a Educação, a Ciência e a Cultura (UNESCO) teve mais sucesso, lançando as bases para vários acordos internacionais sobre a proteção do patrimônio cultural. Este artigo oferece uma visão geral desde o início da proteção do patrimônio cultural institucionalizado em tempos de paz quase 100 anos atrás até hoje, onde até agora ambos os relatores especiais da ONU para os direitos culturais proclamaram

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o direito humano ao patrimônio cultural. Embora este artigo conclua que esse direito humano especializado ainda possa estar em construção, esboçando a evolução da proteção do patrimônio cultural de 100 anos atrás até o século 21, pode permitir também uma perspectiva sobre o futuro da proteção do patrimônio cultural.

**Palavras-chave:** proteção do patrimônio cultural; Direito Humano ao Patrimônio Cultural; UNESCO; Organizações Internacionais; ONU

## 1 Introduction: Institutionalizing *Coopération Intellectuelle* in 1920

The League of Nations (LON) was founded on 10<sup>th</sup> January 1920 through the ratification of the Treaty of Versailles. The primary goal of the LON was to maintain world peace by aiming at collective security, disarmament and the settlement of international disputes. However, these ambitions could not be pursued in an isolated manner, but were accompanied by the idea of an “Intellectual League of Nations” envisioned by Henri La Fontaine and Paul Otlet.<sup>1</sup> Also in 1918, Romain Rolland wrote *L’Internationale de l’Esprit*, and Heinrich Mann spoke of an “alliance of intellectuals of all nations”, whereas in 1922, the Austrian aristocrat Karl Anton Rohan founded the *Fédération Internationale des Unions Intellectuelles* (the *Europäischer Kulturbund*).<sup>2</sup> Already in the “first session of the League of Nations, in November 1920, [...] the need to institute intellectual co-operation alongside the political activity of Governments” was discussed.<sup>3</sup> The foundation of the *Commission Internationale de Coopération Intellectuelle* (CICI) on 4<sup>th</sup>

January 1922 as an advisory organ to the Council of the League of Nations, aiming at promoting international cultural and intellectual exchange between intellectuals and comprising *inter alia* scientists, teachers and artists, fell, thus, on fertile ground.<sup>4</sup> Along with the first chairperson (1922–1925), the philosopher and Nobel Prize winner in literature Henri Bergson, eleven intellectuals, among them Marie Curie and Albert Einstein, united – not as representatives of their governments, but as intellectuals.<sup>5</sup> They contributed, in the words of the latter chairperson Gilbert Murray (1928–1939), to an important goal of the LON: “For the first time in history, public opinion of the civilized world has now, through the League, an instrument for expressing itself.”<sup>6</sup> This commission and its ambition were supported by the French Government. Beyond that, the French Government supported the creation of the *International Institute of Intellectual Cooperation*, which was located in Paris, and founded by a French law promulgated on 9<sup>th</sup> of August 1925. In addition, the French Government “bor[e] almost alone the cost of financing the Institute.”<sup>7</sup> On 16<sup>th</sup> of January 1926, the Institute was inaugurated with an official ceremony.<sup>8</sup> National commissions all across the world were founded and in 1939 44 national delegates and 45 national commissions worked with the Institute.<sup>9</sup>

<sup>4</sup> Inventaire des Archives de l’Institut international de coopération intellectuelle (IICI) 1925-1946. Dossiers de correspondance, documents et publications aux Archives de l’UNESCO à Paris, UIS.90/WS/1, Paris, (juin 1990), p. 7. Cf Renoliet J-J, *L’UNESCO oubliée: la Société des Nations et la coopération intellectuelle, 1919–1946* (Publications de la Sorbonne 1999).

<sup>5</sup> Cf Laqua D, Internationalisme ou affirmation de la nation? La coopération intellectuelle transnationale dans l’entre-deux-guerres (2011) 52 (3) *Critique Internationale* 51–67. For a historical network analysis approach, see Grandjean M, Archives Distant Reading: Mapping the Activity of the League of Nations’ Intellectual Cooperation (2016) *Digital Humanities* 531–534; as well as Grandjean M, *Les réseaux de la coopération intellectuelle. La Société des Nations comme actrice des échanges scientifiques et culturels dans l’entre-deux-guerres* (Doctoral Theses Université de Lausanne 2018).

<sup>6</sup> Murray G, *The Ordeal of this Generation* (London Halley Stewart Lectures 1928), p. 148 as quoted by Wöbse A K, “To cultivate the international mind”: Der Völkerbund und die Förderung der globalen Zivilgesellschaft (2006) 54 (10) *Zeitschrift für Geschichtswissenschaft* 852–863 (860).

<sup>7</sup> See the UN Archives A/136 No. 4068, Memorandum on the nature and value of the assets of the International Institute of Intellectual Co-operation transferred by the League of Nations to the United Nations (1946), p. 3.

<sup>8</sup> See for more details UNESCO Archives, International Institute of Intellectual Co-operation, Introduction of IICI. Inventory of archives 1925-1946 (UIS.90/WS/1), AG 1/1.

<sup>9</sup> Inventaire des Archives de l’Institut international de coopération intellectuelle (IICI) 1925-1946. Dossiers de correspondance, docu-

<sup>1</sup> See Laqua D, Transnational intellectual cooperation, the League of Nations, and the problem of order (2011) 6 (2) *Journal of Global History* 223–247 (227) with reference to Otlet P, *La société intellectuelle des nations* (Alcan 1919) on this Belgium proposal, which, however, never was put in practice as such. Yet, cf also Wöbse A K, “To cultivate the international mind”: Der Völkerbund und die Förderung der globalen Zivilgesellschaft (2006) 54 (10) *Zeitschrift für Geschichtswissenschaft* 852–863 (852–853) describing how Dr. Inazo Nitobe, then Undersecretary General of the LON and Director of the International Bureau, literally screened the streets in Paris in order to find what was left of a civilized global society („Restbestände einer globalen Zivilgesellschaft zu inventarisieren“).

<sup>2</sup> See on this Laqua D, Transnational intellectual cooperation, the League of Nations, and the problem of order (2011) 6 (2) *Journal of Global History* 223–247 (226–227).

<sup>3</sup> Valderrama F M, *A history of UNESCO* (Unesco publishing 1995) p. 1.



And indeed, a glimpse of hope was attached to the *Acte International Concernant la Coopération Intellectuelle*, adopted at a conference in Paris in 1938 and entering into force after the 8<sup>th</sup> ratification – in the midst of war – in 1940.<sup>10</sup>

Between 1940 and 1944 the Institute was closed and shortly after the reopening, the Institute's property, intellectual and material<sup>11</sup>, was transferred to the United Nations Educational, Scientific and Cultural Organization (UNESCO). This was feasible, as already in a letter dating 8<sup>th</sup> of December 1924, the French President informed the President of the Council of the League of Nations as of the following:

“should the *International Institute of Intellectual Cooperation* be abolished, any articles, and, in particular, the records, archives and collections of documents deposited in the premises by the governing body, as well as any property which has been acquired by the Institute during its period of operation, shall remain the property of the League of Nations.”<sup>12</sup>

For this succession, the Institute has been called the “forgotten” UNESCO.<sup>13</sup> However, at least the “spirit of co-operation” on which the International Institute of Intellectual Cooperation was based “remained latent”.<sup>14</sup> Yet, “there were also important institutional breaks, power shifts as well as changing visions” which must not be overlooked.<sup>15</sup> For instance, an attempt by France to “re-position” the Institute as an

active enterprise which could continue its path also after World War II, did not succeed.<sup>16</sup>

## 2 Reestablishing and Strengthening the Institutionalized Protection after 1945: The foundation of UNESCO

On 16<sup>th</sup> of November 1946 the act constituting UNESCO was signed and the transmission of the work of the Institute to the newly founded UNESCO under the UN framework followed by the end of 1946. The Preamble to the UNESCO Constitution holds that “[...] since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”<sup>17</sup>. It is in this spirit, in which the “functions and activities with non-political character”<sup>18</sup> of the UN are – due to their very specific nature – an important, and still somewhat underestimated component of the overall success of the UN. In the words of a member of the Commission Internationale de Coopération Intellectuelle in response to a request of the Economic and Social Council of the UN on “the subject of the United Nations enquiry on International Research Laboratories”, no other than Albert Einstein himself said that:

“[there] is probably no more urgent and indispensable Institute to be set up under truly international and impartial auspices than a great center of sociological studies where the ways and means would be researched to establish a better understanding among nations.”

To this end, he goes on that “[a] method should be ironed out of teaching for instance history without creating the obsession of the past as it is so often the case.” In his eyes,

ments et publications aux Archives de l'UNESCO à Paris, UIS.90/WS/I, Paris, (juin 1990), p. 8.

<sup>10</sup> Inventaire des Archives de l'Institut international de coopération intellectuelle (IICI) 1925-1946. Dossiers de correspondance, documents et publications aux Archives de l'UNESCO à Paris, UIS.90/WS/I, Paris, (juin 1990), p. 8.

<sup>11</sup> As a fun fact, even 67 paper baskets among other items, were listed when arranging the transfer of property from the Institute to UNESCO. See UN Archives A/136 No. 4068, S-0916-0001-0002-00001 UC, Inventaire des objets mobiliers, p. 1, mentioning even “corbeille à papier .... 67”.

<sup>12</sup> UN Archives A/136 No. 4068, Memorandum on the nature and value of the assets of the International Institute of Intellectual Cooperation transferred by the League of Nations to the United Nations (1946), p. 1.

<sup>13</sup> Renoliet J-J, *L'UNESCO oubliée: la Société des Nations et la coopération intellectuelle, 1919-1946* (Publications de la Sorbonne 1999).

<sup>14</sup> Valderrama F M, *A history of UNESCO* (Unesco publishing 1995) p. 19.

<sup>15</sup> Pernet C A, Twists, Turns and Dead Alleys: The League of Nations and Intellectual Cooperation in Times of War (2014) 12 (3) *Journal of Modern European History* 342–358 (344).

<sup>16</sup> Pernet C A, Twists, Turns and Dead Alleys: The League of Nations and Intellectual Cooperation in Times of War (2014) 12 (3) *Journal of Modern European History* 342–358 (356).

<sup>17</sup> This opening sentence goes back to Clement Attlee, Prime Minister of the United Kingdom, and the poet and Librarian of Congress, Archibald MacLeish. See Valderrama F M, *A history of UNESCO* (Unesco publishing 1995) p. 24.

<sup>18</sup> See for this formulation the UN Archives A/136 No. 4068, English translation from Introduction on the Transfer to UNESCO of the Functions and Activities of the International Institute of Intellectual Co-operation and Utilization by UNESCO of the Assets of the Institute transferred to the United Nations by the League of Nations (1946), p. 1.

“the spell of nationalism may be thus broken and an actual improvement of relations between peoples should be aimed at by such an Institute. Social studies of this kind are to be pressed forward with utmost eagerness, for it is first in the minds of men that the conditions of a true international cooperation are to be sought”.

According to Albert Einstein, “scientific and technical progress would mean little to mankind otherwise.”<sup>19</sup>

Based on this understanding, UNESCO started manifold projects, contributed to the drafting of international agreements and adopted important resolutions. While the Organization’s beginnings were dominated by the development of a programme to be approved by a General Conference and by the reconstruction in the field of education, science and culture in 36 Member States after World War II at the end of 1947,<sup>20</sup> over the years, the number of projects and Member States steadily increased. It is UNESCO’s merit that the protection of cultural heritage has become part of international law in general and subject to several international conventions in particular.<sup>21</sup>

In 1960, UNESCO launched a campaign with the goal to move the location of the Great Temple of Abu Simbel in order to spare it from being swamped by the Nile after the Aswan Dam had been constructed. The temple, originally constructed in the 13<sup>th</sup> century BC during the reign of King Ramses II, was indeed, relocated between 1963 and 1968, after UNESCO’s international cry for help. This somewhat ad hoc protection of the now established cultural heritage site was followed by one of the most important and well known international agreements initiated by UNESCO a decade later.

As a milestone in cultural heritage protection in times of peace, the Convention Concerning the Protection of World Cultural and Natural Heritage was adopted by the General Conference of UNESCO in 1972.<sup>22</sup>

<sup>19</sup> UN Archives, S-0921-0032-0003-00006, Summary of a conversation with Dr. Albert Einstein on the subject of the United Nations enquiry on International Research Laboratories (1946-06-17 – 1948-01-15), p. 2.

<sup>20</sup> See on this Valderrama F M, *A history of UNESCO* (Unesco publishing 1995) p. 33.

<sup>21</sup> For a general overview, see O’Keefe P J and Prot L V, *Cultural heritage conventions and other instruments: A compendium with commentaries* (Institute of Art & Law 2011). For an overview on cultural heritage protection in times of war, which dates back to the Congress of Vienna in 1815, see Odendahl K, *Kulturgüterschutz: Entwicklung, Struktur und Dogmatik eines ebenenübergreifenden Normensystems* (Mohr Siebeck 2005) p. 18, as well as 107 et seq.

<sup>22</sup> 1037 UNTS 151.

The Preamble of this convention points out explicitly that the “deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world”. Especially “parts of the cultural or natural heritage are [considered to be] of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole”.<sup>23</sup> And the *travaux préparatoires* of the World Heritage Convention underline this cosmopolitan spirit as an earlier draft considered the Convention’s purpose to restrict the illegal transfer of “peoples” cultural heritage instead of the heritage of States.<sup>24</sup>

With its currently 194 State Parties the World Heritage Convention is a truly universal treaty regime combining the conservation of nature and cultural heritage.<sup>25</sup> Precisely this universal coverage demonstrates the general agreement on the importance of cultural heritage. Seemingly, no State would openly claim to disrespect cultural or natural heritage.

By establishing the World Heritage List, the Heritage Convention brings the duty upon its State Parties to nominate according to Art 1 “monuments” such as architectural works, works of monumental sculpture and

<sup>23</sup> On the public nature of “cultural artifacts”, see Lindsay P, Can We Own the Past? Cultural Artifacts as Public Goods (2012) 15 (1) *Critical Review of International Social and Political Philosophy* 1–17.

<sup>24</sup> See Vrdoljak A F, Human Rights and Cultural Heritage in International Law, in Lenzerini F and Vrdoljak A F (eds) *International Law for Common Goods. Normative Perspectives on Human Rights, Culture and Nature* (Hart 2014) 139–173 (147). Discussing the subjects of the cultural heritage discourse, the floor is divided between cosmopolitans considering cultural heritage as component of a common human culture (Merryman J H, Two Ways of Thinking About Cultural Property (1986) 80 (4) *American Journal of International Law* 831–853 (831–832) pointing at the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict) and nationalists prioritizing the national interest (Merryman, 832–833 pointing at the 1972 UNESCO convention). While the former declares the subject of cultural heritage protection practically to be mankind as such, the latter approach favors the nation state as the main protagonist. At least in the literature, there are strong voices with good reasons pushing towards a focus on the object rather than on the nation (eg Merryman J H, The Nation and the Object (1994) 3 (1) *International Journal of Cultural Property* 61–76 (61). See also Cuno J, *Who Owns Antiquity? Museums and the Battle over Our Ancient Heritage* (Princeton University Press 2008) p. 146 “Antiquities are the cultural property of all humankind, humankind—of people, not peoples—evidence of the world’s ancient past and not that of a particular modern nation. They comprise antiquity, and antiquity knows no borders.”

<sup>25</sup> Statistics available at <https://whc.unesco.org/en/statesparties/> [last accessed 13 July 2020].

painting, “groups of buildings” or “sites” to be included in the list, currently featuring – besides the mentioned Great Temple of Abu Simbel – over 1000 sites worldwide. The enlistment enables the protection of the incorporated sites and obliges States to report to the World Heritage Committee, established in 1976, the state of conservation of the listed objects. In the case of which a listed site is in danger, the World Heritage Committee has established itself the possibility to put this site on the List of World Heritage in Danger according to Art 11 (3) of the World Heritage Convention – also in the event that no request for help had been issued.<sup>26</sup>

The 1970 Paris Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, too, is a UNESCO child. This Convention was adopted on 14<sup>th</sup> of November 1970, and entered into force on 24<sup>th</sup> of April 1972<sup>27</sup> and is of importance as the restitution of looted cultural property such as art is a constant matter of debate and the illegal market is booming. While provenance research constitutes a relatively new field of research aimed at the identification of property status and history of inter alia paintings and other valuable cultural objects, the currently 140 State Parties agreed to the protection of cultural property including according to its Article 1 “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science” belongs to a specifically in the convention listed category (Art 1 a–k). If an object constitutes cultural property as defined by a State party along the lines of Art 1 and Art 4 of the Convention, the State party has specific duties of preservation but may also rely on the restitution provisions regarding the property and on the international cooperation as manifested for instance in the recovery assistance of stolen or illegally exported cultural property envisaged by the Convention. The Convention furthermore obliges its parties to control the trading market and provide for criminal law provisions and appropriate sanctions. While some progress has been achieved concerning the restitution of art looted during the Second World War, the necessity to discuss, research the provenance,

reconstruct and – if applicable – restitute art or cultural heritage of former colonies to the places of origin is still an open matter of debate to which UNESCO could contribute substantially. Yet, important voices already see the “tide turning”.<sup>28</sup>

While during the 1980s, attention was attached to “systematizing and improving existing practices in individual programme actions; consolidated evaluation of programme themes; and selective evaluations of specific projects”,<sup>29</sup> in 1992, UNESCO established the “Memory of the World” Programme which aims at protecting documents of extraordinary value in archives, libraries and museums. This programme allows for the listing of specific documents which are then counted as world heritage.<sup>30</sup> Thereby, treasures in libraries and archives receive special protection spanning film and videotapes, sound recordings, as well as newsprints, photographs and other digital documents.

The institutionalization of cultural heritage protection, however, does not stand still. Beyond the mentioned agreements, two rather young conventions, the Convention on the Safeguarding of the Intangible Cultural Heritage adopted on 17<sup>th</sup> of October 2003, and entered into force on 20<sup>th</sup> of April 2006<sup>31</sup> with currently 178 State parties as well as the UNESCO Convention on the Protection of the Underwater Cultural Heritage, adopted on 2<sup>nd</sup> of November 2001, and entered into force 2<sup>nd</sup> of January 2009<sup>32</sup> with currently 54 State Parties, further complement the protection of cultural heritage. By extending the scope of protection on intangible and underwater objects, the institutionalized protection still seems to be quite flexible adapting to an increasingly diverse range of needs. Especially, the ra-

<sup>26</sup> See Lenski S-C, *Öffentliches Kulturrecht. Materielle und immaterielle Kulturwerke zwischen Schutz, Förderung und Wertschöpfung* (Mohr Siebeck 2013) p. 174–175 with further reference to No 177 Operational Guidelines for the Implementation of the World Heritage Convention.

<sup>27</sup> 823 UNTS 231.

<sup>28</sup> Vrdoljak A F, Human Rights and Illicit Trade in Cultural Objects, in Borelli S and Lenzerini F (eds) *Cultural Heritage, Cultural Rights, Cultural Diversity – New Developments in International Law* (Martinus Nijhoff 2012) 107–140 (107). Cf also the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects adopted on 24 June 1995, and which entered into force on 1 July 1998 (2421 UNTS 457), which complements the Paris Convention for matters of private law on international art trade, especially demanding buyers’ responsibility when acquisitioning cultural objects. By now, this convention, however, only features 48 Member States.

<sup>29</sup> Cf Valderrama F M, *A history of UNESCO* (Unesco publishing 1995) p. 257 et seq.

<sup>30</sup> Cf Charlesworth H, Human Rights and the Memory of the World Programme, in Langfield M, Logan W and Nic Craith M (eds) *Cultural Diversity, Heritage and Human Rights – intersections in theory and practice* (Routledge 2010) 21–30.

<sup>31</sup> 2368 UNTS 1.

<sup>32</sup> 2562 UNTS 3.

pidly growing number of State parties to the Intangible Heritage Convention demonstrates the broad acceptance of this extension in international cultural heritage law.<sup>33</sup> Somewhat skeptical voices, however, relate this rapidly growing body of State Parties to a “certain lack of ‘legal bite’” of this Convention.<sup>34</sup> Nonetheless, while the 1972 Heritage Convention has been criticized for a Eurocentric approach, the recognition of intangible heritage is an important extension in the protection of cultural heritage, if not so say a “counterpoint” to the earlier, narrower focus of protection of cultural property only.<sup>35</sup> The Intangible Heritage Convention, thus, comprises according to Art 2 (1) “the practices, representations, expressions, knowledge, skills – as well as

the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”<sup>36</sup>

According to Art 1 (1) (a) of the Underwater Cultural Heritage Convention “Underwater cultural heritage’ means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as:” (i) sites etc, (ii) vessels, aircraft, etc, and (iii) objects of prehistoric character. Especially “the elimination of the undesirable effects of the law of salvage and finds; the exclusion of a first-come-first-served approach for the heritage found on the continental shelf; and the strengthening of regional cooperation”<sup>37</sup> are important innovations of this convention.<sup>38</sup> This is of importance as for instance Art 303 (2) UNCLOS only enables States to protect underwater cultural heritage in the contiguous zone in a quite complex and also limited manner.<sup>39</sup> If underwater cultural heritage is not protected, States with “liberal” approaches can easily provide for a legalization via national law of dubious practices of “salvaging” insufficiently protected underwater cultural heritage for profit.<sup>40</sup>

Almost in the same breath, the UNESCO Universal Declaration on Cultural Diversity was adopted by the General Conference on 2<sup>nd</sup> of November 2001 and, in

<sup>33</sup> See especially Blake J, *International Cultural Heritage Law* (Oxford University Press 2015) p. 336 stating that „[t]his treaty has had a noticeable impact even in the first eight years after its entry into force (from 2006 to 2014) in the number of Parties that have either revised existing legislation to accommodate safeguarding of this heritage and the requirements of the Convention, or have introduced new legislation to do this. In addition, a number of Parties have developed new cultural policies and policies in other areas (rural development, environmental protection, etc) that are heavily influenced by this Convention. In this way, one of the main impacts of such instruments may well be educative, encouraging both internal policy and legislative development and regional or international cooperation frameworks. To a lawyer of the more ‘classical’ school this may not seem to be sufficiently like ‘law’, but it undoubtedly realizes important achievements in an area of great complexity and sensitivity and one in which States negotiating new agreements will always seek to reserve the majority of matters to their own sovereign jurisdiction.” See, however, for a reference to the Brazilian Constitution of 1988 protecting already intangible cultural heritage in Art 215 and 216, see Fernandes Lima N and Teles Silva S, Conciliating the overlap of protected areas and traditional territories: legal innovations for biological diversity conservation in Brazilian parks (2019) 16 (2) *Brazilian Journal of International Law* 126–139 (129).

<sup>34</sup> See Lixinski L, Selecting Heritage: The Interplay of Art, Politics and Identity (2011) 22 (1) *European Journal of International Law* 81–100 (81); for details, see Blake J and Lixinski L, *The 2003 UNESCO Intangible Heritage Convention* (Oxford University Press 2020).

<sup>35</sup> Smith L and Akagawa N, Introduction, in Smith L and Akagawa N (eds) *Intangible Heritage* (Routledge 2009) 1–10 (1). Cf Prott L V and O’Keefe P J, “Cultural Heritage” or “Cultural Property”? (1992) 1 (2) *International Journal of Cultural Property* 307–320 (312) highlighting that the term “cultural property” was used for the first time in the 1954 Hague Convention, however, the 1972 UNESCO Convention as well as especially in the literature the broader term “cultural heritage” is preferred by now as this term also includes intangible heritage. See also Blake J, On Defining the Cultural Heritage (2000) 49 *International & Comparative Law Quarterly* 61–85 (65 et seq); as well as Vrdoljak AF and Francioni F, Introduction, in: Francioni F and Vrdoljak A F (eds) *The Oxford Handbook of International Cultural Heritage Law* (Oxford University Press 2020) 1–42 (2 et seq) being aware of the “enternal question” of the legal definition of “cultural heritage”, yet mentioning in broad strokes the extension from immovable, tangible heritage to include also intangible heritage.

<sup>36</sup> Cf Scovazzi T, The Definition of Intangible Cultural Heritage in Borelli S and Lenzerini F (eds) *Cultural Heritage, Cultural Rights, Cultural Diversity – New Developments in International Law* (Martinus Nijhoff 2012) 179–200.

<sup>37</sup> Scovazzi T, Underwater Cultural Heritage as an International Common Good, in Lenzerini F and Vrdoljak A F (eds) *International Law for Common Goods. Normative Perspectives on Human Rights, Culture and Nature* (Hart 2014) 215–230 (224).

<sup>38</sup> Cf O’Keefe P J, *Shipwrecked heritage: a commentary on the UNESCO Convention on Underwater Cultural Heritage* (Institute of Art & Law 2<sup>nd</sup> ed 2014).

<sup>39</sup> See for critique Scovazzi T, Underwater Cultural Heritage as an International Common Good, in Lenzerini F and Vrdoljak A F (eds) *International Law for Common Goods. Normative Perspectives on Human Rights, Culture and Nature* (Hart 2014) 215–230 (219 et seq) quoting also Oxman B H, Marine Archeology and the International Law of the Sea (1988) *Columbia Journal of Law and the Arts* 353–372 (363).

<sup>40</sup> See on this Scovazzi T, Underwater Cultural Heritage as an International Common Good, in Lenzerini F and Vrdoljak A F (eds) *International Law for Common Goods. Normative Perspectives on Human Rights, Culture and Nature* (Hart 2014) 215–230 (222 et seq) providing examples such as the United States Court of Appeals for the Fourth Circuit in the decision rendered on 24 March 1999 case *RMS Titanic, Inc v Haver*, ILM 1999, 807.

2003, UNESCO adopted the Charter on the Preservation of Digital Heritage “consist[ing] of unique resources of human knowledge and expression” such as “technical, legal, medical and other kinds of information created digitally, or converted into digital form from existing analogue resources” (Art 1).

Besides these international conventions, also a number of regional cultural heritage instruments exists. In Africa, the Cultural Charter for Africa (1976) and the Charter for the Cultural Renaissance of Africa (2006) are of relevance for our topic.<sup>41</sup> Especially Art 22 (1) of the African Charter on Human Rights and People’s Rights (“Banjul Charter”) (1981) deserves mentioning. This Article explicitly includes “the right to the [people’s] economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.” Besides this right, also “States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”

While there are no specific treaty instruments, with regard to the protection of cultural heritage in the Middle East and North Africa, the Doha Conference of Ulamâ on Islam and Cultural Heritage<sup>42</sup> as well as, in Asia, the ASEAN Declaration on Cultural Heritage (2000) are worth mentioning. However, it is important not to conflate a seeming lack of legal protection which is too easily identified with Eurocentric glasses.<sup>43</sup>

The Convention on the Protection of the Archeological, Historical, and Artistic Heritage of the American Nations (1976) and the European Cultural Convention from 19<sup>th</sup> of December 1954<sup>44</sup> are relevant regional instruments for America and Europe. Especially among the latter other instruments of the Council of Europe like the 2005 Framework Convention on the Value of Cultural Heritage for Society (“Faro Convention”,

from 27<sup>th</sup> of October 2005)<sup>45</sup> is of importance. According to its Art 1, “rights relating to cultural heritage” are considered to be “inherent in the right to participate in cultural life” which in turn is explicitly linked to the UN Universal Declaration on Human Rights. Concerning more recent instruments, the Council of Europe Convention on Offences relating to Cultural Property adopted on 3<sup>rd</sup> of May 2017<sup>46</sup> is a showcase of still ongoing international efforts of constantly strengthening and extending the fight against illegal trafficking of cultural properties in Europe by obliging its State parties to implement specific criminal law norms.

International agreements are not the only source of international law norms on cultural heritage law. There is a lively discussion on potential international customary norms and general principles of law on cultural property protection in times of peace including eg repatriation obligations of states, which is, however, negated by the majority of scholars.<sup>47</sup>

### 3 From Institutionalized Interstate Heritage Protection to a Human Right to Cultural Heritage in the 21<sup>st</sup> century?

The above mentioned agreements on cultural heritage protection are classical interstate norms, obliging and enabling mainly States. Such a somewhat narrow focus, however, might leave cultural heritage unprotected. In order to address such lacunas, there is a rising quest enabling individuals and groups to raise human rights claims against the State also in the field of cultural heritage protection. And indeed, upon closer inspection, there are manifold human rights implications in the field of cultural heritage protection. They span from indirect influences and links between cultural heritage and various specific human rights to the somewhat daring assertion of a human right to cultural heritage.

Several international human rights treaties include provisions closely related or indirectly promoting cul-

<sup>41</sup> Cf Nodoro W, Mumma A and Abungu G (eds) *Cultural Heritage and the Law. Protecting immovable heritage in English-speaking countries of Sub-saharan Africa* (ICCROM Conservation Studies 2008).

<sup>42</sup> Cf generally Baker W G, *The Cultural Heritage of Arabs, Islam, and the Middle East* (Brown 2003); Irsheid C, *The Protection of Cultural Property in the Arab World* (1997) 6 (1) *International Journal of Cultural Property* 11–46.

<sup>43</sup> See Rico T, *Islam, Heritage, and Preservation: An Untidy Tradition* (2019) 15 (2) *Material Religion. The Journal of Objects, Art and Belief* 148–163 (148) on a “Eurocentric preservation dogma and its encounter with different articulations and practices related to Islam”.

<sup>44</sup> 218 UNTS 139.

<sup>45</sup> CETS No 199.

<sup>46</sup> CETS No 221.

<sup>47</sup> Cf Odendahl K, *Kulturgüterschutz: Entwicklung, Struktur und Dogmatik eines ebenenübergreifenden Normensystems* (Mohr Siebeck 2005) p. 145 et seq, 157, 179 et seq.

tural heritage.<sup>48</sup> While Art 22 of the Universal Declaration of Human Rights makes clear that cultural rights are “indispensable for [everyone’s] dignity and the free development of [everyone’s] personality”. The right to take part in cultural life is enshrined in Art 27 of the Universal Declaration of Human Rights. Art 15 (1) (a) of the International Covenant on Economic, Social and Cultural Rights also obliges States to recognize the right of everyone to take part in cultural life. An important component of this right is, according to General Comment No 21 of the UN Committee on Economic, Social and Cultural Rights (CESCR), the “obligation to respect [which] includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group [...] d) [t]o have access to their own cultural and linguistic heritage and to that of others.”<sup>49</sup> Beyond that, the CESCR has declared that “the obligations to respect and to protect freedoms, cultural heritage and diversity [to be] interconnected”.<sup>50</sup>

The right to enjoy one’s own culture is furthermore guaranteed by Art 27 of the International Covenant on Civil and Political Rights (ICCPR) providing for the right of members of minorities to enjoy their own culture, practice their own religion and use their own language. A specific expression of such rights is guaranteed by the United Nations Declaration on the Rights of Indigenous Peoples as well as the International Labour Organization’s Convention No 169, the Indigenous and Tribal Peoples Convention, from 1989. Both containing various provisions in general regarding cultural rights and more specifically also promoting cultural heritage.

Cultural heritage has also links to further human rights such as human dignity as well as identity, and is important for the right of peoples to self-determination.<sup>51</sup> The right to education, too, “is crucial in fostering respect for the diversity of cultural heritages and expressions” and since “much of cultural heritage has

religious connotations, the right to freedom of thought and religion is of great relevance for the right of access to and enjoyment of cultural heritage” too.<sup>52</sup>

The 1993 summit meeting of the Council of Europe Heads of State has generally made a direct link between cultural heritage and human rights.<sup>53</sup> And indeed, it seems that the international community increasingly considers the importance of cultural heritage as an important pillar of a flourishing cultural diversity as important for human rights in particular and peace and stability in a more broader perspective.<sup>54</sup> For instance, the 2007 United Nations Declaration on the Rights of Indigenous Peoples provides in Art 31 that “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage”. In addition, they should control their own cultural resources as enshrined in Art 35.<sup>55</sup>

The human rights discourse on cultural heritage has been shaped. Rising legal claims towards a collective human right to protect, preserve, or reclaim cultural heritage are increasingly made. Farida Shaheed, the first UN Special Rapporteur in the field of cultural rights established by the Human Rights Council through resolution 10/23 in 2009, considered in her first thematic report in 2010 “the conduct of cultural practices and access to cultural heritage” being part of the broad range covered by cultural rights.<sup>56</sup> A year later she held that “[c]onsidering access to and enjoyment of cultural herita-

<sup>48</sup> For an overview, see Shaheed A/HRC/17/38 [2011] para 34 et seq; Blake J, Taking a Human Rights Approach to Cultural Heritage Protection (2011) 4 (2) *Heritage & Society* 199–238 (215 et seq, and espec 223 et seq); Blake J, *International Cultural Heritage Law* (Oxford University Press 2015) p. 288 et seq.

<sup>49</sup> E/C12/GC/21 General comment No 21 [2009] at para 49d.

<sup>50</sup> E/C12/GC/21 General comment No 21 [2009] at para 50.

<sup>51</sup> For a discussing again what Raphael Lemkin had coined „cultural genocide“ in 1944, see, eg, Bilsky L and Klagsbrun R, The return of cultural genocide? (2018) 29 (2) *European Journal of International Law* 373–396.

<sup>52</sup> Shaheed A/HRC/17/38 [2011] para 48, cf paras 2, 45–47; cf Vrdoljak A F, Human Rights and Illicit Trade in Cultural Objects, in Borelli S and Lenzerini F (eds) *Cultural Heritage, Cultural Rights, Cultural Diversity – New Developments in International Law* (Martinus Nijhoff 2012) 107–140 (139) speaking of a “cross-fertilization between human rights and cultural heritage law in the field of movable heritage”.

<sup>53</sup> See Blake J, On Defining the Cultural Heritage (2000) 49 *International & Comparative Law Quarterly* 61–85 (73).

<sup>54</sup> See eg Vrdoljak A F, Human Rights and Cultural Heritage in International Law, in Lenzerini F and Vrdoljak A F (eds) *International Law for Common Goods. Normative Perspectives on Human Rights, Culture and Nature* (Hart 2014) 139–173; Francioni F, The Evolving Framework for the Protection of Cultural Heritage in International Law, in Borelli S and Lenzerini F (eds) *Cultural Heritage, Cultural Rights, Cultural Diversity – New Developments in International Law* (Martinus Nijhoff 2012) 3–25 (25); or Scovazzi T, Culture, in Chesterman S, Malone D M and Villalpando S (eds) *The Oxford Handbook of United Nations Treaties* (Oxford University Press 2019) 307–320 (307) „The treaties of global scope concluded to date in the field of culture aim at bringing two fundamental messages. First, culture contributes to the maintenance of peace. Second, the protection and promotion of culture is a general interest of the international community as a whole.“

<sup>55</sup> GA A/RES/61/295, 13 September 2007.

<sup>56</sup> Shaheed A/HRC/14/36 [2010] para 9.

ge as a human right is a necessary and complementary approach to the preservation / safeguard of cultural heritage”.<sup>57</sup> Therefore she advocates for perceiving cultural heritage “from a human rights perspective”.<sup>58</sup>

This take on cultural heritage protection is, however, far from evident. Firstly, there is no specific universal right to cultural heritage, enshrined in a specific article in an international agreement. Secondly, especially the broad understanding of cultural heritage, including not only material cultural property but also immaterial practices and traditions as well as natural heritage, challenges the classical scope of protection of human rights. Therefore some voices even warn from the danger that cultural heritage framed as a human right, might endanger other human rights, when, for example, a specific traditional practice might clash with established human rights.<sup>59</sup> Barkan, for instance, expressed criticism about group rights and the possibility of “offensive groups”.<sup>60</sup> Thirdly, critical voices are concerned about a potential hegemonic rights framework.<sup>61</sup> Logan describes in this vein a “clash between universalism and cultural relativism”.<sup>62</sup> Similarly, it has been submitted that cultural property is a paradox within the logic of property. That “each group possesses and controls or ought to control – its own culture” would be at odds with a dynamic understanding of what is culture.<sup>63</sup>

Skeptical voices go even further and doubt the “assumption” “that cultural property is distinctive or special, and therefore different from ordinary property”.<sup>64</sup>

<sup>57</sup> Shaheed A/HRC/17/38 [2011] para 2.

<sup>58</sup> Shaheed A/HRC/17/38 [2011] para 4 et seq.

<sup>59</sup> See eg Logan W S, Closing Pandora’s Box: Human Rights Conundrums in Cultural Heritage Protection, in Silverman H and Ruggles D F (eds) *Cultural Heritage and Human Rights* (Springer 2007) 33–52 (40 et seq). Yet it is not the case that the UN special rapporteur would be blind for such dangers: Bennoune A/HRC/40/53 [2019] para 10; see however, also para 17.

<sup>60</sup> Barkan E, Genes and burkas: predicaments of human rights and cultural property, in Silverman H and Ruggles D F (ed) *Cultural heritage and human rights* (New York: Springer 2007) 184–200 (199). For critique of treating an object “with respect simply because they are old”, see James S P, Why Old Things Matter (2013) 12 (3) *Journal of Moral Philosophy* 313–329 (313) who however points to virtue ethics to take serious the history of “old inanimate objects”.

<sup>61</sup> Cowan J, Culture and rights after culture and rights (2006) 108 *American Anthropologist* 9–24.

<sup>62</sup> Logan W S, Closing Pandora’s Box: Human Rights Conundrums in Cultural Heritage Protection, in Silverman H and Ruggles D F (eds) *Cultural Heritage and Human Rights* (Springer 2007) 33–52 (50).

<sup>63</sup> Mezey N, The Paradoxes of Cultural Property (2007) 107 *Columbia Law Review* 2004–2046 (2004).

<sup>64</sup> See eg Posner E A, The International protection of Cultural

Therefore, according to Posner, “[t]here is no good argument for international legal regulation of cultural property, during peacetime or wartime.” Even more so, he argues, “the UNESCO Convention likely has perverse effects and that the treatment of cultural property would improve, even during wartime, if the current regime of international regulation were abolished”.<sup>65</sup>

Addressing these doubts and critiques, it is important not to throw the baby out with the bath water. While, for instance, Silverman is aware of the difficult entanglements, nevertheless she rightly states that the possibility of cultural heritage as a human right “should not be abandoned because of its complexities”.<sup>66</sup> The view that cultural heritage or property is in no meaningful way different than ordinary property seems to be at odds with the identity forming function of specific objects, places and practices. It is precisely the understanding of cultural heritage being of value for more than one individual, often a larger group as for instance a nation, which contrasts sharply with the skeptical argument as to treating cultural property as ordinary property.

Also, the seeming clash between universalism and cultural relativism as well as the fear of cultural heritage as a human right with potential to endanger established human rights does not seem to be a striking argument against cultural heritage as a human right as such. While conflicts between human rights are also well known among established human rights and usually are carefully balanced, it seems not to be the case that any cultural heritage related rights position gives the floor to a dangerous hegemonic universalist position.

What is, indeed however, a major obstacle, is the still somewhat lacking codification of a cultural heritage human right. The missing article is neither balanced by respective customary international law norms or general principles of law, and therefore, it seems difficult to advocate too strongly for such a human right. This is related to somewhat less generally arguing and not overly skeptical voices which warn against asking too much

Property: Some Skeptical Observations (2007) 8 *Chicago Journal of International Law* 213–231 (214–215).

<sup>65</sup> See eg Posner E A, The International protection of Cultural Property: Some Skeptical Observations (2007) 8 *Chicago Journal of International Law* 213–231 (214–215, 225, 228).

<sup>66</sup> Silverman H, World Heritage and Human Rights, in Smith C (ed) *Encyclopedia of Global Archaeology* (2014 Edition) 7874–7877 (7875).

from cultural heritage as global, regional, national and local claims which might easily be incompatible.<sup>67</sup> Gillman, in turn, holds that instead of taking heritage itself as a basic good, rather “debates over heritage should, in the end, be about the well-being of individuals”.<sup>68</sup>

It is however not the case that the UN special rapporteur is not aware of such criticism. Farida Shaheed acknowledged that in a way when saying that “[a]lthough these instruments do not necessarily have a human rights approach to cultural heritage, in recent years, a shift has taken place from the preservation/safeguard of cultural heritage as such, based on its outstanding value for humanity, to the protection of cultural heritage as being of crucial value for individuals and communities in relation to their cultural identity.”<sup>69</sup> She concludes, thus, her 2<sup>nd</sup> report in 2011 reflecting on international law and practice that “the need to preserve/safeguard cultural heritage is a human rights issue.”<sup>70</sup> She details this further in locating the legal basis of the right of access to and the enjoyment of cultural heritage “in particular, in the right to take part in cultural life, the right of members of minorities to enjoy their own culture, and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage.”<sup>71</sup> Interestingly she explicitly mentions also “the obligation to seek and provide international assistance and cooperation” which “is firmly laid down in article 2 of the Covenant” in order to prevent excuses of “scarce economic resources” impeding the compliance with cultural heritage rights.<sup>72</sup> Also in her first report to the UN General Assembly in 2012, she submitted her understanding of cultural rights including the protection of “access to tangible and intangible cultural heritage as important resources enabling such identification and development processes”.<sup>73</sup>

The shift of taking cultural heritage rights seriously from a human rights angle, is also noticeable in the way how UNESCO advances cultural heritage, constantly developing cultural heritage protection towards a hu-

man rights based approach.<sup>74</sup> Therefore, it wasn’t surprising that Karima Bennouna, the second UN Special Rapporteur in the field of cultural rights, strengthened in her first thematic report on 27<sup>th</sup> of October 2016 the position of her predecessor.<sup>75</sup> As to that date, cultural heritage was particularly endangered and therefore she focused on the “intentional destruction of cultural heritage, as exemplified by the demolitions of the Baalshamin Temple and the Temple of Bel in Palmyra in 2015”.<sup>76</sup> However, in so doing she too highlighted the “[i]mportance of cultural heritage from a human rights perspective”.<sup>77</sup>

Also in her first report to the UN General Assembly, she “sets out a human rights approach, which she has developed, to the intentional destruction of cultural heritage, in conflict and non-conflict situations, by States and non-State actors”.<sup>78</sup> And in subsequent reports she raises awareness for the work of what she coins “cultural rights defenders”, that is “human rights defenders who defend cultural rights in accordance with international standards”. To her, the rights that such human right defenders advocate, are “a core part of international human rights law”.<sup>79</sup>

<sup>67</sup> See eg Donders Y, UNESCO and Human Rights, in Gerd Oberleitner (ed) *International Human Rights Institutions, Tribunals and Courts* (Springer 2018), 251–269 (256); cf Ekern S, Logan W, Sauge B and Sinding-Larsen A (eds) *World Heritage Management and Human Rights* (Routledge 2015); Silverman H and Ruggles H and Ruggles DF, *Cultural Heritage and Human Rights*, in Silverman H and Ruggles DF (eds) *Cultural Heritage and Human Rights* (Springer 2007) 3–29 (6).

<sup>68</sup> Bennouna A/HRC/31/59 [2016] para 50–51.

<sup>69</sup> Bennouna A/HRC/31/59 [2016] para 34.

<sup>70</sup> Bennouna A/HRC/31/59 [2016] paras 47 et seq. Also in the tenth anniversary report of the UN Special Rapporteur on cultural rights, Bennouna A/HRC/40/53 [2019] para 15, she explicitly mentions “(e) the rights to enjoy and have access to the arts, to knowledge, including scientific knowledge, and to an individual’s own cultural heritage, as well as that of others; and (f) the rights to participate in the interpretation, elaboration and development of cultural heritage and in the reformulation of cultural identities”.

<sup>71</sup> A/71/317 [2016] Summary. Cf for a general overview on the protection of cultural property in armed conflict, O’Keefe R, *Cultural Heritage and International Humanitarian Law*, in: Francioni F and Vrdoljak A F (eds) *The Oxford Handbook of International Cultural Heritage Law* (Oxford University Press 2020) 43–74. See also the reparations order in the ICC Trial Chamber VIII, Prosecutor v. AAhmad Al Faqi Al Mahdi, ICC-01/12-01/15 (17 August 2017) para 108, however, holding that the “Chamber cannot conclude to the requisite standard of proof that Mr Al Mahdi is liable for bodily harm or other kinds of property loss or damage. In this regard, the Chamber emphasises the relatively narrow scope of this case relative to the wider range of human rights violations alleged to have occurred in Timbuktu and elsewhere throughout Mali. Mr Al Mahdi cannot be held responsible for these broader tragedies”.

<sup>72</sup> Bennouna A/HRC/43/50 [2020] para 2.

<sup>67</sup> Lowenthal D, *The Heritage Crusade and the Spoils of History* (Viking 1997) p. 227.

<sup>68</sup> Gillman D, *The Idea of Cultural Heritage* (Cambridge University Press, rev ed 2010) p. 21.

<sup>69</sup> Shaheed A/HRC/17/38 [2011] para 20.

<sup>70</sup> Shaheed A/HRC/17/38 [2011] para 77.

<sup>71</sup> Shaheed A/HRC/17/38 [2011] para 78.

<sup>72</sup> Shaheed A/HRC/17/38 [2011] para 72.

<sup>73</sup> Shaheed A/67/287 [2012] para 7.



The approach advocated by both UN special rapporteurs resonates with academia. The recognition of a human right to culture in international law is taken as a proof for the evolution of cultural heritage “away from a property framework and toward a human rights-based approach”.<sup>80</sup> Lenzerini, for instance, holds that “international safeguarding of ICH [Intangible Cultural Heritage] must rely on the concomitant application, even though in an indirect manner, of international human rights law”.<sup>81</sup> And Logan understands heritage as “cultural practice” and human rights “as the most significant part of the international heritage of humanity”.<sup>82</sup>

## 4 Conclusion

It has been quite a long journey from the Coopération Intellectuelle institutionalized after the First World War to the human right to cultural heritage in the 21st century. What a brief glimpse at this development shows, is that the institutionalization in general, and specifically active agents in such an institutionalized setting, can indeed bring forward important protective schemes. While it has been specific individuals during the inter-war period and after the Second World War who facilitated the institutionalization of cultural heritage protection,<sup>83</sup> it is again individual agents, namely the UN special rapporteurs on cultural rights, Farida Shaheed and Karima Bennoune who strongly advocate for an important development of cultural heritage

protection: to frame cultural heritage as a human rights issue.<sup>84</sup> Accompanied by the Committee on Economic, Social and Cultural Rights’ General Comment No 21 adopted on 21st of December 2009, the prospective human right to cultural heritage obliges States to respect, protect<sup>85</sup> and fulfil<sup>86</sup> individual’s and group’s rights to cultural heritage.

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<sup>80</sup> Alderman K L, The Human Right to Cultural Property (2011) 20 (1) *Michigan State International Law Review* 69–81 (70); cf Blake J, Taking a Human Rights Approach to Cultural Heritage Protection (2011) 4 (2) *Heritage & Society* 199–238; Lixinski L, Heritage for Whom? Individuals’ and Communities’ Roles in International Cultural Heritage Law, in Lenzerini F and Vrdoljak A F (eds) *International Law for Common Goods. Normative Perspectives on Human Rights, Culture and Nature* (Hart 2014) 193–213 (207 et seq) discussing individuals’ and communities’ roles). Silberman N, Heritage Interpretation and Human Rights: Documenting Diversity, Expressing Identity, or Establishing Universal Principles? (2012) 18 (2) *International Journal of Heritage Studies* 245–256 (253).

<sup>81</sup> Lenzerini F, Intangible Cultural Heritage: The Living Culture of Peoples (2011) 22 *European Journal of International Law* 101–120 (101).

<sup>82</sup> Logan W, Cultural diversity, cultural heritage and human rights: towards heritage management as human rights-based cultural practice (2012) 18 (3) *International Journal of Heritage Studies* 231–244 (231).

<sup>83</sup> See only Grandjean M, Les réseaux de la coopération intellectuelle. La Société des Nations comme actrice des échanges scientifiques et culturels dans l’entre-deux-guerres (Doctoral Theses Université de Lausanne 2018).

<sup>84</sup> See already Amadou-Mahtar M’Bow, Director-General of UNESCO, A plea for the restitution of an irreplaceable cultural heritage to those who created it (1978), available at <https://unesdoc.unesco.org/ark:/48223/pf0000034683> [last accessed 13 July 2020] speaking already in 1978 of peoples victims of plunder having “the right to recover [...] cultural assets which are part of their being.”

<sup>85</sup> See eg General Comment No 21 [2009] para 49(d) including access to everyone’s cultural and linguistic heritage; and 50(a) more generally.

<sup>86</sup> See General Comment No 21 [2009] paras 52(c), 53 and 54, or eg CESCR [2008] para 68 “requiring State parties to the Convention on social, civil and cultural rights to report on their initiatives to “promote awareness of the cultural heritage of ethnic, religious or linguistic minorities and of indigenous communities, and create favourable conditions for them to preserve, develop, express and disseminate their identity, history, culture, language, traditions and customs”.

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