出國報告（出國類別：國際學術會議）

赴義大利波隆納大學拉溫納法學院參加「於教育與經濟間之世界文化遺產：法律分析」學術研討會會議報告

服務機關：政治大學法律學系
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摘要

本次會議係以教育、經濟與法律等觀點，討論世界文化遺產之保護。相關討論主題包括 Ravenna 作為世界文化遺產城市之相關法制規劃、文化遺產之管理、社區參與之價值、義大利法秩序中私人擁有與贊助對於文化遺產之影響、文化遺產與國際投資法、文化遺產與國際貿易法、歐盟與聯合國教科文組織對於文化遺產之治理等議題。

目次

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壹、「目的」(出席國際會議之目的)

一、 世界文化遺產之保護問題，為國際間相當重視之議題，相關國際法制，亦為聯合國教科文組織(UNESCO)所關心，而有相關國際公約之制訂。

二、 本次會議為義大利波隆納大學「IEL 4 SD」(international economic law for sustainable development)整體計畫系列活動之一，由義大利波隆納大學拉溫納(Ravenna)分部法學院承辦，並為世界國際法學會(ILA)與歐洲國際法學會(ESIL)國際經濟法分會協助辦理。

三、 報告人前此，已經持續參加由中國人民大學於2011年舉辦第一屆，法國Auvergne大學於2012年舉辦第二屆，第三屆於2013年由上海華東政法大學舉辦，第四屆於2015年於法國Toulouse大學主辦之相關法律與文化遺產會議（第二屆與第三屆因故未參加）。2016年6月底並受我國科技部補助，於台北舉辦該系列會議第五屆會議，圓滿完成。報告人亦本為國際經貿法領域學者，並為世界國際法學會ILA「永續發展與綠色國際貿易法」委員會成員、歐洲國際法學會國際經濟法、國際環境法與國際生命法等小組成員。因此參與本次會議，有延續與綜整相關研究之成果可能。

四、 我國雖非為前述UNESCO相關公約締約國，但卻可以實際與義大利與各國學者專家討論相關問題，有相當之實質參與意義。

貳、「過程」(此次出國之行程與參加會議之過程)

一、出國行程：本人於 2016 年 10 月 25 日晚間搭機，經杜拜於 10 月 26 日下午抵達義大利波隆納機場，轉火車前往 Ravenna，於當日傍晚抵達。10 月 27-28 日兩日為會議，10 月 29 日中午搭火車前往波隆納，因班機銜接關係，於 30 日搭機返台，31 日抵台。

二、本次會議重點：本次會議共分為兩天（詳見附錄三之議程）。

（一）第一天（10 月 27 日）上午九點為開幕式，由波隆納大學校長等貴賓進行開幕致詞。第一天之大主題為「聯合國教科文組織文化遺產之教育、文化與經濟價值」。第一場次開幕由德國哥廷根大學 Peter-Tobias Stoll 教授專題演講，討論文化遺產與國際法之關係。其次之圓桌論壇，則討論「Ravenna 與 UNESCO 之關係」，由波隆納大學 Tarozzi 教授介紹 Ravenna 文化遺產與羅馬法之關係;同校 Carlie 教授則從文化史角度，討論 Ravenna 文化遺產，尤其是拜占庭時期相關遺產之文化遺產保護意義；義大利文化部則由 Scalini 館長討論博物館在相關文化遺產估價與 Emilia Romagna 遺址之作用；文化部 Magrini 亦討論文化遺產與永續旅遊之關係；Neve 教授則就文化遺產與通訊科技

之變遷進行討論。

（二）第一天（10 月 27 日）第二場次為「文化遺產與其意義」。首先由法國 Alexandre 與 Huleux 共同發表關於 1972 與 2003 文化遺產公約在社區發展之意義，從環境、經濟與社會三方向之整合出發；Mucci 則從全球在地化(“Glocal”)角度出發，討論文化遺產之意義變遷；澳洲 Linxiski 則從市場角度，討論國際文化遺產非法交易之問題；Lanciotti 則從文化遺產與法律之關係，討論國際公約變遷與新增之過程中，法律上之文化遺產定義究竟有哪些變化。

（三）第一天（10 月 27 日）最後兩場次，第三場次「文化遺產之管理」與第四場次「文化遺產保護之提倡」為平行場次，本人參加前者。首先，柏林自由大學之 D’Amico 就文化共和主義中的價值與社群進行分析；其次，日本 Miyamoto 就世界文化遺產基金之財務永續進行探討；中國之 Liu Lina 未出席；波隆納大學之 Botti 亦未出席。與談人為西班牙 Juan Carlos 大學之 Barreiro Carril 教授。

（四）第二天（10 月 28 日）之大主題為「文化遺產與國際經濟法」。第一場次為文化遺產與國際投資法之總論議題。首先，Leuphana 大學 Asteriti 就國際投資條約與仲裁中之文化遺產相關議題進行討論，以條約法公約條約解釋之方法，討論國際投資與文化遺產保護之可能，並主張在投資爭端中直接以文化遺產條約為準據法；法國 CNRS 之 Titi 研究員，則討論外國投資保護與文化遺產法在相關國際爭端解決之角色，尤其是國際投資仲裁與法庭逛尋(forum shopping)之問題。華沙之 Menkes 未出席。與談人為 Kiel 大學之 Trunk-Fedorova 教授。

（五）第二天（10 月 28 日）第二場次為國際投資法與文化遺產之特殊議題。首先，英國劍橋大學國王學院之 Mota 博士生，討論企業社會責任與國際文化遺產保護。其次，英國藍開斯特大學之 Vadi 教授，則從宗教與文化之標語圖像主義(iconoclasm)、文化政治與文化調適性(resilience)，討論後武裝衝突時期之文化遺產保護問題。Bacconi 大學之 Gagliani 教授，則從文化遺產之國家徵收問題，討論公益與私益之調和，以及相關之補償問題。討論人則為英國劍橋大學國王學院之 Marceddu 博士生。

（六）第二天（10 月 28 日）第三場次，討論國際貿易法與文化遺產之相互關係，本人於此一場次為第一位報告（詳如後）。此外，以色列 Broude 教授討論非物質文化遺產與 WTO 規範，新加坡管理大學 Calboli 教授就地理標示、文化遺產與 TRIPs 協議之關係，義大利 Borlini 教授討論法律解釋方法、文化遺產與 WTO 規範之衝突等等議題。與談人為本次會議承辦教授義大利波隆納大學 Baroncini 教授。本場次由於涉及國際貿易法，可說是本會議各場次中提問與討論最熱烈之場次。

（七）第二天（10 月 28 日）第四場次為最後一場次，討論聯合國教科文組織與歐盟之關係。首先那不勒斯大學 Pugliese 教授就國家對於文化遺產場址之治理，分別討論國際與歐盟之規範；波隆納大學之 Menggozzi 教授，則集中對於歐盟執委會對於國家補助與文化活動之通知為論述；荷蘭萊登大學 Baetens 教授，討論歐盟對外自由貿易協定中對於文化遺產之相關規範；新加坡大學國際法中心之 Sardinha 研究員，針對 TPP 與 CETA 等自由貿易協定中文化遺產保護之議題進行最新情勢之分析；最後，加拿大 Laval 大學之 Otasevic 博士生，則報告自由貿易協定中對於文化產品與服務之規範問題。與談人為英國伯明罕大學之 Protopsaltis 教授。

（八）會議於 10 月 28 日下午六點舉行閉幕式。

三、本人發表論文重點：本人於 10 月 28 日下午第三場次發表「國際貿易法與文化遺產保護：從文化民族主義與文化保護主義出發」(Interaction between International Trade Law and Cultural Heritage Protection: Perspectives from Cultural Nationalism & Cultural Protectionism)乙文（全文與簡報檔，參見附錄二），從文化民族主義與文化保護主義角度出發，討論國際貿易規範中主張以文化遺產保護為例外之可能，以及具體國際間對於文化遺產之交易或活動，原始國主張返還之可能途徑與相關法律補償。此外，本次與會，本人係以臺灣政治大學副教授名義參加，對於提昇臺灣與本校於國際法學界之知名度，有相當助益。

四、相關學者交流：本次會議共兩天，第一天上午九點開到晚上八點，第二天上午九點半開到下午六點半閉幕。與會學者專家與聽眾共約十餘國、六十餘人，討論相當熱烈。第一天午餐後，亦安排一小時，由波隆納大學教授 Maria Cristina Carlie 帶領與會學者到會場走路十分鐘附近之 Basilica San Vitale（西元五、六世紀馬賽克宗教裝飾遺跡教堂，世界文化遺產）參觀並導覽。

五、相關會議成果：本人發表之論文，將循國際投稿途徑投稿。

參、 「心得及建議」

一、 法學界與義大利各大學之交流，相較於與英美或德日之交流並不多，建議可以多以獎勵或補助。

二、 波隆納大學 Ravenna 校區之相關硬體設備略顯簡陋，但依舊戮力承辦此一系列會議，相關精神，值得台灣許多學校硬體設備優良、卻未必願意主動承擔國際聯繫與舉辦國際會議等，相當程度之反省與參考。

三、 在相關國際文化遺產法制之討論，台灣目前並不多，值得進一步發展。此外，尤其是第二天討論國際投資法與文化遺產保護之部分，前者在台灣亦不受重視

（受限於台灣參與國際投資爭端解決機制之侷限性），建議可以多加發展。

附錄一　會場相關相片

附錄二　於研討會中本人發表論文全文與簡報檔

附錄三　會議議程

Interaction between International Trade Law and Cultural Heritage Protection: Perspectives from Cultural Nationalism & Cultural Protectionism

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Abstract

For the protection of cultural heritage and preventing illicit trade of cultural property, two international instruments are set: the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property. However, these conventions are once challenged at their ambiguous definition of cultural property, favoring for source nations and no proper protection of bona fide purchasers.

However, would this cultural nationalism not be justified? Would a cultural internationalism be really favored? If we observe from international trade law, we could notice that even in the WTO regime, a cultural heritage protection exception also exist in the Art. XX (f), which stipulates that "for the protection of national treasures of artistic, historic or archaeological value", it's possible to set some trade limitations. Here also shows a kind of trade sovereignty for limiting international trade for the protection of national treasures.

Thus, fundamental questions arise: who owns cultural heritages and who is entitled to legally trade a cultural property? This paper traces back to the definition and ownership theory of cultural heritage and subsequently tries to establish a balanced model for regulating international trade of cultural property.

Keywords

International trade, illicit trade, GATT XX, cultural heritage, cultural property

Introduction

On 20 October 2005, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Culture Diversity Convention)[1] was adopted by United Nations Educational, Scientific, and Cultural Organization (UNESCO), which "*affirm(s) that cultural diversity is a defining characteristic of humanity*" in its preamble. Since cultural diversity is so important, would the global circulation of cultural goods and services be freely permitted? Or could a country set some limitations on culture-relevant good circulation for persevering its own cultural specificity? Internationalist theory insists the former and nationalist one insists the latter.

From a macro perspective, does a state has a regulatory power for insisting its own cultural values in the epoch of free trade? At the beginning of the creation of GATT in 1947, in its general exception clause, a certain sort, very limited version of "cultural exception" in international trade is already set: "*subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:….(f) imposed for* ***the protection of national treasures of artistic, historic or archaeological value****;*"[2]. However, during the discussions before the establishment of WTO, the possible listed restriction of imports of foreign audio-visual goods and services in name of cultural protectionism is finally excluded.

In addition, for the conservation of international cultural heritage, the most significant feature of the 1972 World Heritage Convention[3] is established for that it links together in a single document the concepts of nature conservation and the preservation of cultural properties. The Convention recognizes the way in which people interact with nature, and the fundamental need to preserve the balance between the two. Here not only the importance of protection of culture goods and services is mentioned again, but also the approach of setting cultural heritage is raised for a certain exception from free trade.

On the other hand, from a micro perspective of transaction among individuals, international instruments are also formally set, for the international protection of cultural heritage from illicit trade: the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[4],

[1] http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html (all the websites cited here are lastly visited on 9 October 2016)
[2] https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_07_e.htm
[3] http://whc.unesco.org/en/convention/
[4] http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property[5]. However, all these conventions are ever challenged at their ambiguous definition of cultural property for their respective purposes' sometimes, they favor for source nations and do not provide proper protection of *bona fide* purchasers. Consequently, the protection of whose cultural property, the balance of the protection of private property and culture heritage as property of all the human kind, becomes a crucial issue in the international trade of cultural goods and services.

In sum, based on which international regime would the balance between the interests of international trade and cultural heritage protection be better achieved? UNESCO? Or WTO? This article tries to provide analysis from two perspectives: governmental power to regulate, which would be based on cultural nationalism and protectionism (I); proper equilibrium between the private property and cultural heritage protection (II).

I. Cultural Concerns in International Trade Law: perspective from governments

The expansion of international trade could on one hand facilitate the interaction between different cultures, but might on the other hand endanger cultural heritage[6] if one of the parties in this interaction is much more dominant, either in economic sense or cultural meaning.

1. Governmental regulation for limited circulation of cultural goods and services

First of all, under the guise of sovereignty, it seems that we all recognize that a state, or a government has a power to regulate everything in its territory. Accordingly, for safeguarding cultural identity and promoting cultural preservation, it set rules for import and export. Additionally, every country has its own precious cultural identity and eagers to preserve its uniqueness. Especially, because of the high consumption rate of audio-visual products, the dominance of American audio-visual industry triggers serious concerns for other countries, especially Canada[7] and France, even after the establishment of WTO.

However, would this cultural nationalism not be justified? Would a cultural internationalism be really favored? If we observe from international trade law, we could notice that even in the WTO regime, a cultural heritage protection exception also exist in the Art. XX (f), which stipulates that "for the protection of national treasures of artistic, historic or archaeological value", it's possible to set some trade limitations. While this

[5] http://www.unidroit.org/instruments/cultural-property/1995-convention
[6] Valentina Vadi, Crossed Destinies: International economic courts and the protection of cultural heritage, 18 JOURNAL OF INTERNATIONAL ECONOMIC LAW 51, 52 (2015).
[7] Michael Hahn, A clash of cultures? The UNESCO diversity convention and international trade law, 9 JOURNAL OF INTERNATIONAL ECONOMIC LAW 515, 517-20 (2006).

paragraph (f) has never been interpreted in WTO/DSB cases[8], it shows a kind of cultural sovereignty for limiting international trade for the protection of national treasures. Nevertheless, according to the jurisprudences[9] of WTO/DSB, some authors considered that WTO/DSB did not treat cultural goods differently due to its special quality[10].

For compensating the weak consciousness in WTO regime for cultural exception to trade, the UNESCO Culture Diversity Convention seems to be a new safe harbor. In its art.2.2, it is prescribed that "States have, in accordance with the Charter of the United Nations and the principles of international law, *the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory*". Art.6.1 of this Culture Diversity Convention also declares that " Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, *each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory*". Art.6.2 subsequently allows protective regulatory measures, even for providing public financial assistance.

Certainly, this exceptional cultural safe haven in the Culture Diversity Convention confronts with conformity inquiries towards WTO norms. Art.20.1 of the Culture Diversity Convention declares that "Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, *without subordinating this Convention to any other treaty*". The mutual supportiveness and interpretative techniques are needed. However, a confusing clause is also added in this convention: "Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties." (Art.20.2). So, what if the implementation of this Culture Diversity Convention violates the obligations in WTO? Especially, all the "measures aimed at protecting and promoting the diversity of cultural expressions" may constitute some discrimination towards foreign cultural goods and services. Which international regime would prevail? WTO or Culture Diversity Convention?

Here the resort to legal interpretation in the Vienna Convention on the law of treaties (VCLT) of 1969 is indispensable. The principles of *lex specialis* and *lex posterior* might apply. Art.30.2 of the VCLT says that "When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail". Art.30.3 also declares "When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty."

Yet, which regime is special law? WTO? Culture Diversity Convention? Finally maybe we could just use art.30.4 of the VCLT to resolve the dispute case by case on a *inter se* basis? "When the parties to the later treaty do not include all the parties to the

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[8] James A.R. Nafziger and Robert Kirkwood Paterson, International trade in cultural materials, in HANDBOOK ON THE LAW OF CULTURAL HERITAGE AND INTERNATIONAL TRADE 19, 23 (JAMES A.R. NAFZIGER AND ROBERT KIRKWOOD PATERSON EDS, 2014)

[9] These cases are: *Turkey-taxation of foreign film revenues, Canada-Periodicals, Canada-film distribution and China-Publications and Audiovisual Products*.

[10] Michael Hahn, *supra* note 7, at 530; JINGXIA SHI, FREE TRADE AND CULTURAL DIVERSITY IN INTERNATIONAL LAW para.6.9 (2013).

earlier one: (a) As between States parties to both treaties the same rule applies as in paragraph 3; (b) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations". This *ad hoc* resolution appears to be unattractive and not persuasive.

In short, the literal and sequential interpretation of art. 20.1 and art. 20.2 of the Culture Diversity Convention might lead that: art.20.2 applies exceptionally, and means that the Culture Diversity Convention still bows to the WTO regime. From the perspective of WTO, maybe we could conclude that this Culture Diversity Convention just constitute an illustrative example of art. XX (f) of the GATT[11], but any cultural exception should still pass the test in the *chapeau* of art. XX. One possible way for the harmonization between free trade and protection of cultural interests could be that the DSB use "customary rule of interpretation of international law" (DSU art.3.2) and take cultural considerations as "rule of relevant international law" in sense of art.31.3(c) of the VCLT[12].

2. Cultural nationalism and cultural protectionism

Even form the perspective we mentioned above in WTO regime, cultural "exception" could be just asserted exceptionally, won't it be possible to declare that goods and/or services with different cultural contents are not like products/services and could be treated in a discriminatory manner? For example, could we say that a film in which the language is Taiwanese is different from another film in which English is used? Here the language certainly expresses some uniqueness in cultural meanings, and is essential to be kept for cultural identity and even is central to cultural nationalism.

What's the origin of this cultural nationalism? Semantically speaking, the "Cultural nationalism" encompasses "the feelings of cultural pride that people have in a society. This society is typically an ethnically diverse makeup of people who have common cultural beliefs and a common language but not a common race or ancestry. These societies thus have a shared culture even when they do not share the historically common characteristics of a national group. Hence, the ideas and feelings of cultural nationalism are built upon shared cultural ideals and norms among a society. These shared ideals and norms may include political ideologies, recognition of holidays, a specific and unique cuisine, etc. The other main idea of cultural nationalism is the shared language of the groups of people. While societies that are ethnically and racially homogeneous usually also share a common language, culturally nationalistic societies typically have a common language and different races of people who also speak a native language from a previous society or country along with that common language"[13].

Cultural nationalism is naturally obvious when a new state is installed and will be continuously kept for the national and cultural identity. So, maybe its another face in international trade regulation would be cultural protectionism. For example, Canadian cultural protectionism has, since the mid-20th century, taken the form of conscious,

[11] Some author that the relation of this Art. XX (f) and the Culture Diversity Convention is still ambiguous, *see* James A.R. Nafziger and Robert Kirkwood Paterson, supra note 8, at 39.
[12] Valentina Vadi, *supra* note 6, at 70.
[13] https://en.wikipedia.org/wiki/Cultural_nationalism

interventionist attempts to promote Canadian cultural production and limit the effect of foreign culture on the domestic audience.[14] And, during the discussion of drafting of Culture Diversity Convention, and even after its entering to force, proponents of trade liberalization urged this kind of cultural protectionism should be moved; however, on the other side, opponents of the excessive influence of American cultural products proclaimed that this new cultural imperialism should be avoided[15].

II. Legality of Transaction of Cultural Heritage: perspective from individuals

Besides of macro governmental regulatory power for the protection of cultural heritage, in which the disputes are often between states/ governments, another micro perspective is worthy of our attention as well, in which the legal transaction of cultural goods/services between two or more private parties are concerned. Fundamental questions arise: who owns cultural heritages and who is entitled to legally trade a cultural property? Does a state has a power to limit the use of private property in name of the protection of cultural heritage[16]? This section traces back to the definition and ownership theory of cultural heritage and subsequently tries to establish a balanced model for regulating international trade of cultural property.

1. Ownership of cultural heritage

As at least a customary international law, scholars proposes that a source nation has an inherent right to possess items of its specific cultural heritage[17]. However, could a market nation, a market player, a private actor, has a legal right to own and circulate a cultural heritage? Source nations always seek to protect their cultural heritages and even search for repatriation; market nations would take an internationalist view and urge for a cultural object should be kept in a proper place. Debates never cease and black markets still remain.

In international regime, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970[18] constitutes the first international instrument for guaranteeing the rights of the source nations. Its art.2.1 solemnly declares that "The States Parties to this Convention

[14] https://en.wikipedia.org/wiki/Canadian_cultural_protectionism
[15] Eireann Brooks, Cultural Imperialism vs. Cultural Protectionism: Hollywood's response to UNESCO efforts to promote cultural diversity, 5 JOURNAL OF INTERNATIONAL BUSINESS AND LAW 112, 127-8 (2006).
[16] Charlotte Woodhead, Cultural heritage principles and interference with property rights, 42 CAMBRIAN L. REV. 52, 58 (2011).
[17] Adriana Lopez, The right to cultural heritage: building the case for an emerging fundamental norm and its impact on the future of the international antiquities trade, 21 CURRENTS INTERNATIONAL TRADE LAW JOURNAL 25, 27-8 (2012-2013).
[18] http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

recognize that the *illicit import, export and transfer of ownership of cultural property* is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting there from". Art.3 of this Convention also prescribes that "The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit."

In addition, the UNIDROIT Convention on Stolen or illegally exported cultural objects of 1995[19] also sets some private international law rules for the protection of cultural heritages. Its main purpose is to let parties return the stolen objects to the rightful owner, while the *bona fide* purchaser could receive proper compensation. Art.3.1 of this Convention says that "The possessor of a cultural object which has been stolen shall return it." And art.4.1 states that "The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to *payment of fair and reasonable compensation* provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object". An attempt to balance the interests of both parties is obvious[20].

Recently in 2013, the General Assembly of the United Nations also adopted a resolution called "Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking"[21].

These international instruments demonstrate that countries are willing to recognize and enforce the foreign export control over cultural materials and to prohibit their importation[22].

2. Transaction of cultural heritage

Source nations naturally tend to keep their treasures in their borders and usually use export restrictions. Yet, market nations favor the free circulation of cultural heritages. And in fact, the art and antiquities market do exist, in which the secrecy rule complicates the (il)legal transaction. Even though there's some ethical guidelines for these markets, it seems to be based on a voluntary compliance.

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[19] http://www.unidroit.org/instruments/cultural-property/1995-convention

[20] Adriana Lopez, *supra* note 17, at 31.

[21] https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/2015_Resolutions_Decisions/Resolution_24_2.pdf

[22] James A.R. Nafziger and Robert Kirkwood Paterson, supra note 8, at 43.

For example, article 1 of the UNESCO International Code of Ethics for Dealers in Cultural Property [23] proposes that "Professional traders in cultural property will not import, export or transfer the ownership of this property when they have reasonable cause to believe *it has been stolen, illegally alienated, clandestinely excavated or illegally exported*". Nonetheless, in its art.8, it is set that "Violations of this Code of Ethics will be rigorously investigated by (a body to be nominated by participating dealers). A person aggrieved by the failure of a trader to adhere to the principles of this Code of Ethics may lay a complaint before that body, which shall investigate that complaint. Results of the complaint and the principles applied will be made public". Quite clearly it's a moral persuasion and the real binding legal steps would be still remained to the national authorities.

Conclusion

Based on the importance of cultural heritage, it's without any doubt that on one hand, a nation has a power to regulate for the import and export of cultural goods and services for preserving its own cultural identity. But, to which extent a state has such a power? It seems that the international trade law regime has already set some limits of MFN and NT treatment requirements. On the other hand, in concrete objects, would it be allowed to transact a cultural object? What if this object has been stolen? Equilibrium appears in protecting the cultural heritages of the country of its origin and the rights of bona fide purchasers.

Behind all the scenarios, we could reveal that some kind of cultural nationalism could justify these measures, both in regulatory power of trade measures and in individual transaction between private parties.

[23] http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/legal-and-practical-instruments/unesco-international-code-of-ethics-for-dealers-in-cultural-property/

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UNESCO WORLD HERITAGE BETWEEN EDUCATION AND ECONOMY

A LEGAL ANALYSIS

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Conference accredited by the Council of the Ravenna Lawyers with n. 4 credits

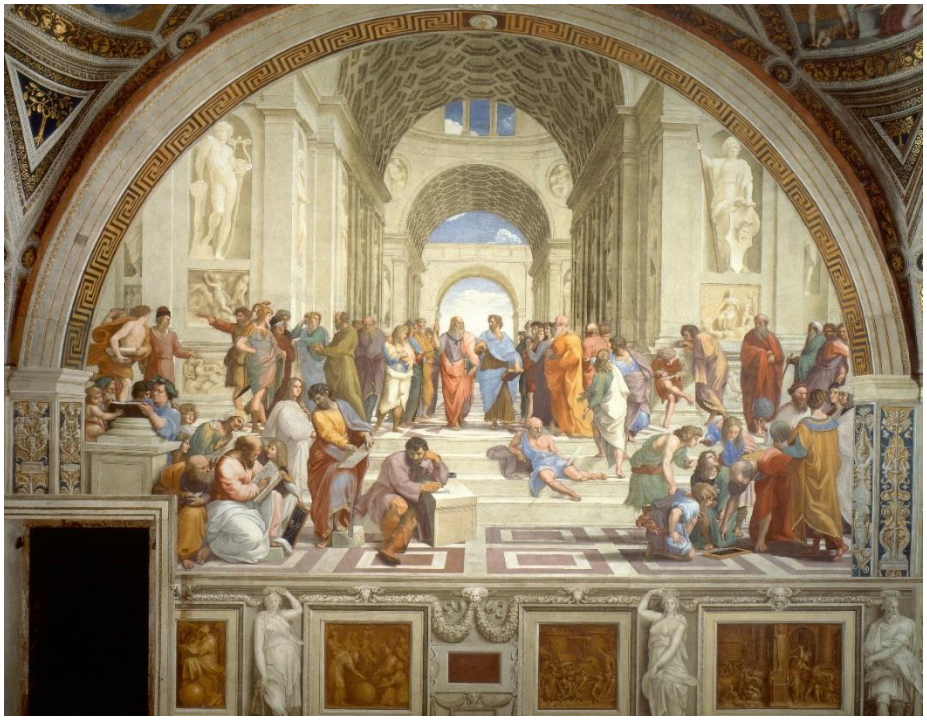
Participation is free of charge for students and academics, but registration is required due to space constraints. Please, send an email to Dr Carla Rossi (Fondazione Flaminia) at: crossi@fondazioneflaminia.it

For other interested persons and professionals, a registration fee of Euros 100,00 has to be paid, following the indications of the registration form.

The Registration Fee has to be paid no later than Monday 24 October 2016, and communicated to Dr Carla Rossi by Monday 24 October 2016.

CONCEPT NOTE

For the first time, ‘world's natural and cultural heritage’ has been explicitly included in the UN Sustainable Development Goals (Agenda 2030) as a factor in sustainable development, thus recognizing its increasing importance and appreciation.



Scuola di Atene

Prior to this, the concept of "UNESCO Outstanding Universal Value" progressively reached a very extensive meaning, including cultural, natural, immaterial goods, landscape, expressions, arts and traditions. It also expands the scope of "cultural heritage" to diverse manifestations of culture, taking into account the development of knowledge and the growing importance of cultural diversity. The resulting cultural process and its associated values, constituting the UNESCO World Heritage, are firmly linked to education, and also to economics.

As UNESCO site the city of Ravenna, and the University of Bologna based therein share a special responsibility and a privileged perspective to analyse the concept of UNESCO World Heritage and its interaction with education and economics.

The International Conference here proposed, belonging to the series of international scientific events within the framework of "International Economic Law for Sustainable Development" (IEL 4 SD), aims to generate much heat in discussion and debate on the interaction between UNESCO World Heritage and education, and UNESCO World Heritage, economics and International Economic Law. The intention is to investigate how the UNESCO sites act as hotspots for promoting local development, and thus thinking on the way in which the UNESCO World Heritage can be used as an asset for economic and social development through education and tourism, as provided in all the UNESCO Conventions -requiring State Parties to promote by all appropriate means, and in particular by educational and information programmes, appreciation and respect by their peoples of the UNESCO World Heritage. More broadly, the present Conference intends to illustrate the legal framework creating, supporting and promoting the UNESCO World Heritage, stressing lights and shadows of the normative instruments, and so proposing improvements of the current legal framework, financing tools and resources.

With reference to International Economic Law, and in particular international investment law, the preservation and safeguarding of cultural heritage often clashes with the exercise of private property rights over cultural properties, especially when restrictive cultural policies negatively affect foreign investments, thereby amounting to indirect expropriation. So far, the issue has not exhaustively been addressed. Notwithstanding States' desires to protect cultural heritage and private property rights as fundamental values worth safeguarding by domestic law, no uniform trend exists in this respect. The International Conference therefore intends to fill this gap.

As far as the WTO system is concerned, beyond the topic of general exceptions concerning free trade when cultural goods are involved (see eg Article XX lett. f) of GATT 1994), the relevance given also to products and services generated by creative industries by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions raises the issue of the interaction between UNESCO law and the Geneva multilateral trade system. Providing for a very wide definition for cultural activities, goods and services (to be intended as referred to those activities, goods and services which embody or convey cultural expressions, irrespective of the commercial value they may have), and underlining the very important contribution given by economic globalization to cultural exchanges, the 2005 Convention suggests an equilibrium between free trade and the protection of cultural diversity. The very limited WTO case-law on the relation between the multilateral trade system and the 2005 UNESCO Convention developed until now, together with the way in which the two treaty-systems should be read together need to be carefully explored, in order to more concretely define the interaction between the protection of cultural diversity and the promotion of free trade.

Original approaches seem to come from the recent 'mega-regional' agreements, insofar as they include protection and promotion of cultural diversity among regulatory State powers, thus confirming a trend already traced by UNESCO Conventions and, in principle, by investment arbitral tribunals. The European Union, in particular, has adopted as a basic principle of its international action the promotion of the 2005 UNESCO Convention of Cultural Diversity, so that this essential element is included in all the free trade agreements of new generation already negotiated or currently discussed -like CETA with Canada, or TTIP with the United States. Such innovative instruments therefore require to be considered, together with the attention to cultural goods and services and cultural diversity devoted within TPP.

The Scientific Committee of the present International Conference has organized an International Call for Papers in order to gather in Ravenna the most prominent scholars in the field of UNESCO and education and tourism, and UNESCO and International Economic Law. Hope is expressed that the proposed Programme may meet the interest of experts on UNESCO heritage, but also newcomers.

27 OCTOBER 2016

PART I - *THE EDUCATIONAL, CULTURAL AND ECONOMIC VALUE OF UNESCO HERITAGE*

Piazza del Popolo - Ravenna

09:45 - 10:10 ***Introduction to the Conference***
Elisa Baroncini (University of Bologna)

08:30 Registration

9:00 - 09:45 Opening Ceremony *(Aula Magna)*

Angelo Paletta, Deputy Rector for "Planning and financial reporting", on behalf of Francesco Ubertini, Rector of the University of Bologna
Elsa Signorino, Council for Culture of the City of Ravenna
Lanfranco Gualtieri**,** President, Fondazione Flaminia

Giorgio Cozzolino**,** Director, Soprintendenza Archeologia Belle Arti e Paesaggio per le Province di Ravenna, Forlì - Cesena e Rimini
Mario Scalini, Director of Polo museale dell'Emlia-Romagna, Ministero dei beni e delle attività culturali e del turismo

Mauro Cellarosi, President, Ordine degli Avvocati di Ravenna

Luigi Tomassini, Director of the Department of Cultural Heritage of the University of Bologna
Giovanni Luchetti, Director of the Department of Legal Studies of the University of Bologna
Nicoletta Sarti, President of the School of Law of the University of Bologna
Francesca Curi*,* Responsible at the Ravenna Campus for the Department of Legal Studies of the University of Bologna
Michele Lupoi*,* Coordinator of the Laurea Magistrale of the School of Law of the University of Bologna

10:40 *Keynote Speech*

Peter-Tobias Stoll

University of Göttingen

Peter-Tobias Stoll holds a chair for Public and Public International Law at the University of Göttingen Faculty of Law and is the acting Managing Director of the Institute for International Law and European Law, where he heads the Department for International Economic and Environmental Law. Since 2007, he is also the German Director of the Sino-German Institute for Legal Studies at Nanjing University. His research focus is on international law, trade, investment and the environment. Tobias has published extensively on international economic and environmental law. Inter alia, he is the co-editor of the Max-Planck Commentaries on World Trade Law. Tobias has been and is advisor to the German Federal Government, the UN and several civil society organizations. He has been visiting and teaching at a number of places, including Addis Abeba, Beijing, Berkeley, Cambridge, Kaliningrad, Minneapolis, Nanjing and Paris. Together with Elisa Baroncini and Marion Panizzon he chairs ESIL's Interest Group on International Economic Law. Furthermore, he is a co-convenor of the Study Group on Preferential Trade Agreements of the International Law Association.

Duchess Anna Amalia Library- Weimar

10:40 - 12:30 Round Table: Ravenna & UNESCO
(Aula Magna)

Chair: ***Alessandra Zanobetti*** (University of Bologna)

Ravenna Cultural Heritage and Legal History
Simona Tarozzi (University of Bologna)

The Cultural Heritage of a Late Antique Capital: Ravenna and UNESCO and Legal History
Maria Cristina Carile (University of Bologna)

The Valorisation of the Emilia Romagna UNESCO Sites and Museums
Mario Scalini (Polo Museale dell'Emilia Romagna, MIBACT)

The UNESCO Site in Ravenna, Romagna and the National Italian Policy for Sustainable Tourism
Sabrina Magrini (Director Italian Ministry for Cultural Goods, Office of Emilia Romagna)

Cultural Heritage, Communication, Transmission: A New Course to Face Old Issues
Mario Neve (University of Bologna)

Colombe abbeveranti - Mausoleo di Galla Placidia, Ravenna

Scala Elicoidale - Palazzo Farnese, Caprarola (Viterbo)

12:30 - 13:45 Light Lunch

12:45 - 13:45 Posters Session

Restitution of Looted Art through Alternative Dispute Resolution (ADR) Mechanisms: Achieving Fair and Just Solutions Thanks to the Panel´s Expertise?
Katia Fach Gómez (University of Zaragoza)

Investor's legitimate expectations and cultural resistance in the performance of extractive industries within indigenous territories
Sebastian Espinosa (University of Maastricht)

The Meanings Of 'Cultural Diversity' And 'Intangible Cultural Heritage' In International Criminal Law
Luigi Sammartino (University of Bologna)

13:45 - 16:00 *Guided Tour: Ravenna UNESCO Sites*

16:00 - 18:00 Session I – Cultural Heritage and its Meaning *(Aula Magna)*

Chair: ***Gabriella Venturini*** (University of Milan)

The UNESCO 1972 and 2003 Conventions' Adaptation to A New Vision of Heritage: Heritage as Key to Community Development,
Caecilia Alexandre (Laval University) **& François Huleux** (Laval University, Paris-Saclay University)

Glocal Cultural Heritage: Living and Alive,
Federica Mucci (University of Rome Tor Vergata)

International Heritage Law and the Market: Outlawing, Ignoring, Alienating
Lucas Lixinski (UNSW Australia)

The Concept of Cultural Heritage: A Historical Perspective
Roberto Balzani (University of Bologna)

Cultural Heritage and the Law: Looking for a Definition
Alessandra Lanciotti (University of Perugia)

Discussant: ***Sabrina Urbinati*** (University of Milano-Bicocca)

18:00 - 18:30 Coffee Break

El Silbo Gomero

18:30 - 20:00 Session II - The Economic Value of UNESCO Heritage

Agora I *(Aula Magna)*

Chair: ***Luca Mezzetti*** (University of Bologna)

Values and Communities for Cultural Republicanism UNESCO Clubs as an Asset For Cultural Heritages' Participatory Management
Gabriele D'Amico (Free University Berlin)

The UNESCO World Heritage Convention - Addressing the Financial Sustainability of the World Heritage Fund
Kana Miyamoto (Fletcher School of Law and Diplomacy)

Making the past inspire the China future: A Xi'an Perspective on legal protection of the Cultural Heritage in Conformity with the Local Education and Economical Development
Liu Lina (Law School of Xi'an Jiaotong University)

Between Culture and Faith. Identifying and Legal Routes of the UNESCO Cultural Heritage in the Balkans
Federica Botti (University of Bologna)

Discussant: ***Beatriz Barreiro Carril*** (University Rey Juan Carlos University)

Cattedrale di Cefalù

Agora II *(Aula 7)*

Chair: ***Chiara Alvisi*** (University of Bologna)

Protection and Enhancement of UNESCO Heritage: the Role of Patronage and Sponsorship of cultural property in the Italian Legal Order
Caterina Drigo (University of Bologna)

Sponsorship of Cultural Property: Coliseum, Rialto Bridge, and Leonardo Da Vinci Museum
Silvia Stabile (BonelliErede Law Firm, Milano)

Not just philantropy: the opportunities offered to the UNESCO Heritage by new legal frameworks. The Italian example of "innovative hi-tech start-ups with a social goal
Silvia Guizzardi (University of Bologna)

Discussant: ***Massimo Calcagnile*** (University of Bologna)

28 OCTOBER 2016

PART II - *UNESCO HERITAGE & INTERNATIONAL ECONOMIC LAW*

National Library -Riga

09:30 - 11:00 Session III – Cultural Heritage & Investment Law (*The General Legal Framework*) *(Aula Magna)*

Chair: ***Attila Tanzi*** (University of Bologna)

The Protection of Cultural Heritage in International Investment Treaties and Arbitrations
Alessandra Asteriti (Leuphana University)

International Dispute Settlement in Cultural Heritage Law and the Protection of Foreign Investment: From Collision to Cross-Fertilisation
Catharine Titi (French National Centre for Scientific Research (CNRS), CREDIMI, Law Faculty of the University of Burgundy)

Culture: the Creator and the Creation of International Investment Law
Marcin Menkes (Warsaw School of Economics)

Discussant: ***Marina Trunk-Fedorova*** (University of Kiel and St. Petersburg)

11:00 - 11:30 Coffee break

11:30 - 13:00 Session III – Cultural Heritage & Investment Law (*Some Specific Aspects)* *(Aula Magna)*

Chair: ***Riccardo Pavoni*** (University of Siena)

Respecting Culture – Corporate Social Responsibility as an Instrument for the Protection and Promotion of Cultural Rights
Ana Rita Mota (King's College London)

Foreign Investments, Cultural Politics and Resilience: The Protection of World Heritage in Post-Conflict Zones
Valentina Vadi (Lancaster University)

The Expropriation of Cultural and Natural Heritage and of Heritage-Related Rights under International Law – Bridging Public Interest and Private Profit
Gabriele Gagliani (Bocconi University)

Discussant: ***Maria Laura Marceddu*** (King's College London)

13:00 - 14:00 Light Lunch

13:00 - 14:00 Poster Session

Precolumbian Chiefdom Settlements with Stone Spheres of the Diquís - Costa Rica

Capoeira Circle

15:30 - 16:00 - Coffee Break

14:00-15:30 Session IV – UNESCO & International Trade Law *(Aula Magna)*

Chair: ***Mary Footer*** (University of Nottingham)

Interaction between International Trade Law and Cultural Heritage Protection: a Perspective from Cultural Nationalism
Yao-Ming HSU (National Cheng-Chi University)

Mapping the Potential Interactions Between UNESCO's Intangible Cultural Heritage Regime and World Trade Law,
Tomer Broude (Hebrew University of Jerusalem)

The Importance of Geographical Indications of Origin for Promoting Locality in International Trade and Safeguarding Cultural Heritage
Irene Calboli (Singapore Management University School of Law)

The UNESCO Convention on Cultural Diversity and WTO Law: Conflict Clauses and Principles of Interpretations to Address Cultural and Trade Interfaces,
Leonardo Borlini (Bocconi University)

Discussant: ***Elisa Baroncini*** (University of Bologna)

16:00 - 17:30 Session V - UNESCO and the EU *(Aula Magna)*

Chair: ***Pietro Manzini*** (University of Bologna)

EU and UNESCO Approaches Concerning the Cultural Sites' Governance
Maria Luisa Tufano & Sara Pugliese (University of Naples, “Parthenope”)

Cultural activities and the Commission Notice of 19th May 2016 on the notion of State aid
Pieralberto Mengozzi (University of Bologna)

The New Generation of EU Free Trade Agreements: Heralding the End of Public Financial Support to Maintain Cultural Heritage and Diversity?
Freya Baetens (University of Leiden)

The Interplay between Cultural Heritage Protections in Regional Trade Agreements and Investor-State Arbitration: A Dissection of the Cultural Exceptions in CETA, EU-Vietnam FTA, and TPP
Elsa Sardinha (National University of Singapore)

The Treatment of Cultural Goods and Services in Trade Agreements: the Best, the Good and the Bad Practices of Canada, the EU and Some Other Countries
Véronique Guèvremont (Laval University) **& Ivana Otasevic** (Laval University)

Discussant: ***Panayotis Protopsaltis*** (Birmingham City University)

Ponte Vecchio - Firenze

17:30 - 18:00 *Closing Remarks*

Manlio Frigo
University of Milano and BonelliErede Law Firm, Milano

Professor **Manlio Frigo** is a professor of International and European Law and International Contracts and Arbitration Law at the Department of International, Juridical, Political and Historical Studies of the University of Milan. He is currently a member of the Steering Committee for the PhD in International Economic Law at Bocconi University in Milan. He is also a member of the Committee on Cultural Heritage Law of the International Law Association and vice president of the Société Internationale pour la Recherche en Droit du Patrimoine Culturel et Droit de l'Art (Paris).

Consultant for international organisations (UNESCO, Unidroit and the EU Commission), Professor Manlio Frigo is also an arbitrator in national and international cultural and commercial disputes. He has authored several publications concerning contractual obligations, international cooperation in the field of civil and commercial procedure, applicable law and the linguistic factor in the circulation of arbitral awards, and on the international protection and circulation of cultural property.

Beside his academic work, Professor Manlio Frigo is of counsel of BonelliErede. He regularly assists foreign and Italian museums and cultural institutions in connection with issues relating to the import and export of goods of cultural interest including art antiques, ancient manuscripts and books.

His recent experience includes the legal assistance to a leading Japanese museum for the negotiation of a long-term cultural cooperation agreement with the Italian Ministry of Cultural Heritage, for the donation of a painting of Leonardo's School to the Republic of Italy, for several loan agreements for the exchange of cultural property between Italy and Japan on the occasion of Expo 2015 and the first exhibition on the Italian Renaissance in Tokyo.

L'ultima Cena (Leonardo da Vinci) – Convento Santa Maria delle Grazie, Milano

Abstracts & Short Bios of the Speakers

Ravenna Cultural Heritage and Legal History (Simona Tarozzi)

Ravenna was important in history as the capital of the Western Roman Empire in the 5th century AD and later (6th–8th century) of Ostrogothic and Byzantine Italy. In 402 the danger of barbarian invasions compelled the Western Roman emperor Honorius to move his court from Milan to Ravenna, which became henceforth the capital of the Western Roman Empire and one of the great cities of Europe. As such, Ravenna was embellished with magnificent monuments. The city was also raised to the status of an archbishopric in 438. With the new political set-up in 476, it became the capital of the first barbarian ruler of Italy, Odoacer (reigned 476–493), who in turn surrendered it to the Ostrogothic king Theuderic (reigned 493–526) in 493. Theuderic made Ravenna the capital of the Ostrogothic kingdom, but in 540 Ravenna was occupied by the great Byzantine general Belisarius and was subsequently made an imperial exarchate. As the capital of the Exarchate of Ravenna, the city was the administrative centre of Byzantine government in Italy: great churches were built, beautiful mosaics were made to decorate them.

The fame of Ravenna rests instead on the quality and quantity of its 5th–8th-century Christian monuments. As the capital city of the Western Roman Empire for 250 years and a major port of entry for the Eastern (Byzantine) Empire, Ravenna reflects in its art and architecture, a fusion of Roman architectural forms with Byzantine mosaics and other decoration, its political authority.

Its monuments and mosaics are not only quite representative of Byzantine art, but are symbol of the imperial power. For exemple, the Basilica of San Vitale, a blend of Roman and Byzantine architectural styles, and in its majesty and harmony, one of the most beautiful buildings of cultural world heritage. It was completed during the reign of the emperor Justinian. The church was begun by Bishop Ecclesius and was consecrated by Bishop Maximianus in 547 or 548. The splendid mosaics that cover the walls and vault of the presbytery and the conch of the apse have been strongly influenced by similar work at Constantinople and they depict Old and New Testament figures, as well as contemporary Byzantine rulers and Catholic ecclesiastics: both above-mentioned bishops are depicted in presbytery and apse mosaic to symbolize the Church of Ravenna supremacy over the other archbishoprics, Milan and Aquilea. In these great wreathing swaths of birds and beasts and flowers, the intricate abstract patterns that decorate the rims of the arches, the multitude of figures, the gradations of color at once rich and delicate and particularly the marvelous use of green and gold and dark red, you come to see the true purpose of Byzantine mosaic art: to impress with pomp, to overawe, to demonstrate wealth and power of the Emperor and his Bishop.

Simona Tarozzi is Researcher of Roman Law at the School of Law of the University of Bologna. She holds a Bologna Law Degree, a PhD in Roman law at the School of Law of the University of Padua and a Diploma in Archival Training, Palaeography and diplomatics at the School of Archival Training of the

Bologna State Archives. She specialized in Nazi documentation and she has practiced as archivist at the Milan State Archives, the Darmstadt State Archives, the German Federal Archives in Koblenz and at the Center for Research on Antisemitismus at the TU Berlin. Simona has also been Visiting Professor in the Ravenna Papyri's Law at the School of Law of the University of Mainz and has been Visiting Fellow at the School of Law at the Pontifical Catholic University of Chile and at the Austral University of Chile. She is Associate Editor of the series of volumes "Ravenna Capitale" Her main fields of research include: Roman Law, History of European Law, Legal History; Studies on Legal Practice and formularies; Ancient Archives and archival Traditions; Granting and Management of Public Land in Late Antiquity; Colonialism in Late Antiquity and in Modern Ages.

The cultural heritage of a late antique capital: Ravenna and UNESCO (Maria Cristina Carile)

Writing in praise of Emperor Justin II (565-578), the court poet Corippus mentions Ravenna in passing while describing the robes and garments that Justin wore at his coronation ceremony. The author defines the city as "loyal to our rulers" (*favens dominis*), while recalling the context of the wars won by Justinian's general Belisarius against the Vandals and the Goths (533-34; 535-53). In this way, Corippus wisely associates Justin's glory to Justinian's and presents him as a victorious heir to the empire. To the intended audience of Corippus's oration – the emperor and imperial court, to whom he would have delivered his speech – Ravenna appeared as a rich imperial city – so rich as to have gifted the emperor with jewels. It was a center taken into great consideration by the emperor and the imperial administration, since her present to the emperor eventually came to adorn the imperial brooch – a piece of jewelry listed among the imperial insignia.

This was the perception of Ravenna commonly shared by the élite members of sixth-century Byzantium. At that time the city was a real late-antique megalopolis, extending over a considerable portion of land, where several languages including Latin, Greek, Syriac and Hebrew were spoken. Arising from the secure marshes of the western Adriatic coast, it was formed of a compound of three urban areas: Classe with its military and commercial harbor; Caesarea, probably a residential area; and Ravenna itself, housing the centers of the ecclesiastical and imperial administrations. Its monuments and urban setting spoke of its past: shedding the status of a small Roman city, it became the seat of the western court of Honorius in the first years of the fifth century, then an archbishopric of major importance under Galla Placidia and Valentinian III (425-438; 438-455). The fifth-century imperial buildings were maintained and enlarged by Theoderic the Great (493-526) who had reconquered Italy from Odoacer on behalf of the Roman Empire. During Theoderic's time, other monuments were built following Roman architectural practice and the city also acquired an Arian ecclesiastical seat, meant to accommodate the needs of the Gothic population and to balance the Orthodox church of Ravenna. After the death of Theoderic the center became part of the Gothic kingdom, soon to be reconquered to the Roman Empire by Belisarius in 540. Since the first centuries C.E. Ravenna had been a Roman city – excepting the period following Theoderic's death until 540 – and continued to be as such until 751, serving in this later period as the seat of the exarch and a military outpost of strategic importance. The architecture, marble work and mosaic produced in Ravenna in Late Antiquity are testament to their pertinence to a Roman Empire that,

although ruling from Constantinople (the New Rome), considered the old Rome as a spiritual capital and included the Mediterranean at large within its premises.
Since in the sixteenth century this empire was erroneously labelled as “Byzantine”, under the prejudice that it was an age of decay and perdition deserving of being differentiated from the Roman Empire of the first centuries CE. We now identify Ravenna as a Byzantine city, and its monuments and mosaics are included in reference books on Byzantine Art. Even in the common perception of the people living in the city today, Ravenna is a Byzantine city and its late antique monuments are considered part of its cultural heritage, worthy of being protected under the UNESCO patronage.
After having presented the monuments and works of art of Ravenna in Late Antiquity within their cultural context, this paper will explore the perception of those monuments in order to shed light on their importance for the present image of the city and the impact of their insertion into the UNESCO lists. On these bases, it will then discuss the concept of cultural heritage, with specific reference to Ravenna, addressing the issue of its broadness and the difficulties of including it as a whole within the UNESCO labels and principles.

Maria Cristina Carile is a Byzantinist with a specialization in art history and archaeology. In 2007 she defended her doctoral thesis, written at the University of Bologna under the co-supervision of the University of Birmingham (supervisor: Prof. Leslie Brubaker). Carile’s dissertation, published as a monograph in 2012 (*The Vision of the Palace of the Byzantine Emperors as a Heavenly Jerusalem*, Spoleto: CISAM. Centro Italiano di Studi sull’Alto Medioevo), explores the image of the imperial palace as a reflection of the Heavenly Jerusalem in Late Antiquity and early Byzantium.

Believing in the validity of a direct approach to the evidence for a correct comprehension of the art-historical and historical context, between 2000 and 2013 she participated in several archaeological projects and conducted personal art-historical projects in Turkey (Istanbul and Central Anatolia), Greece (Thessaloniki), Albania (Mesopotam) and Italy (Classe and Ravenna), collaborating with Koç University (TR), Princeton University (USA), UNESCO, the University Ca’ Foscari of Venice, the Politecnico of Milan and the University of Bologna (Italy). Since 2005, Carile has worked in research centers specializing in Late Antiquity and Byzantine culture (2005-08: *Honorary Research Fellow*, Centre for Byzantine, Ottoman and Modern Greek Studies, University of Birmingham (UK); 2008-15: *Research Fellow*, Dipartimento di Beni Culturali, University of Bologna, Italy) and has benefited from several fellowships and grants (Junior Fellowship, RCAC_Research Center for Anatolian Civilizations, Koç University, Istanbul, TR; Onassis Fellowship, Alexander S. Onassis Public Benefit Foundation, Athens, GR). Since the academic year 2013-14 Carile has taught History of Byzantine Art at the University of Bologna's School of Letters and Cultural Heritage (Ravenna campus), where she currently holds the position of Fixed-Term Senior Assistant Professor.
Her research has focused on Late-antiquity and medieval Mediterranean, with particular reference to Constantinople, Ravenna, Rome, Thessaloniki and the Balkans, as well as the diffusion and meaning of visual arts in these centers in the periods covering Late Antiquity and Byzantium. In particular, the late-antique monuments of Ravenna, her hometown, have always fascinated her and have had a strong impact on her academic research. Other subjects of interest span from architecture to architectural representations, imperial images and represented textiles, which she explores as cultural and ideological

vectors, in an attempt to understand modes of visual communication. The results of her work have been published and presented at seminars and conferences in Italy, the USA, Russia, Turkey, and in several European countries.
List of publications relevant to the subject of the conference:

M.C. CARILE, Imperial Icons in Late Antiquity and Byzantium. The Iconic Image of the Emperor Between Representation and Presence, «IKON», 2016, 9, pp. 75 - 98 [article];
M.C. CARILE, Production, promotion and reception: the visual culture of Ravenna between Late Antiquity and the Middle Ages, in: *Ravenna: Its Role in Earlier Medieval Change and Exchange*, eds. Judith Herrin and Jinty Nelson, London, Institute of Historical Research, 2016, pp. 53 – 85 [book chapter];
M.C. CARILE, E. CIRELLI, Architetture e decoro del complesso vescovile ariano: ipotesi ricostruttive e modelli di riferimento, in: *Il patrimonio culturale tra conoscenza, tutela e valorizzazione. Il caso della "Piazzetta degli Ariani" di Ravenna*, a cura di G. Garzia, A. Iannucci, M. Vandini, Bologna, BUP - Bononia University Press, 2015, pp. 97 - 127 (STUDI SUL PATRIMONIO CULTURALE) [book chapter];
M. C. CARILE, The Vision of the Palace of the Byzantine Emperors as a Heavenly Jerusalem, SPOLETO, Fondazione Centro Italiano di Studi sull'Alto Medioevo, 2012 (STUDI E RICERCHE DI ARCHEOLOGIA E STORIA DELL'ARTE) [book];
M. C.CARILE; G. C. GRILLINI, I portali delle chiese paleocristiane di Ravenna. Analisi macroscopiche dei materiali lapidei, «QDS. QUADERNI DI SOPRINTENDENZA», 2006, 6, pp. 66 – 84 [article].

Other publications on Ravenna are now in print. For further information on my academic research and full texts, please visit the webpage: https://unibo.academia.edu/MariaCristinaCarile

Mario Scalini graduated at the University of Florence in 1978 with summa cum laude, and specialized in history of art in 1981-2. Later on he has been fellow of the Alexander von Humboldt -Zentralinstitut für Kunstgeschichte-München with Willibald Sauerländer. In 1992 Mario Scalini joined the State museums in Florence as curator, later on he became director of the National Galleries in Modena and Siena.
He organized exhibitions and congresses worldwide (Vienna, Muenchen, Bruxelles, Istambul, Peching, Paris, ...), and has been invited as speaker in some of the most relevant museums as the Louvre, The Metropolitan Museum of Art of New York, the Kunsthistorisches Museum in Vienna.
He published on Italian art and ancient works of art; among his works, including several articles and books, which testify his very wide interests: L'arte italiana del bronzo 1000-1700, Milano 1988; Benvenuto Cellini, Firenze 1995; L'armeria del Castello di Churburg, Udine 1996; L'ombre du guerrier"... La representation des armes entre spécificité individuelle et message historico-social, in Miroir du temps, Peching-Ruen 2006; La perla di Modena, un

Raffaello ritrovato, Modena 2010; Pittura Senese: Ars narrandi al tempo del gotico in Europa, exh. Bruxelles 2014-5; Buckets and Wells: Helmets and a Hand Cannon from the Aldobrandesco Fortress of Piancastagnaio', Metropolitan Museum New York 2014.
Member of Gesellschaft für Historische Waffen und Kk. and in the board of the ICOMAM (International Committee for Museum of Arms and Military History). Lecturer in various times in the school Opificio delle Pietre Dure (1993-2014); professor of Medieval History of Art 2004-10 for the Siena University.
He is presently the Director of the Polo Museale Emilia Romagna, 23 museums and sites including some of the most important monuments of Ravenna, the Pinacoteca Nazionale in Bologna and archaelogical museums in Ferrara and Marzabotto.

The UNESCO Site in Ravenna, Romagna and the National Italian Policy for sustainable Tourism (Sabrina Magrini)

Italy has just recently launched its first national Tourism policy. It is interesting to study the case of the UNESCO site of Ravenna in this context, underlining its potential with reference to the territory of Romagna.

Sabina Magrini is a librarian. She has worked for many years at the Biblioteca Medicea Laurenziana in Florence and has directed the Biblioteca Palatina in Parma. Her studies focus on the mechanisms underlying Latin manuscript production and diffusion in the 13th and 14th centuries. Currently, she is the Regional Secretary for Emilia Romagna of the Italian Ministry for Cultural Heritage, Activities and Tourism, thus coordinating the Ministry's offices in the territory.

Cultural Heritage, Communication, Transmission: A New Course to Face Old Issues (Mario Neve)

The issue of cultural heritage, and, specifically, of urban cultural heritage is no more concern of only experts, specialised private and public bodies, academics, but it has become a national concern (as a value and an asset), but also a global one, since 'world's natural and cultural heritage' have become part of the UN Sustainable Development Goals.

This welcomed and promising achievement poses, on the other hand, questions related to the ways and speed of changes involved, and, above all, to the entrenchment of scales implied: from the neighbourhoods to the cities, regions, and so on, often merged in an unprecedented cluster.
Such situation urges a thorough understanding by citizens of issues at stake and the education and training of a new figure of professionals both able to tackle concrete situations and having a cultural background and vision making them up to the analysis of the different dimensions of problems implicated.
The new international Master which will be launched this year by the Department of Cultural Heritage of the University of Bologna, in collaboration with the School of Political Sciences, it is an attempt to give answer to such questions, and that this new course be born in Ravenna is not by chance.
The present paper briefly presents the rationale behind this new course and how it searches not only for a new approach to cultural heritage's education and training but also for the re-evaluation of the relationship between research and education.

Mario Neve is Full Professor of Geography at the Department of Cultural Heritage of the University of Bologna, where it teaches Cultural Geography, Geography of the Mediterranean, and Geography of Historic Towns and Landscapes. He is the Director of the Second cycle degree/Two year Master *International Cooperation on Human Rights and Ethno-Cultural Heritage*. He has been visiting professor at the York University of Toronto and the University of British Columbia in Vancouver. His latest book is *Il disegno dell'Europa* (Mimesis, 2016; English edition forthcoming by Springer).

Restitution of looted art through Alternative Dispute Resolution (ADR) mechanisms: achieving fair and just solutions thanks to the panel´s expertise? (Katia Fach Gómez)

Owners of looted art may resort to national courts in order to recover their property. Nevertheless, litigation is not necessarily the most convenient mechanism for the dispossessed owner. Delays, lack of courts´ expertise and exorbitant lawyers´ fees are some of the cons that may encourage the claimant to look for other settlement mechanisms.
Alternative Dispute Resolution mechanisms (ADRs) are experiencing an incredible boom in multiple sectors – e.g. labour conflicts, family disputes, intercultural clashes-. Some of their most prominent characteristics are viewed as beneficial by the parties, such as their lower costs, greater flexibility, weighting of non-legal criteria, and confidentiality. The field of looted art has not remained immune to this phenomenon, and the Nazi plundering is an extremely painful phenomenon that has sharpened the good intentions of national governments and international organizations in the search for ADR

efficient solutions. Laudable initiatives in this regard are for instance the Spoliation Advisory Panel (UK), the Kommission für Provenienzforschung (Austria), the Commission pour l'indemnisation des victimes de spoliations (France), the De Restitutiecommissie (the Netherlands), the Beratende Kommission (Germany), as well as the Art and Cultural Heritage Mediation Program created by the International Council of Museums (ICOM) and the World Intellectual Property Organization (WIPO).

The author of this abstract is conducting an extensive research project focused on the role of non-legal adjudicators and neutrals1 in national and international disputes. The referred project has verified that national courts and investment arbitration tribunals are unanimously composed by legal professionals. When judges and arbitrators need to address non-legal (mostly, technical or scientific- aspects of a given dispute), they always rely on external competences (e.g., party-appointed experts or ex curia experts) trying to shed light on these controversies. The project has additionally highlighted that there are nevertheless various ADR mechanisms (e.g., conciliation, mediation, negotiation), and also commercial arbitration´s areas in which non-legal experts are frequently part of the adjudicatory body, and internally provide with the required non-legal competences. For instance, it is well reported that in specialized areas such as disputes regarding construction, energy, engineering, financial services, technology and applied science cases, resorting to non-lawyers to resolve these type of disputes is a widely-used practice.

1 For the purpose of this abstract, non-legal adjudicators and neutrals refer to adjudicators and neutrals who do not possess a law degree.

2 In this context, "internal competences" refer to the adjudicators and neutrals' competences that make up the adjudicatory body, whereas "external competences" refer to competences that the adjudicators and neutrals lack.

The resource to ADR in the field of looted art has been encouraged by various international documents. Nevertheless, it has not been thoroughly studied from an academic perspective. A few works that have recently appeared offer a useful general overview on the issue, but still leave open flanks for further specific studies. In this sense, the proposed paper will begin by analysing the requirements on panelists´expertise included in the above mentioned national and international spoliation panels. This preliminary exercise of data collection is necessary in order to ascertain if there is a widespread awareness amongst these panels regarding the relevance of a varied panelists´ expertise. The results of this analysis will also show if these provisions dealing with panelist´s qualifications give to all members a uniform treatment or if, on the opposite, the legal panelists receive a specific treatment that results in the granting of the panel´s governing roles. Given that the disputes regarding restitution of looted art may also have economic, cultural, political, historical or religious facets, the specific types of expertise required to non-legal panelists will also be examined. The paper will equally try to deduce which is the real weight of various criteria -of technical, scientific, political or sociological nature- that may influence the selection and appointment of non-legal neutrals. Likewise, all these data will lead to reflect on the reasons supporting –or condemning- the participation of non-legal panelists in looted art´s conflicts.

Additionally, this paper aims at reflecting on the effects that this multidisciplinary expertise generates in the non-binding solutions offered by the spoliation panel. Unlike the binomial solutions (restitution or not restitution) that are offered in the judicial and arbitral context, a preliminary analysis of the national panel reports seems to show a greater number of possibilities (loan or co-ownership of the artwork, repurchase, sale to a third, economic compensation, etc.). If this array of options is appropriate -as it seems a priori-, in terms of fostering case-by-case solutions that satisfy the justice´s requirements, this

paper will provide some guidelines on which would be the most appropriate way of achieving fairer and juster solutions by means of precising and implementing some guidelines regarding panelist´s expertise.
Finally, this paper will also connect two of its key concepts (panelist´s qualifications and fair solutions) with the notion of transparency. Whereas transparency is a growing demand in the context of commercial and investment arbitration, it seems that one of the reasons for the success of these spoliation panels is precisely their lack of transparency. A first analysis of the above referred panels has shown that some aspects of the process suffer from a lack of transparency (i.e., not every panel report is published, the WIPO-ICOM list of mediators is secret, etc.). The paper will reflect on the –positive or negative- effects of a potential increase of transparency in spoliation panels, both on the sphere of the parties´ expectations and also on the collective rule of law.

Katia Fach Gómez teaches Conflict of Laws, International Arbitration and International Business Transactions at the University of Zaragoza (Spain). She was Adjunct Professor at Fordham University (New York), Visiting Scholar at Columbia Law School (NY), and Pre- and Post-Doctoral Grantee at the Max-Planck Institut (Germany). She has also lectured at numerous European and Latin American Universities (in Germany, France, Czech Republic, Mexico, Brazil, Guatemala, Chile, Colombia and Peru). She graduated summa cum laude from the University of Zaragoza, holds a European Ph.D. summa cum laude in International Environmental Law, and an LL.M. summa cum laude from Fordham University. Member of various European, national (DER 2012-36806 -Subprograma JURI) and regional Research Projects (e-Procofis S 14/3 DGA), she is author of several books and book chapters. Her articles have appeared in a number of international peer-reviewed law reviews -such as Yearbook on International Investment Law & Policy, Law and Business Review of the Americas, Swiss Yearbook of Private International Law, Zeitschrift für Gemeinschaftprivatrecht and Rabels Zeitschrift für internationales und europäisches Recht-, and she is also external reviewer of a number of international legal journals. Admitted to the Spanish bar, she has been involved in various international litigation and arbitration cases in USA and Europe, and has chaired several panels at the Consumer Arbitration Court of Zaragoza. She has been Executive Director of the Excellence Campus at the University of Zaragoza, and served various times as scientific expert for the European Commission and foreign funding agencies.

Investor's legitimate expectations and cultural resistance in the performance of extractive industries within indigenous territories (Sebastian Espinosa)

Not different from other developing countries favored by large reserves of non- renewable resources, Ecuador has defectively faced the challenge of breaking the chain of commodity dependence and underpinning new visions of development. The difficulty to conciliate State-centered natural resources

governance with the guarantee of indigenous peoples rights has resulted in the neutralization of the latter in favor of governmental short-term interests. By way of example, the factors that determined the failure of Yasuní ITT Initiative, attempting to refrain the exploitation of the country's largest oil deposit located in Yasuní National Park, a UNESCO World Biosphere Reserve, shows an early weak State's commitment towards the success of such proposal. While this attitude could be understandable in light of the urgent need of revenues stem from a growing public spending, the parallel execution of a plan to exploit the reserves in case the initiative failed, poses inquiries with regard to the extension of the commitments the government has made to the companies engaged in activities directly confronting with indigenous peoples rights. In a context of domestic and international opposition to the development of such extractive project, it is expected a turbulent coexistence among the actors and stakeholders (State and non-State, intergovernmental, international and domestic) with conflicting interests in the performance of such activities.
Given these difficult conditions, it is worth addressing the scope of commitments the State would be allowed to make for the performance of extractive industries within indigenous territories, as well as to the extension of the investors' legitimate expectations in light of the particular regulatory, cultural and political context where these activities are taking place.

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In Ecuador, his home country, he has served as legal advisor at the National Congress, the General Comptroller's Office, the National Secretary of Planning and Development and the Commission for the Integral Citizen`s Audit of the Treaties of Reciprocal Protection of Investments and of the International Arbitral System of the Subject of Investments. In the private sector he has worked in the regulatory department of a national leading law firm.
Finally, he has collaborated as teacher assistant in the courses of Administrative Procedural Law and International Investment Law.

The Meanings of 'Cultural Diversity' and 'Intangible Cultural Heritage' In International Criminal Law (Luigi Sammartino)

Since the end of World War II, a concrete interest for the protection of cultural heritage had developed in International Community. Following the ratification of the 1954 Hague Convention on the protection of cultural property in time of armed conflict and the 1972 UNESCO Convention on the Protection of World Cultural and Natural Heritage, applicable in other situation than armed conflict, most part of States, jurisprudence and scholars affirmed that an obligation of an erga omnes nature has developed in order to preserve cultural heritage in every situation in which destruction or damage could occur. More over, the

presence of this kind of obligation bring to the consideration that every wrongful conduct against a cultural heritage must amount to a serious breach of international law.

For this reason, the interest for the protection of cultural heritage has found legal basis also in international criminal law. Indeed, international criminal jurisprudence (namely, that of ICTY) has envisaged a specific criminal intent in the destruction of cultural heritage since it is subject to universal protection and considered as expression or a symbol of cultural values of a specific people. In cases where a wrongful conduct had occurred, determined by a direct intent of “cultural purification” of a particular territory (using the wording of UNSC Res. 780/1992 on the situation in Bosnia), the international criminal jurisprudence (for instance, in Blaskic, Korkic-Cerkez and Brdanin cases) had made a reconnaissance of cultural diversity's meaning, making also a reference to “the manifold ways in which the cultures of groups and societies find expression” (2005 UNESCO Convention Protection and Promotion of the Diversity of Cultural Expressions, Article 4), arguing also that “any form of domination constitutes a denial or an impairment”, that “the international community considers it its duty to ensure that the cultural identity of each people is preserved and protected” and “The neglect or destruction of the culture of any group is a loss to mankind as a whole” (1982 Mexico City Declaration on Cultural Policies). These legal reasoning could be applied in Al Mahdi case before International Criminal Court (which will be held in 22 August 2016 – here is the link: https://www.icc-cpi.int/pages/item.aspx?name=MA203) and to devastations occurred in Syria and Iraq by IS.

Despite the protection offered by international criminal law for cultural diversity, no direct reference could be found in relation to intangible cultural heritage. The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage defines in a broad way this category as “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (Article 2, par. 1). Following this definition, a strong relationship with cultural diversity could be easily found, although a specification for the purposes of a separated protection might be considered. Anyway, this kind of heritage has a legal dimension only in cases in which a reconnaissance of the cultural value for a people is made and there is a link with specific human rights protection tools, such as the protection of freedom of expression in general and cultural expression in particular, aside from prohibitions of persecution.

Indeed, although no specific international criminal sentences could be found on the matter, the protection of this particular heritage could be envisaged in Article 7(1)(h) of ICC Statute, which establishes persecutions for cultural reasons as a crime against humanity. Despite an identification of a specific hypothesis of genocide could not be considered, the protection is actionable in cases which are characterized by a specific intent of persecution for cultural reasons and a damage of the inherent universal interest. This could be found not only in the cases cited above, but also in General Comments of Human Rights Committee (in particular, in relation to Articles 19 on freedom of expression). This legal framework could be considered even for situations occurred in the past, like persecutions of intellectuals by the Pol Pot regime in Cambodia and the prohibition of the silbo gomero language during the regime of Francisco Franco in Spain. These instances are of a very interesting character, since it could be possible to determine the legal implications in the human rights dimension of intangible cultural heritage's meaning.

The purport of this contribution will be to show, in a detailed manner, legal meaning of “cultural diversity” and “intangible cultural heritage” in international criminal law. In order to do so, beside the exposition of principal sources, and in particular those related to the UNESCO legal framework, the analysis will take into account relevant sentences of international criminal jurisprudence, where this meaning could be found (in particular in relation to the specific intent of destruction or persecution). Reference could also be made to the above mentioned situations in which the so determined definitions could be applied. Finally, it will be shown that the protection offered by international criminal law is effectively applicable to the definitions enlisted in UNESCO legal framework.

Luigi Sammartino graduated at the University of Bologna School of Law in 2011, he is currently completing his Ph.D. Studies in International and EU Law at the University of Florence School of Law (expected discussion in 2017). During this period, he draft a thesis on the international control over arms trade (supervisor: prof. Luisa Vierucci) and worked as a Teaching Associate at the University of Bologna School of Law, with prof. Attila Tanzi and Elisa Baroncini, and also as a Teaching Tutor in International Law at the School of Political Sciences with prof. Marco Balboni and dr. Carmelo Danisi.
His main field of interest are the law of armed conflict and international criminal law (particularly, war crimes), but he has also a deep interest in international economic law (in particular, public procurement, international trade law and international commercial contracts) and international law of dispute resolutions, improved during the Ph.D. Course.
He is an associate member of the Italian Society of International Law (ISIL), adhering also to the Interest Group in International and EU Law of New Technologies and Internet, and of the International Society for Military law and Law of War (ISMLLW) Italian Group.

The UNESCO 1972 and 2003 Conventions’ adaptation to a new vision of Heritage: Heritage as key to community development (Caecilia Alexandre & François Huleux)

Since 1945, when the international community began thinking about heritage, the concept has continued to evolve. In 1954 and in 1970, heritage was defined from a Western perspective based on tangible cultural property. In 1972, with the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, the definition and protection of heritage took on a new path. Indeed, from the protection of cultural property, the notion is now based on a World cultural and natural Heritage. Thirty-one years later, the concept changes once again by the recognition and safeguarding of intangible heritage with the *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003). As the former director-general of UNESCO, Koichiro Matsuura, pointed out in 2002 when the United Nations Year for Cultural Heritage was proclaimed, heritage has become key to development. With this in mind, how have the

UNESCO Conventions of 1972 and 2003 incorporated this broader vision of heritage? This paper proposes to analyse the changes brought about by the World Heritage Committee and the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage that, through the Operational Guidelines and Directives, have recommended that States Parties protect and safeguard the heritage that contributes to community development.

In the World Heritage Convention, the concept of heritage is fragmented. The different criteria applicable to cultural and natural heritage for inclusion in the List of World Heritage, the lack of recognition of a site's intangible aspects and the rigid framework for the conservation and protection of heritage compromise the role heritage plays in community development. However, the initiatives taken by the World Heritage Committee, such as the creation of cultural landscapes, the strategy for disaster risk reduction incorporating traditional ecological knowledge, as well as the Committee's efforts to encourage the participation of communities within strategic objectives have inevitably broadened the concept of heritage as it was defined in 1972. Furthermore, the recent Declaration of Ngorongoro which recognizes African World Heritage as a driver of sustainable development, demonstrates a radical change in the understanding of heritage as a holistic concept.

Secondly, in the Convention on the intangible cultural heritage, although based on an anthropological view of culture, the notion of heritage is, as the 1972 Convention, considered in a fragmented manner. Indeed, the Convention fails to integrate natural spaces within the definition of intangible cultural heritage thus bringing about a distinction between a community's land and its culture. However this year, the changes brought about by the Operational Directives have greatly modified the purpose of heritage. In addition to encouraging States Parties to the Convention to conserve and protect natural spaces whose very existence is necessary for the expression of intangible cultural heritage, the new Directives have an entire section on the links between safeguarding intangible cultural heritage and sustainable development at the national level. Over and above a simple goal provided for in the Convention, it is now recognized that intangible cultural heritage offers strategic solutions to meeting sustainable development objectives.

Thus, this paper proposes an analysis of the progress made by the Committees of the 1972 and 2003 Conventions in order to encourage viewing heritage as key to sustainable development. However, it must be noted that the full capacity of heritage to influence community development has not yet been determined. Many challenges remain, such as the integration of human rights within UNESCO's Mechanisms and the conservation and sustainable use of biodiversity depending on the local community's land and knowledge in order to ensure free access to and recognition of ancestral rights. In this context, we propose a series of solutions to ensure that this new concept be assimilated in all its wealth to encourage the wellbeing of communities and States where heritage is expressed.

Caecilia Alexandre is a PhD candidate in International Law at Laval University in Québec City. Her thesis examines how to effectively preserve the indigenous peoples' land through the UNESCO Conventions. She has received a scholarship from the Government of Québec and from the Centre for International Governance Innovation (Waterloo, Ontario). Ms. Alexandre holds a LL.M. in International Law from Laval University and a Master's degree in public law from the University of Paris I Panthéon-Sorbonne. Since 2011 she has been involved in several NGOs dedicated to human rights, environmental

preservation and heritage protection in Québec, Morocco and Mauritius. She is now a member of the Nomomente Institute, based in Montréal that provides financial and other resources to indigenous and local communities.

François Huleux is currently working on his PhD in International Law pursuing a double degree between Laval University (Quebec City, Canada) and Paris-Saclay University (Training school: UVSQ, France). His thesis examines the limits and contribution of the Convention for the Safeguarding of the Intangible Cultural Heritage to the in situ conservation and sustainable use of biological diversity. M. Huleux holds a Master's degree in Environmental Law from the University of Artois (Douai, France). In 2015, he has worked at the Cultural Department of the UNESCO's regional office in Dakar (Senegal). He has received a scholarship for his PhD research from the Centre for International Governance and Innovation (Waterloo, Ontario, Canada).

Glocal Cultural Heritage: Living and Alive (Federica Mucci)

The 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (WH Convention) is usually referred to as one of UNESCO's most successful conventions in the cultural heritage field, considering the huge number of States Parties and the astonishing number of sites inscribed in the World Heritage List. In fact, the first challenge faced by the Convention is to guarantee its effectiveness. The WH Committee has developed a full array of procedures to guarantee the conformity of the List to the real situation of such a huge number of sites – suffice it here to mention reactive monitoring and the procedure for the eventual deletion of properties from the WH List. It even dared to push on as far as to delete two inscribed sites, as a consequence of wrong management choices made by the States Parties.

The success of the WH Convention is particularly interesting if considered from the point of view of the meaning of cultural heritage for the international community. The two international conventions on the protection of cultural heritage that had already been concluded under the auspices of UNESCO were devoted to themes (armed conflicts and international illicit trafficking) that could effectively be dealt with only through international cooperation, because of the significant transnational component of the particular cases within their scope of application. The same consideration is true for the 2001 Underwater Cultural Heritage Convention but not for the WH Convention, that was concluded to organize international assistance for the protection of sites of outstanding universal value (OUV) within the territory of each Member State, treasuring the positive experience of the UNESCO safeguard campaigns.

International responsibility in the protection of WH sites comes from the imperative protection of the common cultural heritage, irrespective of material transnational issues, that is at the core of all UNESCO conventions. Another basic challenge faced by the WH Convention is, then, to be globally representative. Since imbalances in its representativeness undermine its overall credibility, a strategy for a representative, balanced and credible WH List has been included in the Operational Guidelines and capacity building in all the regions of the world, alongside with conservation and credibility, is one of the five "Cs" strategic objectives of the Convention.

Global representativeness of the WH List could be affected not only by economic imbalances but also by culturally oriented criteria for inscription. Applying the concept of OUV to immovable cultural heritage all around the world implies a certain flexibility of approach, without renouncing common standards. The meaning of the “authenticity criterion” for the assessment of OUV of cultural sites has been widely discussed and its applicability in different cultures is the result of a genuine international debate, culminated in the Nara Document (as a consequence, for instance, the tradition of ritual rebuilding of religious shrines is not excluded from the concept of authenticity if the rebuilding is based on genuine cultural values).

A certain detachment from the material elements of the sites, implied in the debate about the authenticity criterion, can be observed also in the debates (opened by some non-European States) on the application of the “associative criterion”, that determined consecutive modifications of the Operational Guidelines. To usefully protect truly intangible cultural heritage, and so to better represent the geographical distribution of cultural heritage in UNESCO lists, a new convention was finally concluded.

The international protection of intangible cultural heritage does not only give an answer to better representativeness requests by some regions of the world, it also focuses on the role of “living heritage” for sustainable development and gives a prominent role to local communities. Both these issues are prioritized in the implementation of the WH Convention and synergies can be usefully developed. Also built heritage, in fact, though not “living” in itself, is defined through its meaning for the essential needs of humanity and should have a contemporary role in the life of the “communities around it”. Appropriate “revitalization” activities are encouraged by UNESCO recommendations since the ‘70s, highlighting that “the cost of safeguarding operations should be evaluated not only in terms of the cultural value of the buildings but also in relation to the value they acquire through the use made of them.”

UNESCO is trying to build synergies in the implementation of its conventions. The WH Convention is constantly facing new challenges and recent developments about serial and transboundary sites are paradigmatic of the complexities and potentials of a more participatory conception and management of WH sites.

Beyond the concept of cultural heritage, fostering creativity and promoting the diversity of cultural expressions is the purpose of the last UNESCO convention in the cultural domain, further underlining the global importance of each and every local cultural expression for the protection of human rights and peace.

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and the diversity of cultural expressions and has been published by Editoriale Scientifica in 2012. She is author of several articles published in academic journals on specific topics of international and European Union law in the fields of the law of the sea, the law of treaties (the federal clause), the protection of cultural heritage and of the environment, the principle of effectivity.

International Heritage Law and the Market: Outlawing, Ignoring, Alienating (Lucas Lixinski)

International heritage law's relationship to the market is fraught to say the least. It oscillates between potentially outlawing the market outright, such as the prohibition on the traffic of cultural objects in the 1970 Convention or the prohibition of salvage in the 2001 Underwater Heritage Convention, to simply not mentioning the possibility of cultural heritage being in the market, such as the World Heritage Convention and the Intangible Cultural Heritage Convention. The effect across heritage instruments is to push the market into the invisible and un(der)regulated private. Much of this troubled relationship stems from a rejection of the possibility that heritage could belong in the market. Across many civil law jurisdictions, for instance, heritage is classically thought of as *res extra commercium*, or a thing outside the stream of commerce. And that is because heritage is just too special; to add it to the market would be distasteful. But cultural objects are still traded, or at the very least heritage is impacted by economic activities around it. So, when the law excludes the economic possibilities of heritage, the market does not go away; it simply moves elsewhere, often into the under-regulated private, or to other fora that are less sympathetic to the cultural needs of heritage, because their goals lie more in the promotion of economics. This paper engages with these tensions, and what the market means (and can mean) for communities who live around heritage. It will explore the economics of cultural heritage, and its potential impacts on how we read and apply international heritage law, as well as its potential impacts on addressing issues of community engagement in the economics of heritage. One of the often-made promises to communities when it comes to their heritage is that listing their heritage, making it available to the world, will translate into development, and boost the local economy. In practice, though, it seems that most of the money spent on cultural heritage ends up benefitting other parties. So, once again, communities end up alienated from their heritage, as control over it tends to pass to those that have more tangible economic stakes. An international heritage law oriented towards communities therefore needs to be mindful of the impact economics has on heritage and the relationship between heritage and local communities. The paper will look at: the current engagement of international cultural heritage treaties under UNESCO with the market; the literature on heritage economics, and the promises and pitfalls of development through cultural heritage; how those promises play out in the international standard-setting bodies that do engage with heritage in an economic sense, such as the World Tourism Organization (UNWTO), the World Trade Organization (WTO), and, from an adjudicatory point of view, the International Center for the Settlement of Investment Disputes (ICSID). The paper will lastly examine the effects of the economics of heritage on issues of community engagement and governance over heritage, and flesh out the idea of a market on cultural heritage.

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Roberto Balzani (Forli, 1961) is ordinary professor of Contemporary History at the Departement of History, Cultures and Civilizations at the University of Bologna.
He dedicated his recent studies to this latter research field, in particular reconstructing the genesi of the protection laws of 1909 through the unpublished documentation of the Parliamentary Archives. Balzani has also studied the prominent players in the world of Italian fine arts from the turn of the century – in particular Corrado Ricci and Luigi Rava -, bringing to light the political-administrative correlations, aside from the historical artistic ones, that characterize the Italian context in the conservation of "monuments" and works of art in the decisive phase of the "decollo" of the protection. In 2015 he is appointed curator of the Academic Collections (University of Bologna).

Alessandra Lanciotti is Professor of International Law at the University of Perugia (Italy); she holds the chair of International Law and Advanced International Law in the Department of Law, and is the Coordinator for EU Law at the Post Graduate School on Legal Professions in the same University. She is a Member of the Board of Professors of the Ph.D-Doctoral Program in International Law and EU Law at Università 'La Sapienza' of Rome. From 1998 to 2004. She was legal adviser to the United Nations at the Preparatory Commission of the International Criminal Court and to the Assembly of States Parties. In more than twenty years of experience she conducted research and scientific activities in several fields, such as private international law, humanitarian law, international contracts, international criminal law and the protection of cultural heritage. Among other research activities, she directed the Research Unit on the legal protection of cultural heritage of the Project of National Interest "Site Specific MUSeum Research Workshop- SisMus" (www.Sismus.org), dealing with legal issues on cultural property and museums protection (2008-2010), and before that the research project on "Immunities in International Law" (2004-2006), both co-financed by the Italian Ministry of Education, University and Research (MIUR). She also directed and

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She is the author of several scientific publications dealing with cultural property, since the issue in 1996 of her first book on The Circulation of Cultural Property in Private International Law and in EU Law (La circolazione dei beni culturali nel diritto internazionale privato e comunitario): The international circulation regime of goods of artistic and historical interest (Il regime di circolazione internazionale delle cose di interesse storico e artistico), in Codice della proprietà e dei diritti immobiliari, chap. III, UTET, (2015); Relaunching the economical activities through the promotion of cultural heritage in Europe: A legal survey, in The Europ. Lawyer Journal (2015); The Dilemma of the Right to Ownership of Underwater Cultural Heritage: The Case of the Getty Bronze, in Lenzerini and Borelli (eds.), The Safeguarding of Cultural Heritage in International Law: Pending Problems and New Challenges, Brill, (2012); Underwater cultural heritage: protection of archaeological property and limits to international cooperation, (Patrimonio culturale sommerso: tutela dei beni archeologici e i limiti alla cooperazione internazionale), in Archivio penale (2011).

Values and Communities For Cultural Republicanism UNESCO Clubs As An Asset For Cultural Heritages’ Participatory Management (Gabriele D’Amico)

This paper argues that the UNESCO Civil Society Movement is the network of cultural associations most suited to channel the involvement and boost the commitment of stakeholders in the participatory management of cultural heritages, and specifically of WH sites.
Such argument will be developed through three logical steps.
Firstly I will analyse the crucial role that “the relevant community” plays (both in UNESCO Conventions and in the Recommendations of the WH Committee) in defining the values of cultural heritage and reinterpreting/presenting them. Through the definition of cultural goods as “contents and containers”, elaborated by cultural economists (Greffe, 2011) to signify the dialogical relation between material and immaterial components of heritage, the paper will underline how heritages’ materiality is to be preserved and protected not because of an institutionalized fetishism, but because they are the medium through which accessing the messages they embody and convey.
Accordingly to the 2003 UNESCO Convention, what ontologically constitutes cultural heritage is being "recognized as such by the communities, groups or individuals that create, maintain and transmit" them. Furthermore UNESCO takes the stand that "without their recognition, nobody else can decide for them that a given expression or practice is their heritage".

In this first part I will question the meaning of such communitarian understanding of heritage. I will showcase that rather than an attempt to democratize heritage (where “democracy” is understood as the majority of the local inhabitants/stakeholders decides), the evolution in the definition of heritage calls for cultural republicanism. WH management could not become a “the majority decides” process: top-down mechanisms would still be needed in order to ensure the sites’ intergenerational protection and the preservation of some sort of scientifically based notion of authenticity. What cultural heritage could wish for seems thus a form of cultural republicanism, in which communities are involved in the process of constantly reassessing the values of cultural heritages, and in their (human rights based) sustainable management (for cultural, economic, civic and social development); but always within a given, larger and superior “constitutional” framework able to guide specific interests and values toward a heritage-based idea of common good and intergenerational solidarity.

Secondly I will analyse the notion of cultural value (Throsby, 2001) underlining how conceiving tangible cultural heritage as the material vehicle through which different values are expressed and trasmitted leads to the discussion over the potential conflict among such values. Focusing on WH sites, the paper will address the idea that a multiplicity of values and interpretations of a given heritage, despite the difficulties of being enhanced within a common management strategy- is normatively considered as a diversity which is “ as necessary for humankind as biodiversity is for nature” (UNESCO, 2001). Based on this understanding of what WH sites’ management should do in terms of multiple values, the paper will suggest that stakeholders themselves should be analysed depending on the immediate relation between their interest and a certain value component of heritages’ cultural value.

Concluding, the proposed paper takes on the challenge of suggesting how to start working on a model of participatory management of cultural heritage able to transform all the theoretical aspects which the evolution of the notion of heritage implies into concrete mechanisms of valuation, communities’ participation and institutionalized management of the conflicts which arise both among values and communities. In order to do so, the paper will combine cultural economics and human rights studies.

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His thesis focuses on the universality of human rights, seeking to assess the ontological boundary between the latter and the value of cultural diversity.

His academic training and work experience have included a law degree summa cum laude from the Faculty of Law of University of Torino, a MSc in Comparative Law, Economics and Finance (final thesis on Culture as a participatory commons) at the IUC of Turin, a UNESCO Master in World Heritage at Work, interning at the UNESCO Centre of Turin and at the International Training Centre of the UN and finally working in a firm specialized in criminal labour law. He is a member of the Bar Association of Turin.

The UNESCO World Heritage Convention - Addressing the Financial Sustainability of the World Heritage Fund (Kana Myiamoto)

At present, the World Heritage Convention remains as a major international instrument for safeguarding cultural properties. Furthermore, the existence of the World Heritage List has facilitated sites to garner international and national prestige and enables the state parties to access the World Heritage Fund for monetary assistance, which brings them potential benefits of heightened public awareness, tourism, and economic development. However, in recent years, the financial sustainability of the Convention has been an increasing challenge, whereby concerns have surfaced about the lack of monetary resources to implement the objectives of the Convention, especially in regards to maintaining the Fund.

One of the most prominent motives behind such budgetary shortfall has been the drastic increase in the number of sites inscribed in the List. During the initial years of the Convention, the List only included a few sites. It has since grown at a disproportionate rate, counting, at present, over 1.000 sites in 163 countries. Inevitably, such a large number cannot be managed only by the Fund budget, which has not seen any considerable increase in proportion to the number of new sites. Furthermore, in recent years, state parties have taken a principal role in the decision-making process, prioritizing their own political and economic interests. Unfortunately, this growing influence of the state parties has led to an acceleration in premature inscriptions, which ignores the economic burden that it poses to the World Heritage Fund. Moreover, many state parties see site inscription as an end in itself, and give little attention to the long-term protection and conservation of sites, including the implementation of relevant financial strategies.

Another major reason for the budgetary shortage are the arrears in payments by the state parties. Their contributions are essential to the functioning of the Fund but many countries have not fulfilled their obligations to pay for these fees. The most blatant example of this is the US, who was the major provider until its last payment in 2011, when it decided to reject paying any further contributions because of political reasons. As a consequence, the lack of financial stability has not only caused impediments to the execution of the Convention's activities, but is also threatening the general reputation of the Convention and the World Heritage List.

To find a viable solution to this financial problem, one must understand the two drives that are shaping the current trend of the Convention. That is, in terms of the World Heritage List, it signifies universality but at the same time, it embodies a socio-economic implication to it. This means that whilst the principle behind the Convention asks for 'state parties to engage in international cooperation', and the concept of 'outstanding universal value' is the core element for the property inscription process, once a site has been accorded into the List, undoubtedly, there is a sense that the site becomes a marketable asset for the country where it is found. Indeed, though the Convention is in need of dire reform, the List is in itself a highly successful system and has come to exist as an extremely visible global brand, and as such, whether the Convention bodies sees this favorably or not, it accumulates an added value and a 'commercial' potential. To give an example, the branding process appears to facilitate touristic interest, or increased touristic interest to the site. The single

phrase of ‘a UNESCO World Heritage site’ stimulates visits to the property and this in turn is transformed into economic value. We therefore cannot ignore the rationality of why state parties would wish to be part of this list and enjoy its advantages.
The author suggests several recommendations to address this issue. In terms of recognizing the need for ‘commercializing’ the List, as much as state parties can enjoy such benefits, they also need to be more active in taking on the economic burden of maintaining it. Unfortunately, this is not being achieved through the current system of yearly contributions. The proposed solution is to let state parties be directly accountable for their own sites, which could be attained by introducing site inscription fees. The fee will be applied at a flat rate, and will take the World Intellectual Property Organization’s (WIPO) fee-based financial structure as a model. Other solutions include the formation of new commercial partnerships in order to achieve a sustainable source of income to cover costs for protection and conservation of sites. In this sense, if undertaken responsibly, collaborations in the tourism field can be a special driver for the proper preservation of cultural and natural heritage and a vehicle for sustainable development. The timing is ideal too, since from 2012, there has been a gradual re-assessment of the relationship between World Heritage sites and tourism. By emphasizing on a balanced approach to the management of sites, between the needs of conservation and access to the public through tourism, this could potentially generate revenue that could be invested back into conservation efforts.

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Prior to her graduate studies, she worked as Officer at the Embassy of Spain in Japan, whereby she took an active role in cultural and educational diplomatic activities. She has collaborated in joint initiatives by the Spanish and Japanese government on cultural heritage, including the registration of documentary material to the UNESCO Memory of the World Register. She has also assisted local governments in the preparations for their cultural sites to be included in the official lists of the UNESCO.
Kana is a native of Japan, but grew up in Madrid, Spain, where she experienced firsthand the influence of arts and culture in civil society.

Making the past inspire the China future: A Xi’an Perspective on legal protection of the Cultural Heritage in Conformity with the Local Education and Economical Development (Liu lina)

Xi'an, known as her position under several of the most important dynasties in Chinese history, is now confronting tough task to promote the effective protection of the local cultural heritage in the process of metropolization. According to the approval of the State Council in June 2009, Xi'an would be built to China's third international metropolis after Beijing and Shanghai. By 2020 Xi'an will have become the cultural center of China.

This article first takes Heritage site Chang'an City of Han Dynasty, Tang west market Museum and Shaan'xi Historical Museum for examples, to analyze the effectiveness of the new protective measures and models in Xi'an, and the conformity with the Local Education and Economical Development. Part two then focuses on a critical appraisal of t*he 2015 Regulations on Museums* and local regulations. The final part will examine the feasibility of the new cultural heritage protection measures regarded as implementation of national and local regulations. Cultural heritage protection might be considered to be stumbled by the process of metropolization, but we still can conclude that there exists a positive interaction between them to maintain cultural heritage authenticity, integrity and context from the Xi'an perspective.

The cultural heritages in Xi'an have offered important evidence for us to examine the Chinese history which has been through days of glory and times of despair. The implementation of effective strategies, planning, policy and regulations to sustainably manage heritage sites requires consistency and continuity in application, whilst benefit the local education and economy in which they function. Furthermore, the PPP legal CH protection model nurtures culture with business, and promotes business through culture. And the interactive pattern for the conservation and utilization of cultural relics in museums wake up sleeping ruins in the process of metropolization. I believe all of endeavor contributes to the full richness of values, authenticity, integrity and diversity in Xi'an cultural heritage.

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Between culture and faith. Identifying and legal routes of the UNESCO cultural heritage in the Balkans (Federica Botti)

The cultural heritage of the Balkans presents its own characteristics which are valued by the categories used by UNESCO to emphasize the cultural deposits in this area. Significant is the presence of archaeological sites of the classical period, especially following the route of the Via Egnatia. This heritage differs along the lines of Islamic penetration, not only for the obvious and significant presence of some religious monuments, but especially for the characterization of some urban settlements and fortifications, while the coast is quite distinct and identifiable for the presence of artifacts dating Venetian era. However, the originality of this heritage is given mainly by the immaterial, made up of the traditions, the singing, the music, the costumes, as well as showing us the legislation of these countries dedicated to the protection of cultural heritage and that takes into account the recent European legislation as well as its criteria made by UNESCO to highlight the importance of these goods. This redefinition of values and contents certainly has an impact in stimulating tourism and investments in the sector, assessed through careful territorial marking and the specific cultural and religious activities.

Of cultural heritage we can't leave out connotations of religious interest, either because used as places of worship or because instrumental to the celebration of worship and holidays. The importance of said interest, however, is not derived solely from the property or ecclesiastical patrons, but mostly from the sensitivity of large sections of the population to the meanings and transcendental values that such property express on the intentions of their authors and asylum.

Starting from this premise and from the close link between religion and cultural heritage, we will analyze the legislation enacted by the countries in the Western Balkans and the appreciation that is given to the goods of religious interest.

We want to determine whether such legislation, in accordance with the guidelines suggested by UNESCO, is by itself sufficient not only to protect, but above all to enhance this cultural area.

Enhancement, there is no doubt, necessarily passes by the promotion of cultural heritage where the religious element, for the reasons set out above, becomes a distinguishing feature of a form of ad hoc tourism, i.e. religious tourism.

This new frontier of tourism is booming, in contrast to the current crisis, and provides to the devotees interesting offers to reach the most prestigious destinations. Even the travel agencies are specializing and gathering information in order to best satisfy every type of request, both for individuals and for organized groups by providing appropriate offers (eg. Medjugorje).

The legitimacy of tourism to the destinations of cult or strong spirituality was in 1987 when the Council of Europe has recognized the importance of religious and spiritual paths such as cultural vehicles paramount. Furthermore analyzing the data provided by the World Trade Organization we can ascertain the weight that the religious tourism now plays in the world economy.
According to the latest data from the religious tourism it involves more than 300 million people a year with a turnover of about $18 billion (WTO 2012).
The cultural heritage of the Western Balkan countries through the work of the various legislations coordination could now proceed through cultural corridors (Razvan Teodorescu) already naturally present in those territories.
Among these cultural corridors, special mention must be given to Via Egnatia and its offshoots. Along the guideline we find the presence of numerous works of religious interest (eg. The churches and sanctuaries of Ohrid), from Christianity to Islam in its various facets, and its path could be a realistic example of tourism, in which religion and pilgrimage live in close contact with each other (a good example is the 'Camino de Santiago').
On the path, the tourist choses a destination that has a religious connotation, a sanctuary, a convent, a place that has a mystical meaning, not leaded by his confession but rather by his citizenship in a tourist movement connoted in the modern sense. Doing so a link is created between the past and the present, where the goals of the traditional pilgrimage, have become destinations of tourist movement characterized most of the time in a cultural sense, or ethical/social, or natural/health-conscious.
This vision is not only proper to Christianity, but it is inherent to the feel of those populations.
Proof of this is the wide spread in those territories of brotherhoods, the most famous of which is certainly the Bektashi.
Said brotherhood is known for having translated the myth of the journey to Mecca in what every man naturally runs during their lives.
In the theological vision of this fraternity life is indeed a journey, the proof is that they built their houses of worship (tecqe) every six hours on foot march where the pilgrim could find shelter and then continue the journey.
The best-known trails are the ones that bring real Mount Tomorri, where the traveler could find God rediscovering himself as proof of the omnipresence of the Divine.

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She has obtained the national scientific qualification (ASN) to Associate Professor. Since 2004 she is the scientific coordinator of the http://licodu.cois.it site (Freedom of Conscience and Human Rights) that offers scholars of religious freedom and freedom of conscience and religious denominations in Eastern Europe , more than 2000 legal documents necessary for the study of the religious phenomenon in this area .
She took care of legal issues of religious denominations and of individual and collective religious freedom in Albania and Romania, and more generally in relation to the Balkans.

Another field of interest regards the religious buildings and the cultural heritage. She performs consultations for the Balkan governments collaborating with the Academy of Sciences of Albania and Bulgaria.

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Protection and Enhancement of UNESCO Heritage: the Role of Patronage and Sponsorship of cultural property in the Italian Legal Order (Caterina Drigo)

This work aims to analyse the paths of protection and enhancement of UNESCO Heritage in the Italian legal order through the prism of two specific tools: patronage and sponsorship of cultural property. This work thus describes the difficult normative trajectory that characterized the cultural patronage in our country, and the difficult to structure the sponsorship of cultural property in a way that could be able to valorise efficiently private contribution in the protection and enhancement of UNESCO Heritage. Indeed, despite being one of the richest areas of historical, artistic and cultural tradition, Italy suffers difficulties of regulatory and fiscal nature, which for decades have made inefficient the management of the res publica.

Caterina Drigo, graduated in Law (LLM) from the University of Udine. After her undergraduated studies she got the Diploma of specialization at law school of legal professions from the University of Padua and she got the PhD in Constitutional Law from the Alma Mater Studiorum University of Bologna (phd thesis: Constitutional Courts and Legislators). During her PhD she has been Visiting research scholar at Cardozo School of Law, New York, with Professor Michel Rosenfeld. In 2010 she also got the Diploma of the Académie Internationale de Droit Constitutionnel, after having attended the courses of the XXVI session, in Tunis.
She has been Research Fellow in Constitutional Law from 2010 to 2012 in the Alma Mater Studiorum University of Bologna and also (2012-2013) Teaching assistant of Public law in Bocconi University, in Milan (with Prof. Luca Mezzetti).
From November 2012 she is Fixed-term Researcher in Constitutional law in the Law School and Law Department of Alma Mater Studiorum University of Bologna, where she also teaches, from 2013, Fundamental rights and Public law and fundamental rights protection in the Ravenna Campus.
She is member of the editorial board of the review dirittiregionali.org and member of the Association Diritto pubblico comparato ed europeo and of the Association des Auditeurs de l'Académie Internationale de Droit Constitutionnel. She is also member of the Italian section of the Instituto iberoamericano de derecho constitucional.
She participated to several national and international congress and seminars as speaker or discussant and she published several articles and essay especially on constitutional justice, on fundamental rights protection and on cultural heritage.

Sponsorship of Cultural Property: The Flavian Amphitheatre (Coliseum), Rialto Bridge and the Last Supper Museum (Silvia Stabile)

The Italian legal framework concerning the sponsorship of cultural property (art. 120 of Italian Legislative Decree 22 January 2004, No. 42, as amended - Code of Cultural Property) has been recently changed: the Italian Legislative Decree 18 April 2016, No. 50 - Code of Public Contracts (implementing the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU) entered into force on 19 April 2016. The Code of Public Contracts regulates the sponsorship contract with the Public Administration (art. 19) and, more in particular, the agreement for the sponsorship of cultural goods (art. 151). The new legal framework

simplifies the procedure to select the sponsor, and it is completed by the Guidelines approved by the Italian Ministry Decree of 19 December 2012 regarding the definition of sponsorship of cultural property, the key elements of the sponsorship contract, the distinction between sponsorship, patronage and donation in favor of cultural property, and the application of art. 120 of Code of Cultural Property (sponsorship of cultural property). A particular space in the dissertation is dedicated to the Italian case studies regarding the sponsorship of The Flavian Amphitheatre (Coliseum, Rome), the Rialto Bridge (Venice) and The Last Supper Museum (Milan).

Silvia Stabile is contract professor of Art and Cultural Property Law for the postgraduate course in Promotion of Tourism and Management of Cultural Property at the University of Bologna, and of Art & Design Law for the postgraduate course in Design Management at the Marangoni Institute. She also regularly holds lessons on the protection and valuation of family art collections at the Italian Family Officer Association (AIFO). Silvia Stabile has authored several articles and books on art law. She also collaborates with leading art journals (The Art Newspaper, Insideart and ArtEconomy - Plus24 of Il Sole 24 Ore).Silvia Stabile graduated with honours from the University of Milan in 1995 and obtained a PhD in Legal Studies the University of Milan in 2000. She was admitted to the Milan Bar in 2000. Silvia Stabile is of counsel of BonelliErede and has broad experience in art law. She recently assisted a leading Italian cultural foundation in setting up a third generation digital museum located in Venice; top leading international art galleries of the primary market and the Italian Association of Modern and Contemporary Galleries in connection with the appropriate application of the resale right for the benefit of the author of an original work of art (droit de suite). In the past, she assisted a number of foreign museums in connection with the return of cultural objects to Italy, not to mention leading fashion designers regarding the sponsorship of the restoration of Italian historical monuments. She is a member of the advisory board of the Chamber of Arbitration of Milan for the development of ADR Arte, a mediation service in the sector of art and cultural property. Silvia is also a member of PAIAM (Professional Advisors to the International Art Market, London) and ALAI (Association Littéraire et Artistique Internationale, Paris).

Not just philantropy: the opportunities offered to the UNESCO Heritage by new legal frameworks. The Italian example of "innovative hi-tech start-ups with a social goal (Silvia Guizzardi)

As Winston Churchill once said: "Never let a good crisis go to waste". The 2008 global economic crisis forced governments worldwide to imagine out-of-the-box solutions to generate quick economic growth and employment.
The Italian legislation aimed at creating favourable conditions for the establishment and the development of innovative enterprises and supporting innovative entrepreneurship is one of the most significant examples of such solutions.

To reach these goals, the Italian Government has passed a comprehensive legislation to bootstrap an ecosystem of innovative startups with high technological content, meaning that such newly created companies should "produce, develop and commercialize innovative goods or services of high technological value". The cornerstone of such legislation is Law 221/2012.

Within the new entities envisaged by the Law 221/2012, one of the most innovative is the "hi-tech startup with a social goal". While fulfilling all the requirements that apply to ordinary startups with high technological content, the innovative hi-tech startup with a social goal must operate in specific domains that the Italian legislation considers of very high social value. From the Unesco Heritage standpoint, a number of these domains look particularly relevant, like promotion of cultural heritage, social tourism and cultural services.

Among the important benefits available for "innovative hi-tech startup with a social goal" are both higher fiscal advantages and the option to raise capital through equity crowdfunding portals.

Silvia Guizzardi is Researcher of Commercial Law at the School of Law of the University of Bologna where she teaches Financial Markets Law.

She holds a degree cum laude in Law, Law Faculty, Università degli Studi di Bologna and a PhD in Intellectual Property, Università degli Studi di Pavia, and has also the national habilitation as Associate Professor.

She was Visiting Researcher at the Max Planck Institut, Munich, Germany.

After having written extensively about IP and Competition Law, her current research field focuses on the legal, economic and social impact of the start up legal frameworks which have been recently introduced in several EU countries.

The Protection of Cultural Heritage in International Investment Treaties and Arbitrations (Alessandra Asteriti)

The last sixty years have seen the rise of a whole new area of public international law, dedicated to the protection of foreign direct investment; the conclusion of international investment agreements has been accompanied by the development of a sophisticated system of dispute resolution underpinned by the multilateral International Convention on the Settlement of Investment Disputes. International investors have been able to avail themselves of this system both to protect their contractual rights and, since the first investment treaty arbitration decided in 1990, their rights protected in international investment agreements.

The protection of cultural heritage has equally received the attention of the international legislators, thanks in great measure to the work of the UNESCO and the standards of protection guaranteed by its three main Conventions dedicated to the protection of cultural heritage, intangible heritage and cultural diversity.

There has been little attention given to the potential conflict or conversly harmonisation of these distinct regimes, nothwistanding the increased awareness of the fragmentation potential of international law, and the recent attempts at providing a reconciliation narrative, away from fragmentation, of the international legal project.
This paper will provide an overview of the provisions in international investment agreements that pay respect to the protection of cultural heritage and to the arbitration awards where issues related to cultural heritage have been raised either by investors involved in cultural projects or by host States as defences against an investment claim, such as the *Southern Pacific Properties v Egypt*, *Malaysian Historical Salvors v Malaysia* and *Parkerings v Lithuania* cases. The paper will assess whether international investment arbitration can accommodate cultural heritage issues and whether the economic globalisation rationale that underpins international economic law can finally recognise cultural heritage as a resource and not an obstacle to development.

Alessandra Asteriti is Junior Professor of International Economic Law at the Competition and Regulation Institute at Leuphana University in Lüneburg; she is also post-doctoral research associate in international law at the School of Law in Glasgow. She has an MA (summa cum laude) in Ancient History and Archaeology from the University of Rome, an MA in the Theory and Practice of Human Rights from the University of Essex and an LLM and PhD in International Law from the University of Glasgow. She has worked as an archaeologist in Syria (Tell Mozan) and in Rome (Temple of the Magna Mater). She has published in the areas of international law, legal theory and European law.

International Dispute Settlement in Cultural Heritage Law and the Protection of Foreign Investment: From Collision to Cross-Fertilisation
(Catharine Titi)

The relationship between international investment law and world cultural heritage is often explored from the prism of their professed mutual incompatibility: the former's object is the protection of economic interests and the latter's the preservation of world cultural heritage. The two often clash. Investment rights, endowed with robust enforcement mechanisms, typically prevail. However, a comparative reading of the two systems' international dispute settlement mechanisms reveals that a more constructive approach to their study is also possible: cross-fertilisation and the drawing of lessons from their respective functioning can improve the international resolution of disputes for both. The presentation will consider the international legal framework of the two systems and the nature of disputes in international investment law and in international cultural heritage law. It will then focus on their respective dispute resolution mechanisms and will canvass the appropriateness of a broader use of extra-'judicial' or alternative dispute resolution means in investment law, and the desirability of access to dedicated international fora and stronger enforcement rules in international cultural heritage law.

Catharine Titi is a Research Scientist at the French National Centre for Scientific Research (CNRS) and Member of the CREDIMI, Law Faculty of the University of Burgundy. She holds a PhD from the University of Siegen in Germany. Catharine has previously worked at the University Panthéon-Assas Paris II (CRED) and at the United Nations Conference on Trade and Development (UNCTAD). She has published extensively in international law journals, such as *Arbitration International*, *European Journal of International Law*, *Journal du droit international*, *Journal of World Investment & Trade*, *Transnational Dispute Management*, and contributed to edited volumes, such as the *Yearbook on International Investment Law & Policy* (Oxford University Press, 2015). Her monograph *The Right to Regulate in International Investment Law* (Nomos & Hart Pubishing) was published in 2014, and she is co-editor (with Katia Fach Gómez) of the *Journal of World Investment & Trade* special issue *The Latin American Challenge to the Current System of Investor-State Dispute Settlement* (2016).
In 2016, Catharine received the prestigious Smit-Lowenfeld Prize of the International Arbitration Club of New York for the best article published in the field of international arbitration.

Culture: the Creator and the Creation of International Investment Law, (Marcin Menkes)

1. Cultural Determinants of International Investment Law.

Historical accounts of international law often constitute an intriguing exercise that tells as much about described events, as they reflect author's cognitive stance. Approaches stretch from narratives of a linear progress, to creative destruction in course of a class struggle, to value driven theories like the feminist approach to international law. Seen from this perspective, international economic law constitutes a particularly interesting area, as it's normative interpretation is largely predetermined by the adherence to a historical school: either a normative heritage of hospitality towards foreign merchants – subjective focus, or the resultant force of economic vectors (substantive focus). Hence, one finds, for instance, authors applying contemporary communitarian understanding of public international law to assess legal paradigms during the colonisation period, or a plethora of authors reducing their anti-globalist cognitive dissonance while writing about liberalisation and universalism.
Yet even without reaching into the past, the clash of private-public law paradigms in international investment law (IIL) debates reflects stakeholders' – perhaps unconscious – understanding of the normative heritage; since predictability of IIL largely depends on the jurisprudence constante, one can hardly imagine that a particular line of advocacy would be altered on a case by case basis.
2. Cultural Rule of Law.
If we move, however, from the meta-level, where normative culture predetermines understanding of law, to actual contents of law, it turns out that also the culture itself can be perceived in different terms.

Obviously, given its fundamental importance to the very subsistence of nations, some trade and investment treaties contain carve outs for the cultural sectors. At the same time, not only this is not a universal standard, but even where such an exception is to be found, explicit provisions tend to focus on the areas relevant to the entertainment sector.

The question thus arises, what is the scope of state capacity to protect its cultural heritage in accordance with the rule of law principle? Should it be compared to measures undertaken in times of threats to public security? Or can the cultural exception only be implied in respect of core matters, vital to one's identity? Does protection of the national heritage imply not only rights of host state in respect of the investment-investor, but also the duty of protection?

3. From the Creator to the Creation.

I try to find the balance for the regulatory (administrative, judicial) freedom of a host state in respect of protection of cultural heritage.

First, I refer to tangible cultural objects. Basing on Polish experiences in the field I scrutinise three areas, where host state conduct conflicts (or may conflict) with foreign investor expectations.

1. I question the scope of normative freedom using the example of legislative works underway on the implementation of the EU Directive Return of cultural objects unlawfully removed from the territory of an EU country. Here the law-maker decided the introduce a broad notion of national goods of culture, broader than the current normative benchmark, which entails risks, for instance, for the contemporary art collectors.
2. I address certain administrative decisions concerning classification of real estates as a national heritage. The possible arbitrariness of such decisions and their direct and indirect financial impact, including taxation or admissibility of renovation works, may be particularly worrying to possible investors.
3. Finally, I focus on a controversial court ruling, by virtue of which a foreign investor has been deprived of his estate. Although factual basis of the judicial intervention was a destruction of a monument, it was actually the investor's legal predecessor who had committed the illegal act. The matter is subject to international arbitration.

Second, I raise questions concerning the scope of cultural values and possible duties of the home state to protect such. I refer here to the infamous Marikana massacre (South Africa). Can, evolving, social norms be considered as appertaining to the national heritage? Can labour standards thus be elevated to a different normative category? If so, how and to what extent can they be taken into account while balancing interests of a foreign investor and hosting society?

Moving from tangible to intangible heritage, from strictly economic to social interests, from state rights to duties, one continuously faces the dilemma, whether culture is an object of his analysis or a predetermining factor. It could appear as purely academic exercise, however, importance of such an endeavour reaches far beyond. In times of a general backlash against international investment law, where technocratic governance fails to address the legitimacy crisis, it seems indispensable to ask, whom and what IIL serves?

Dr **Marcin Menkes** is an assistant professor at Warsaw School of Economics, where he combines his legal (MA from Warsaw University and Université Paul Cézanne Aix-Marseille 3; Ph.D. from Jagiellonian University) and economics (Warsaw School of Economics) training. He is an author of over 60 scientific publications including monographs on International Law Analysis of Economic Sanction (Duet 2011), Economic Governance in International Law (CH Beck 2016) and a Comparative Commentary of the UN and European Conventions on State Immunities from Jurisdiction and Execution (SGH 2013).

Respecting Culture – Corporate Social Responsibility as an Instrument for the Protection and Promotion of Cultural Rights (Ana Rita Mota)

In the past decades, the whole world has witnessed and praised the undeniably vast array of benefits brought about by foreign investment, particularly in terms of economic growth. Nevertheless, scholars, activists and the media have all highlighted the dangers of globalisation and the transformative effect that it has on societies all over the world, at every level. In fact, the benefits attributed to increasing investment flows are not always homogeneously distributed amongst all stakeholders, and claims of insufficient consideration for certain attention-worthy interests have started to appear and spread all over the world. One such interest is the protection of Cultural Rights as a legitimate non-investment objective that States ought to be able to pursue. This particular aspect of the exercise of a given State's sovereign powers seriously risks being constrained by the assumption of commitments at the international level which focus solely on economic issues, potentially leading to Investor-State arbitration.

Undeniably, there is already significant research on the relationship between International Investment Law and Human Rights, but a perspective that focuses on Cultural Rights (understood as encompassing the protection of tangible and intangible cultural heritage) is still largely unexplored and underdeveloped. In addition, whereas most research on the subject has paid more attention to the role of host States and dispute settlement, this paper intends to explore the role that the investor himself may play in the protection and promotion of the Cultural Rights of affected communities, in particular, those of indigenous peoples.

This paper thus focuses on the role that Corporate Social Responsibility (CSR) can play in the context of foreign investment, in order to ensure respect for Cultural Rights. As powerful multinational enterprises have spread the influence of capitalism throughout the world, most entered the markets of less developed countries without giving any particular thought to the needs of their hosts (and even less to the needs of local communities). CSR intends to counteract this tendency, incentivising businesses to take Human Rights into account when planning and implementing their activities. But is this effort enough to ensure the protection of Cultural Rights?

The first part of the paper will analyse the concept, origins and scope of CSR, followed by an attempt to briefly characterise the most noteworthy initiative taken at the UN level, namely the UN Global Compact, which is the largest and most significant CSR initiative in the world, with particular focus on the Cultural Rights of indigenous peoples. Finally, some conclusions will be drawn with respect to the appropriateness and effectiveness of CSR to protect Cultural Rights.

Ana Rita Mota is a PhD student at King's College London, currently on the last year of her programme, conducting research on international investment law and cultural rights. She graduated from the University Of Lisbon School Of Law in 2009, having spent one year as an Erasmus student at the University Paris-Descartes. She also holds a Master's degree from the Portuguese Catholic University Global School of Law, which she completed in 2011 with a research semester at the University Of Houston School Of Law. Her final Master's dissertation focused on stabilisation clauses in international petroleum contracts. She taught European Union Law at King's College London for one academic year and has had other teaching experiences, namely through a charity, in addition to working as a Research Assistant.

Iconoclasm, Cultural Politics and Resilience: The Protection of Cultural Heritage in Post-Conflict Zones (Valentina Vadi)

What role, if any, can international law play in situations in which a state is assisting to the deliberate destruction of cultural heritage of great significance located in its territory? Iconoclasm, that is the destruction of religious/cultural icons for religious, economic or political motives, has been a constant feature in human history. However, how international law can prevent, address and cope with iconoclasm remains a relatively understudied domain. This article aims to address this gap in current international law literature. After discussing the various forms of political, religious and economic iconoclasm and highlighting the complex interplay between iconoclasm and cultural politics, this article discusses how international law addresses the threats to the protection of cultural heritage in post-conflict zones, focusing on Afghanistan as a case study. In 2001, the Taliban destroyed two massive Buddha statues in Afghanistan's Bamiyan Valley considering non-Islamic art as symbol of idolatry. This act brought the interplay between iconoclasm and international law to the forefront of legal debate. However, this article suggests, today, an even more impressive and significant type of iconoclasm is under way: that of economic iconoclasm that is the inexorable destruction of cultural sites yielding to economic development needs. The article examines and critically assesses how international law governs the protection of cultural heritage in conflict societies. It then concludes that despite the extraordinary and paradoxical resilience of cultural heritage, a more holistic approach to the protection of cultural heritage should be developed which takes into full consideration culture, economic growth and human rights.

Valentina Vadi is a Professor of International Economic Law at Lancaster University, United Kingdom. She formerly was a Reader (Associate Professor) in International Business Law at the same University (2013-2015), an Emile Noël Fellow at the Jean Monnet Centre for International and Regional Economic

Law, at New York University (2013-2014), and a Marie Curie Postdoctoral Fellow at Maastricht University (2011-2013). Professor Vadi also lectured at Hasselt University (Belgium), the University of Rome III (Italy), the China–EU School of Law (P.R. China) and Maastricht University (The Netherlands). She has published articles in various areas of public international law in top journals, including the Vanderbilt Journal of Transnational Law, the Stanford Journal of International Law, the European Journal of International Law among others. She is the co-editor (with Hildegard Schneider) of Art, Cultural Heritage and the Market: Legal and Ethical Issues (Springer: Heidelberg 2014), and (with Bruno De Witte) of Culture and International Economic Law (Routledge: 2015). Valentina Vadi is the author of Public Health in International Investment Law and Arbitration (Routledge, Abingdon 2012), Cultural Heritage in International Investment Law and Arbitration (Cambridge University Press, 2014) and Analogies in International Investment Law and Arbitration (Cambridge University Press, 2016).

The Expropriation of Cultural and Natural Heritage and of Heritage-Related Rights under International Law – Bridging Public Interest and Private Profit (Gabriele Gagliani)

Recent data have confirmed that one of the most common claims made by foreign investors against host states relates to expropriation. This notwithstanding, and despite the significant case law and literature on the matter, expropriation still remains a contentious issue under international law. Indeed, the line between legitimate regulatory takings, for which states are not obliged to pay compensation, and expropriation, appears blurred. The weight to be ascribed to certain factors, such as the public purpose of the measure, its non-discriminatory nature, the due process of law and the compensation owed by the state, in order for an expropriation to qualify as lawful, are still the object of diverging decisions by arbitral tribunals. Further, the redress available in the case of expropriation and the calculation of the quantum of the amount of compensation do not appear as definitively settled issues. Recent decisions, such as the Yukos case, confirm these remarks, which apply also to cases of expropriation of cultural and natural heritage. A number of investment disputes have dealt with heritage-related expropriation claims (such as Compañia de Desarollo de Santa Elena v. Costa Rica or SPP v. Egypt) or (alleged) expropriation of foreign investors rights for cultural or natural heritage-related reasons (for instance, Parkerings v. Lithuania, Metalclad v. Mexico or Glamis Gold v. the United States of America). These cases offer different examples of restrictive measures where the cultural heritage protection purpose was used as a 'defensive' disguise or conversely, of genuine concerns for heritage protection and preservation. The stances taken by investment arbitral tribunals provide with significant insights on the relevance of national and international cultural and natural heritage norms and on the practical interplay between host states' obligations toward foreign investors and the possibility to adopt heritage-related measures which might affect or impact foreign investments.

Taking stock of all these considerations, this paper discusses the approaches and rulings of investment arbitral tribunals on foreign investors' claims of expropriation involving cultural and natural heritage, within the broader context of the international case law on this subject. Existing decisions and the

arguments of the parties in dispute allow to test and re-discuss the interpretation and application of customary and treaty rules on expropriation. In particular, attention should be paid to the standards adopted by investment tribunals to assess heritage-related measures purposes and practical impact and the weight that international cultural heritage law plays therein. On this line, an analysis of when and how heritage-related measures fall within the scope of legitimate regulatory actions seems fundamental to understand how to devise viable cultural heritage policies and to use heritage as leverage for heritage-related investments and development. Also, the (non-)discriminatory nature of certain measures which might amount to expropriation and the valuation of the expropriated property to determine the compensation owed by the host state deserves more attention.

These questions might gain a new significance if applied to cultural and natural heritage. As a case in point, while the adoption of the 2005 UNESCO Convention on cultural diversity has been regarded as a breakthrough for the consideration of the double (cultural and economic) value of cultural goods and services in theory, it is not easy to find a compromise between these two values in practice when the amount of compensation has to be determined. While individuals and companies push for a higher compensation, brandishing the value of the heritage at stake as a good argument, states often reply that heritage-related public policy purposes should drive down the amount of compensation due, if any. However, the need for private investments to safeguard heritage sites and monuments might allow to move beyond this opposition and to conduct further reflections under general international law. Many investment tribunals which have considered some of the questions mentioned above have in fact referred to similar cases before the European Court of Human Rights. The number of cases involving expropriation in general, and expropriation of cultural heritage more specifically before this Court is quite meaningful.

As a result, though apparently divergent from investment tribunals' positions, the Court jurisprudence might not be so much at variance with them if looked at closely. Thus, finally, this paper further proposes to test whether, though with some inconsistencies, there are some common approaches to the expropriation of cultural and natural heritage under international law.

Gabriele Gagliani is Contract Professor of International Law at Bocconi University in Milan (Italy). He is also Chargé de Cours/Lecturer at the Université Senghor de la Francophonie and has served and still serves as external consultant to several intergovernmental organizations.

He has been a visiting research fellow at the British Institute of International and Comparative law (BIICL) in London (U.K.), an intern in the Permanent Mission of Italy to the United Nations, World Trade Organization section, in Geneva (Switzerland) and has worked as a consultant for a law firm on national and international law issues.

Before undertaking an ad hoc Ph.D. program (2013-2016) at the École Normale Supérieure de Paris/Saclay and the University of Palermo, under a thesis co-direction at Bocconi University, he studied at the Universities of Milan (Bachelor and Master of Laws, summa cum laude) and Barcelona (International Economic Law and Policy/IELPO LL.M., with distinction). He speaks fluently and works in English, French, Italian and Spanish.

Interaction between International Trade Law and Cultural Heritage Protection: a Perspective from Cultural Nationalism (Yao-Ming HSU)

For the protection of cultural heritage and preventing illicit trade of cultural property, two international instruments are set: the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property. However, these conventions are once challenged at their ambiguous definition of cultural property, favoring for source nations and no proper protection of bona fide purchasers.
However, would this cultural nationalism not be justified? Would a cultural internationalism be really favored? If we observe from international trade law, we could notice that even in the WTO regime, a cultural heritage protection exception also exist in the Art. XX (f), which stipulates that "for the protection of national treasures of artistic, historic or archaeological value", it's possible to set some trade limitations. Here also shows a kind of trade sovereignty for limiting international trade for the protection of national treasures.
Thus, fundamental questions arise: who owns cultural heritages and who is entitled to legally trade a cultural property? This paper traces back to the definition and ownership theory of cultural heritage and subsequently tries to establish a balanced model for regulating international trade of cultural property.

Yao-Ming Hsu is an associate professor now in National Cheng-Chi University in Taipei. He got his LLB & LLM in National Taiwan University, Taipei. Besides, he got another two LLM and his Doctor of Law in Université Aix-Marseille, France. Professor Hsu have been visiting scholar and professor in University of Wuhan (Wuhan, China) and People's University (Beijing, China) and UC Berkeley (California, USA). He already published two books and more than 100 articles in Taiwanese law journal, and several articles in English and French in international colloquium collections. Now he mainly focuses his researches on WTO Law, EU Law, Private International Law, International Environmental Law, Bioethics and Law, and International Cultural Heritage and Law, under several research projects sponsored by Taiwan Ministry of Technology and also by international bilateral projects.

Mapping the Potential Interactions Between UNESCO's Intangible Cultural Heritage Regime and World Trade Law (Tomer Broude)

Momentarily setting aside theoretical, political and practical critiques of UNESCO's Intangible Cultural Heritage (ICH) regime, a conservative reading of the Convention for the Safeguarding of ICH (CSICH) would conclude that the CSICH was not intended to have legal repercussions in international trade, or

interactions with world trade law (and in fact, some pains were taken to avoid such implications, such as Article 3(b) CSICH on the relationship to other international instruments, which should apply vis-à-vis the TRIPS but possibly also to GATT, TBT and SPS insofar as they relate to "biological and ecological resources". However, it seems inevitable that ICH will indeed have such repercussions and interactions under various scenarios. The "Representative List of the Intangible Cultural Heritage of Humanity" under the CSICH includes numerous elements with international commercial potential and potential trade law implications, such as: traditional performing arts that may raise issues relating to intellectual property, entertainment services, labeling and marketing (e.g., the Capoeira circle (Brazil) or Marimba music, traditional chants and dances from the Colombia South Pacific region and Esmeraldas Province of Ecuador); methods of producing particular goods (e.g., Copper craftsmanship of Lahij (Azerbaijan), or Traditional skills of carpet weaving in Fars (Iran) – and four other carpet-making inscribed items) with implications for all disciplines in trade in goods; local festivals (e.g., summer solstice fire festivals in the Pyrenees) that interact with tourism and travel services; medical practices (e.g., Acupuncture and moxibustion of traditional Chinese medicine) also with services and intellectual property dimensions; other practices and knowledge relating to pharmaceutical goods, human health and agriculture (e.g., Argan, practices and know-how concerning the argan tree (Morocco)); and agrarian practices associated with certain products (e.g., Traditional agricultural practice of cultivating the 'vite ad alberello' (head-trained bush vines) of the community of Pantelleria (Italy)). In some cases, inclusion in the UNESCO ICH list has raised hopes not only of cultural safeguarding as such, but of international commercial success, and has been promoted by economically interested parties, including corporations that have lobbied for ICH recognition.

These potential and emerging trade-ICH dynamics require not only some critical reflection (i.e., is safeguarding of ICH ultimately dependent on commodification or at least significantly prone to commercial capture?; Is there a 'political economy' of ICH?) but also basic legal analysis. This presentation undertakes a mapping exercise of the many interactions, using two case-studies on ICH items deriving from culinary culture. These are the Mediterranean Diet and Korean Kimchi/Kimjang - which are telling for both the general understanding of cultural heritage and interactions with trade law. As far as world trade law is concerned both cases raise issues of GATT, TBT, SPS, TRIPS, anti-dumping and subsidies. The presentation will also address briefly GATS implications which do not arise in these two cases.

Prof. Tomer Brude, Vice-Dean, Sylvan M. Cohen Chair in Law, Faculty of Law and Department of International Relations, Hebrew University of Jerusalem

Tomer Broude specializes in public international law and international economic law, particularly international trade and investment, human rights, dispute settlement, development and cultural diversity. He is currently working on a book project on Behavioral Economics and International Law, to be published by Oxford University Press in 2017 (co-authored with Anne van Aaken).

Latest publications:

Who Cares About Regulatory Space in BITs? A Comparative International Approach, (with Yoram Haftel and Alex Thompson), Comparative International Law, Anthea Roberts, Pierre- Hugues Verdier, Mila Versteeg and Paul B. Stephan, eds. (Oxford: Oxford University Press, 2016, forthcoming).
A Field of His Own: John Jackson and the Consolidation of International Economic Law as a Scholarly Domain, Forthcoming, Journal of International Economic Law, 2016.
Selective Subsidiarity and Dialectic Deference In the World Trade Organization, Law and Contemporary Problems, forthcoming, 2016.
From Chianti to Kimchi: Geographical Indications, Intangible Cultural Heritage, and Their Unsettled Relationship with Cultural Diversity, in Irene Calboli & Ng-Loy Wee Loon (eds.), Geographical Indications at the Crossroads of Trade, Development, and Culture: Perspectives from Asia Pacific (Cambridge: Cambridge University Press, 2016, Forthcoming).

The Importance of Geographical Indications of Origin for Promoting Locality in International Trade and Safeguarding Cultural Heritage (Irene Calboli)

The protection of Geographical Indications of Origin (GIs) has historically been the subject of heated debates among lawyers and economists at the national level and as part of international trade negotiations. As fierce defenders of GIs, European countries have traditionally advocated that GIs should be protected because they identify unique product qualities and characteristics linked to the specific terroir where products are grown, processed, or manufactured. In the past years, this claim, and the protection of GIs, has been supported also by several developing countries, eager to protect their national products and promote them in the international market. Hence, the United States, Canada, Australia, and other "new world" countries have often criticized protecting GIs—particularly GIs from the "old world"—and have argued that, thanks to modern agricultural and manufacturing techniques, most products today can be replicated almost anywhere. In addition, "new world" countries have argued that many GIs have long been generic terms on their soil and that their "new" protection would create unnecessary detriment to businesses and confusion among consumers which would be deprived from using terms currently in the public domain.

The adoption of the International Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS) in 1994 marked an important victory for the European approach by establishing a minimum standard for protecting GIs for all countries members of the World Trade Organization (WTO). Specifically, while acknowledging exceptions and "grandfathering" existing trademark rights, TRIPS required all WTO members to establish minimal protection for GIs as part of their international obligations as well as to implement national systems of enhanced protection for GIs identifying wines and spirits. In addition, TRIPS required its members to agree to participate in future negotiations to expand the enhanced protection granted to GIs identifying wines and spirits to GIs in general. Yet, despite several attempts to promote TRIPS' built-in GI agenda, the debate over GIs' protection has not advanced within the WTO framework, at least to date, due to the irreconcilable positions of the pro-GIs and anti-GIs camps. Instead, discussions over GIs have recently continued primarily as part of a bilateral and plurilateral trade agreements. This includes several international trade agreements (FTAs) concluded or under negotiations between the EU and other countries, including South Korea, Singapore, Vietnam, India, Canada, the U.S., and several countries in South

America. As part of these FTAs, a variety of compromising solutions have been identified to protect (to some degrees) GIs, even though much controversy continues to characterize this area of international intellectual property and trade law.

In this paper, I highlight the unique benefits of GI protection, and I advocate for the acceptance of a higher degree of this protection across all WTO members. Namely, I underscore that GI protection may promote the development of niche-markets, incentivize investments in high quality products, and contribute to creating a mechanism of rewards and accountability for producers, thus supporting more sustainable development in the GI-denominated regions. I also stress that, besides purely economic benefits, GIs can serve to protect culture-related interests. Specifically, I support that GIs can promote local products and their associated knowledge as cultural expressions. This not only could contribute to preserving cultural heritage and existing traditions—it could also lead to (re)affirming cultural identities and promoting these identities nationally and internationally.

The growing importance of culture-related concerns led to the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage under the patronage of United Nation Educational, Scientific and Cultural Organization (UNESCO) in 2003. The Convention refers to "intangible cultural heritage" as "the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artifacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage." In 2005, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions was also adopted by the UNESCO General Conference. Under this framework, GIs seem well suited for the protection of culture-based interests. In particular, GI-denominated products frequently embody a cultural component, which relates to local and traditional knowledge of the region where the products are made. In particular, as expressions of local terroir, GIs offer incentives for the preservation of culture as embodied in the traditional methods of production, which stems directly from the use of the natural resources and the traditional yet evolving knowledge of geographical regions.

Ultimately, because GIs protect the terroir and its link with the products and manufacturing techniques, GIs promote cultural diversity—a crucial value in an economy driven towards "globalization of everything"—by recognizing and incentivizing the preservation of local cultural practices and local knowledge. Accordingly, the debate over GI protection should finally and explicitly recognize the cultural interests that can be promoted with GIs, and add this culture-related component to the ongoing discussion of GIs as trade-related instruments to promote local products in the international market.

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University in Madrid, the University of Nijmegen, the University of Amsterdam, the University of Essex, the Chinese University of Hong-Kong, the European Institute of Macau, and the University of Queensland.

Dr. Calboli's articles and chapters have appeared in leading volumes, peer reviewed journals, and student edited law reviews. Her recent books include TRADEMARK PROTECTION AND TERRITORIALITY CHALLENGES IN A GLOBAL ECONOMY (Edward Elgar, 2014, edited with E. Lee), DIVERSITY IN INTELLECTUAL PROPERTY: IDENTITIES, INTERESTS, AND INTERSECTIONS (Cambridge University Press, 2015, edited with S. Ragavan), THE LAW AND PRACTICE OF TRADEMARK TRANSACTIONS (Edward Elgar, 2016, edited with J. de Werra), and the RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY EXHAUSTION AND PARALLEL IMPORTS (Edward Elgar, 2016, edited with E. Lee). She currently completing the text book GLOBAL ISSUES IN TRADEMARK LAW (West, forthcoming 2017, with C.H. Farley), the monograph INTELLECTUAL PROPERTY EXHAUSTION: A CRITICAL AND COMPARATIVE APPROACH (Cambridge University Press, forthcoming 2017, with Shubha Ghosh), and the edited volume GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC (Cambridge University Press, forthcoming 2017, with W.L. Ng-Loy).

Dr. Calboli is an elected member of the American Law Institute, an associate member of the Singapore Academy of Law, and is currently serving in the Executive Committee of the Intellectual Property Section of the Association of American Law Schools, the Board of the European Policy for Intellectual Property Law Association, and the Legislation and Regulation Committee of the International Trademark Association. She is also the past Co-Chair of the Professors' Team of the Academic Committee of the International Trademark Association (INTA) and a past member of the executive committee of the Art Law Section of the Association of American Law Schools. She is also an active member of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) and the Association Litteraire and Artistique Internationale USA (ALAI-USA).

The UNESCO Convention on Cultural Diversity and WTO Law: Conflict Clauses and Principles of Interpretations to Address Cultural and Trade Interfaces (Leonardo Borlini)

The Convention is a comprehensive and far-reaching instrument setting out the global standards for cultural diversity. However, other international legal regimes also affect the leeway that States have in preserving and promoting cultural diversity. A crucial role is played in this respect by the international trade rules of the WTO. Cultural goods and services have, indeed, a dual nature: not only do they have a cultural and social function, but they are also of an economic (and tradable) nature. On the one hand, in the view of many States the heavyweight of multilateral trade agreements and the efficient dispute settlement system of the WTO tilt the balance towards a merely commercial approach to cultural goods and services, ignoring their valuable role as carriers of different cultural traditions and expressions. On the other, State measures that, in implementing the 2005 UNESCO Convention, protect or promote the diversity of cultural expression within a State's territory may conflict with the WTO agreements. More precisely, they will not always be contrary to the basic

premise of the WTO: substantial reduction of tariffs and other barriers to trade and elimination of discriminatory treatment in international trade relations.2 Nonetheless, very often such measures will clearly restrict free trade and impose dissimilar treatment on cultural products of different origins. The present article aims at examining whether the UNESCO Convention on Cultural Diversity can be reconciled with the WTO agreements by using the existing methods and techniques that deal with fragmentation in international law. It will investigate the problem in the form of a double question: In which cases does the interface between trade and cultural diversity legal regimes constitute a true normative conflicts? Given that there is 'no homogeneous, hierarchical meta-system realistically available to do away with such problems (of coordination at the international level)'3, to what extent do existing legal methods or techniques to deal with fragmentation of international law ease the tensions between the two normative regimes at issue?

After mapping the main cases of potential conflicts between State measures that protect and promote cultural diversity and the WTO agreements (especially, the GATT and the GATS), the article will briefly consider the general principles of resolving treaty conflicts and conclude that they are in casu largely not sufficient. This is why, it was desirable to fix the will of the parties to the UNESCO Convention concerning its position in the international legal framework in a specific 'conflict clause' which is indeed contained in its Article 20. The article will thus examine the inherent obligations of such clause in detail and show that, while it certainly has inter alia the merit of calling for reliance

on the Convention when applying and interpreting other treaties, at the same time, it is highly uncertain whether the WTO panels and Appellate Body will be willing to consider the Convention as a tool for interpreting WTO provisions, given the explicit disapproval of the Convention by at least one WTO Member (namely, the US). Yet, as expressly acknowledged by the Panel in EC-Biotech, rules of international law that are not applicable in the relations between all the WTO Members can still be used for interpreting the terms of WTO agreements to define their 'ordinary meaning'.4 Embracing such a perspective, the article will question if and to what extent the adoption of a holistic approach to treaty interpretation – one in which the treaty interpreter looks thoroughly at all relevant elements of the general rule on treaty interpretation pursuant to under Article 31(1) of the Vienna Convention of the Law of the Treaties – and, particularly, the reliance on the Convention on Cultural Protection to interpret the 'ordinary meaning' of the expressions 'like products' in Art. III of the GATT, 'artistic treasures' in Art. XX(f) of the GATT, 'public moral and public order' in Art. XX(a) of the GATT and Art. XIV(a) of the GATS, and 'laws and regulations' in Art. XX(d) of the GATT and Art. XIV(c) of the GATS, could make the (application of the) WTO agreements more cultural sensitive.

Leonardo S. Borlini is Assistant Professor of EU Law and a qualified lawyer at the Bar of Milan. Dr. Borlini holds a BA cum laude in Economics and Business Administration from Bocconi University, a BA cum laude in Law from the University of Pavia, an LLM (Magister Legum) from the University of Cambridge, and a PhD in International Law and Economics from Bocconi University. He was visiting scholar at the Legal Department of the International Monetary Fund (Fall 2014), at the World Bank Institute (June 2011) and at Wolfson College, University of Cambridge, in 2008. He has been teaching in numerous academic institutions, including the State University of Milan, the Free University of Social Studies LUISS of Rome, the International Institute of Higher Studies in Criminal Science (ISISC), the Beijing Normal University, the Institute for Advanced Study of Pavia, (IUSS-University of Pavia), the Higher School of Public Administration of the Italian Council of Ministers, the Maxwell School of Public Affairs of Syracuse University and the Free University Institute "Luigi Catteneo" of Castellanza. He has published nationally and internationally on issues ranging from the international law and economics of

corruption and anti-money laundering, to competition policy and antitrust law, international economic law, WTO and EU legal systems. Since November 2013 he is author for Lavoce.info. He is a member of the United Nations Expert Group working on Anti-Corruption Academic materials (Academic Initiative Against Corruption) and of the Wolfson College of the University of Cambridge (UK).
Besides his academic activity, Dr. Borlini exercises a number of consultancy work. In addition to the European Commission, the International Monetary Fund (IMF), the World Bank and the Inter-American Development Bank (IDB), he was a consultant for the Italian Competition Authority, KPMG, U4 -Anti-Corruption Resource Centre at Chr. Michelsen Institute, Transparency International and Grande Stevens Law Firm. He is currently a consultant, the Inter-American Development Bank (IDB), the Independent Committee for the reform of the anti-corruption prevention and compliance system of the Finmeccanica Group and for the European Union Commission and the Government of Vietnam in the context of the European Trade Policy and Investment Support Project (EU-MUTRAP).
At an international level, Dr. Borlini was part of the Italian delegation at both (i) the OECD Working Group on Bribery's meeting for the evaluation of the Italian implementing law of the 1997 OECD Anti-Bribery Convention and (ii) the V Conference of State Parties to the UNCAC in November 2013, (iii) to the UNCAC Implementation Review Group (IRG) on Prevention and Asset Recovery in September 2014, and (iv) as an expert invited to the OECD Working group on Bribery's on-site evaluation (phase three) of the national implementing law of the 1997 OECD Convention on corruption of foreign public officials in international business transactions and to on –site Third Mutual Evaluation of Italy by the Group of State Against Corruptions (GRECO; Council of Europe).

EU and UNESCO Approaches Concerning the Cultural Sites' Governance (Maria Luisa Tufano and Sara Pugliese)

The speech proposes a comparison between UNESCO and EU about the methods, practices and instrument the two OIs apply to stimulate innovative forms of governance within the cultural institutions (Public Authorities competent on cultural matters, Museums' and Cultural sites' Management, NGO committed in cultural heritage protection, valorization, communication).
Generally, the UNESCO resorts to the "listing/delisting" mechanism to induce the States to encourage the cultural institutions to the compliance with UNESCO objectives. It is a "composed" method. Indeed, as the UNESCO offers technical assistance and funds to the States which comply with its objectives and guidelines, its method could be considered a "reward" mechanism. At the same time, the UNESCO has also a sanctioning power against the States which fail to assure the adequate preservation of the cultural sites included within the World Heritage List, as it can delist the cultural sites that are not properly preserved. Being a heavy sanction, delisting can be considered a "command&control" instrument. However delisting is a measure of "last resort" and its application is very rare. So the States are induced to be uncompliant with the UNESCO guidelines and they don't transfer them to the domestic cultural institutions.

The EU has a rather recent competence in cultural sector, as the Maastricht Treaty introduced a specific Title concerning this matter. The cultural EU objectives, unchanged until the last Treaty modification made by the Lisbon Treaty, consist in "contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore" (article 167 TFEU).
In order to realize the cultural objectives, in the first times the EU resorted only to reward mechanisms, consisting in funding programs.
Recently the EU considered useful applying in the cultural sector the Open Method of Governance. This method, which assimilates the European Cultural Policy to the other so called "supporting" competences, attempts to induce the States to the compliance with the EU objectives through soft mechanisms (as non-binding guidelines or exchange of best practices) more than through hard law and infraction procedures.
Even if the recourse to soft mechanisms of governance could appear effective in the cultural sectors, where both States are really jealous of their autonomy, sometimes it could generate within the cultural institutions an underestimation of the importance to comply with EU guidelines.
Starting from an analysis of the strengths and weaknesses of the UNESCO and EU methods, the speech attempts an assessment of their effectiveness to orient the cultural institutions behaviors and choices and to influence their governance.

Prof. Maria Luisa Tufano is Full Professor of EU Law at the Universityof Naples "Parthenope". She authored two volumes (M.L. Tufano, I *trasporti terrestri nella Cee,* Napoli, 1990; M.L. Tufano, *La c.d. eccezione di invalidità degli atti comunitari*, Napoli, 1996) and several papers concerning the Institutional and material issues of European integration.

She teaches EU Law (12 ECTS) within the Course of Law of the Legal Department of Universityof Naples "Parthenope". She has taught in several Degree courses (Course of Political Sciences, University of Naples L'Orientale; Course of Law, Universityof Naples "Parthenope"; Course of Science of Public Administration, Universityof Naples "Parthenope";) and in many post-lauream activities (Masters, Schools of Specialization, Phd programs, etc.), organized some International Conferences and was Scientific Responsible of several projects of national and European interest.
She is Coordinator of the Phd Course in "International and European Law of socio-economic development" and She is Director of the School of Specialization for Legal Professions of the University of Naples "Parthenope".
In recent years, She concentrated her activity on sectors concerning the environmental and cultural sites' management both as scientific responsible of projects (Principal Investigator for PRIN 2006 "Reconstruction of the juridical regime of fisheries zones and problems concerning its delimitation"*),* as author of papers concerning these subjects (M.L. Tufano, *Le zone di pesca: spazi per la* governance, in M.L. Tufano (edit.), *Zone di pesca: regime, strutture, funzioni*, Napoli, 2009, p. 9 -53; M.L. Tufano, *Oltre Montego Bay: la nuova*governance *del mare e la politica marittim aintegrata dell'UE*, in T. Vassalli di Danchenhausen (edit.), *Atti del Convegno in memoria di Luigi Sico*, Napoli, 2011, p. 199-210; M.L. TUFANO, L. BRIZZI, S. PUGLIESE, V. SPAGNA, *Towards an effective method of governance of cultural heritage sites (CH sites)*, in AA.VV., *Cultural Heritage. Scenarios 2016*, Venezia, forthcoming).
She was Scientific and Teaching Responsible of projects, post-lauream courses and training activities concerning cultural heritage.
In particular She was:

- Scientific Coordinator for the University of Naples “Parthenope” of the project "Reti di eccellenza tra Università, Centri di Ricerca e Imprese “TPCC – ValCSiP “Tracciabilità del Patrimonio Culturale della Campania: valorizzazione, comunicazione, sistemi e prodotti” POR Campania FSE 2007/2013 (2012-2015),
-Scientific Responsible of the project “Valorizzazione e gestione dei beni culturali: sfide vecchie e nuove per le amministrazioni locali” and teacher in the related training program for PA servants organized by ANCI and UPI (2015);
- Scientific Responsible of the Project for the publication “CULTURAL HERITAGE SCENARIOs 2015” (2016-2018), organized with Museo Archeologico di Napoli, Teatro San Carlo and Polo museale della Campania;
- Director of the Universitary Master of II level in “Tutela, europrogettazione e management del patrimonio culturale” (2014-2015) and teacher within the Master course;
-Director of Summer School in “Tutela, europrogettazione e management del patrimonio culturale”, Università di Napoli “Parthenope”, 13-30 April 2015.
In 2015 she organized the following International conferences concerning cultural heritage:
Patrimonio e identità culturale tra coesione e conflitti: un approccio multilivello, Napoli, Università “Parthenope”, 17 novembre 2014;
Patrimonio e identità culturale come risorsa o come vincolo: scelte regolative e difficoltà applicative, Napoli, Università “Parthenope”, 22-23 aprile 2015;
In 2016 She was selected to participate to the in the Second All Art and Heritage Law Conference (Geneva 24-25 June 2016) with the speech entitled “*Filling the gap between IOs’ soft law and cultural institutions’ governance*”. A paper related to the same subject, co-authored with Sara Pugliese, is forthcoming.

Sara Pugliese is Permanent Researcher of EU Law at the University of Naples “Parthenope”. She authored several papers concerning the international organizations and EU law and policies, with particular interest on subjects related to international and EU law of environmental and cultural sites’ management (*Dalle aree protette alla valutazione del rischio: verso una nuova* governance *internazionale in materia di biodiversità?,* in *La Comunità internazionale*, vol. 4, 2011, p. 653-673; *La biodiversità nel mosaic paesistico-culturale: dale aree protette alla pianificazione territorial sostenibile,* in *PAYSAGE/TOPSCAPE,* 2012, p. 690-706; M.L. TUFANO, L. BRIZZI, S. PUGLIESE, V. SPAGNA, *Towards an effective method of governance of cultural heritage sites (CH sites)*, in AA.VV., *Cultural Heritage. Scenarios 2016*, Venezia, forthcoming).
She was co-speaker at the Conference “The governance of UNESCO cultural landscapes between universal values and local identity: the case of Campania” in the XVII International Interdisciplinary Conference “Utopias and dystopias in landscape and cultural mosaic. Visions Values Vulnerability”, Udine, 27-28 June 2013 and coauthored the paper S. Pugliese S, A. D'Auria, *The Governance of Unesco Cultural Landscapes Between Universal Values And Local Identity: The Case Of Campania,* in *Society, Integration, Education,* 2013, p. 177-188 (Indexed by the Catalogue ISI Web of Science).

She was member of the research group of the University of Naples “Parthenope” “Reti di eccellenza tra le Università campane TPCC – ValCSiP: Tracciabilità del Patrimonio Culturale della Campania: valorizzazione, comunicazione, sistemi e prodotti”(2012-2015).
She is coordinator of the research group activities of the “Project for the publication “CULTURAL HERITAGE SCENARIOs 2015” (2016-2018).
She was charged of teaching activities within the Master of II level in “Tutela, europrogettazione e management del patrimonioculturale” (2014-2015) and within the project “Valorizzazione e gestione dei beni culturali: sfide vecchie e nuove per le amministrazioni locali”, training program for PA servants organized by ANCI and UPI (2015).
In 2014 she was winner of a mobility grant for research activity, project “PROGETTO TPCC – ValCSiP*“Tracciabilità del Patrimonio Culturale della Campania:valorizzazione, comunicazione, sistemi e prodotti*”. Title “*Recognition and analysis of IO programs aimed to make the tourism a tool of sustainable development*”, *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht*, Heidelberg, Germany.
In 2015 she was winner of a mobility grant for research activity, project “PROGETTO TPCC – ValCSiP*“Tracciabilità del Patrimonio Culturale della Campania:valorizzazione, comunicazione, sistemi e prodotti*”. Title “*Recognition and analysis of IOs programs aimed to make the tourism a tool of sustainable development*”, Research activities, Central Library of European Commission, Bruxelles.
In 2016 she was selected to participate to the Second All Art and Heritage Law Conference (Geneva 24- 25 June 2016) with the speech entitled “*Filling the gap between IOs’ soft law and cultural institutions’ governance*”. A paper related to the same subject, co-authored with Prof. Tufano, is forthcoming.

Cultural activities and the Commission Notice of 19th May 2016 on the notion of State aid (Pieralberto Mengozzi)

The essay analyses the Commission Notice of 19th May 2016, on the notion of State aid as referred to in Article 107(1) TFEU, as far as State aid for culture and heritage conservation is concerned. Previously, in Regulation n. 651/2014, the Commission had exempted Member States from the obligation to notify aid in this field, but not from the application of other EU competition rules. This Regulation had faced criticisms because it listed exhaustively State measures considered as State aid compatible with the internal market instead of identifying those situations which are exceptionally subject to the respect of State aid rules. In the framework of public consultations launched by the Commission on the proposal for a Notice on State aid notion, Italian authorities went even beyond these criticisms as far as financial support to cultural activities is concerned (museums, archaeological sites, including their management) with the exception of audiovisual goods and services (for these latter the Commission had previously devoted three different notices, in 2001, 2009 and 2013). According to the Italian authorities, since the cultural activities mentioned above do not qualify as economic activities, financial support in their favor cannot be considered as State aid. The Commission Notice of 2016 shows a total agreement with the Italian position. Consequently, the Notice exempts the recipients of such financial support from all obligations required by State aid rules.

According to the author, the stand so taken by the Commission in its Notice is compatible with Regulation n. 651/2014, in spite of the lower hierarchy level of the first in respect to the second. In fact, the Commission Notice respects the Treaty's rules and its Regulation does not seek to give an exhaustive interpretation of the same rules.

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ACADEMIC ACTIVITY - Teaching Experience

Since 2016 Adjunct Professor of European Union Law in the Law School – University of Bologna - Ravenna Campus
November 2015 – Present: Adjunct Professor of International law in the Political Sciences School – University of Bologna
November 2008 – Present: Adjunct Professor of European Union Law in the Economics, Management, and Statistics School – University of Bologna - Forlì Campus
2012-2013: Seminars on European Union Law – School of Medicine (Dietistic First cycle degree/Bachelor) – University of Bologna
March – April 2008 Seminars on European Private Law and European Union Law and in the Postgraduate Programme of "Centro Ricerche e Studi Direzionali" (CERISDI) of Palermo
2006-2007: Lectures in the University of Ferrara, Firenze and Milano on the Consumers Law and EU Law
Since 2006 member of the editorial board of the law journal Contratto e impresa/Europa

POSTGRADUATE ACTIVITIES

2007-2008: Research Contract - Faculty of Economics - University of Bologna
2004-2006: Post doctorate scholarship - University of Bologna
2001-2004: PhD Courses in Civil Law - University of Bologna
2000-2002: Research contract - "A. Cicu" Law Department - University of Bologna
1998-1999: Specialisation course on European Union Law with the elaboration of a final thesis on "EC law and the form of acts concerning the contractual relations"
Since November 1998: Cooperation with the Chair of Civil Law of the Faculty Law - University of Bologna

Recent Publications

BOOKS:

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Il Trattato sul Meccanismo di stabilità (MES) e la pronuncia della Corte di giustizia nel caso Pringle, in Studi sull'integrazione europea, 2013
Commento all'*Art. 12 TUE* (I Parlamenti Nazionali ed il funzionamento dell'Unione) in Trattati dell'Unione Europea, a cura di Antonio Tizzano, Milano, 2014
Commento agli artt. *Art. 12 TFUE, Art. 169 TFUE* (Protezione dei consumatori), in Trattati dell'Unione Europea, a cura di Antonio Tizzano, Milano, 2014
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Il Two Pack ed il funzionamento del Meccanismo Europeo di Stabilità, in Verso i 60 anni dai Trattati di Roma. Stato e prospettive dell'Unione Europea, a cura di Antonio Tizzano, Torino, 2016.

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The new generation of EU Free Trade Agreements: heralding the end of public financial support to maintain cultural heritage and diversity?
(Freya Baetens)

Through the entry into force of the Lisbon Treaty in 2009, the competences of the European Union (EU) were expanded to cover, among other matters, foreign direct investment. Since then, the Council of the EU has given a mandate to the European Commission to initiate negotiations for EU-wide free trade agreements (FTAs) with several key trading partners, including the US (the Transatlantic Trade and Investment Partnership, or TTIP), Canada (the Comprehensive Economic Trade Agreement, or CETA), Singapore and Vietnam.

Third countries have often expressed a strong interest in gaining access to the EU services market, including to cultural sectors such as audiovisual services. The EU's stance, however, is that cultural services should be treated differently from other 'regular' services so as to minimize the potential impact of these FTAs on any sector related to cultural heritage. More specifically, in light of the EU's standard practice in previous FTAs not to negotiate the circumstances in which public subsidies supporting cultural diversity can be granted, the European Commission stated that:

> TTIP is no exception: it will not affect the ability of the EU or EU Member States to provide financial support to cultural industries. National authorities will remain free to subsidise any type of cultural activities, such as live performances, festivals, theatres, musicals and publishing. They will also be able to discriminate against US suppliers. Such public financial support may take a variety of forms, such as direct grants, tax advantages, debt offsetting and guarantees.
>
> The only legal constraint is that the subsidy complies with EU rules on state aid. TTIP – like all previous trade agreements – will not have any effect on this. Claims that TTIP will limit subsidies to cultural activities are simply wrong.

Even though no similar express statements have been made with regard to the other pending agreements, it is to be assumed that this assertion would equally apply.

This paper aims to scrutinize this bold statement of the European Commission, focusing on the four aforementioned agreements which (1) in the case of CETA, have been adopted by the European Commission and presented to the Council for signature and provisional application; (2) in the case of the EU-Vietnam FTA, form currently the object of legal revision before being presented to the Council or (3) in the case of the EU-Singapore FTA, are the subject of a question concerning their mixed or exclusive status presented to the Court of Justice of the EU; or, (4) in the case of TTIP, are available as extensive textual proposals made by the European Commission.

First, this paper examines how the European Commission is dealing with cultural matters which may potentially be affected by its new FTAs, explaining what is covered by "cultural sectors" or "cultural industries". This part also investigates the so-called "cultural exceptions" or "cultural exemptions" included in various sections of the agreements, focusing generally on the chapters dealing with services and investment protection.

Secondly, in spite of the explicitly expressed but difficult to apply right to regulate ("right to adopt, maintain and enforce measures necessary to pursue legitimate policy objectives such as […] promoting and protecting cultural diversity"),6 this paper anticipates, based on an analysis of existing case law, legal issues which may arise under these agreements and form the object of investor-State disputes. Examples include State financial measures which affect the acquisition of foreign ownership and intellectual property; potential (indirect) expropriation claims; and discriminatory treatment allegations.

The four agreements (as currently conceived) diverge significantly in their treatment of cultural heritage, ranging from extensive provisions in CETA, through sparse references in TTIP and the EU-Vietnam FTA, to no mention at all in the services and investment chapters of the EU-Singapore FTA. This fragmentation of regulation of the cultural industry risks creating manoeuvring room for investors invoking most-favoured-nation clauses in order to achieve protection under FTAs with no or sparse cultural exemptions.

Although the analysis in this paper is centred on four EU agreements, its conclusions provide a warning signal for cultural heritage protection under other preferential trade and investment treaties, such as the Transpacific Partnership (TPP) and various bilateral arrangements which are currently being

negotiated. More broadly speaking, the recommendations of this paper bear relevance for any public financial support given to maintain diversity – be it cultural, social or environmental.

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The Interplay between Cultural Heritage Protections in Regional Trade Agreements and Investor-State Arbitration: A Dissection of the Cultural Exceptions in CETA, EU-Vietnam FTA, and TPP (Elsa Sardinha)

Cultural heritage is intrinsically multidimensional, and encompasses inherited values, practices, and traditions, as well as culturally significant monuments, archaeological resources, built heritage, and cultural heritage landscapes. Aside from providing a window into the past and a gateway to better understanding the present, the underlying object of cultural heritage shares considerable affinity with various legal systems. In fact, it has spawned its own specific cultural legal schemes, which intersect – and sometimes conflict – with other regimes. With regard to the regulation of international trade relationships between investors and States, for instance, "[i]nternational cultural law and international investment law may be seen as *complementary* because cultural resources can foster human development and economic growth, and foreign direct investment is aimed at promoting development."
States appear to be increasingly acknowledging the challenging, and sometimes contradictory, interplay between the protection of cultural heritage and the promotion of investment in the context of resolving their disputes through investor-State arbitration. Recent investment treaties and a handful of arbitral awards show that States and arbitral tribunals are turning their minds to the cross-cutting issues which arise when cultural heritage intersects with, or sometimes disrupts, investors' expectations. It is time for scholarship to follow suit and contribute to the debate. Just like archaeologists working tirelessly to

unearth humanity's cultural treasures, the task of commentators is to dig deep into law and policy so as to better understand the interactions and contradictions between international cultural law and international investment law.

With this in mind, my paper will undertake a detailed comparative exploration of the cultural heritage protections included in the preambles and investment chapters of the final, legally scrubbed version of the EU and Canada's Comprehensive Economic Trade Agreement (CETA), the EU-Vietnam Free Trade Agreement (EU-Vietnam FTA), and the Trans-Pacific Partnership (TPP). With a view to drawing broader conclusions about the future of investment law and disputes involving a cultural heritage element, and in assessing where treaty-drafting practice stands today, it will also be useful to take a retrospective look at NAFTA. My paper will also investigate the effect of certain exclusions and reservations for cultural heritage in the substantive investment protections in these agreements. The discussion will then examine a selected sample of cultural heritage-related investor-State awards (e.g. *Parkerings-Compagniet v. Lithuania* and *Bilcon v. Canada*), and assess whether these cases have adequately dealt with the cultural values at stake.

CETA and EU-Vietnam FTA are the most complex instruments of their kind ever negotiated by Canada and Vietnam, and arguably the most far-reaching ever negotiated by the EU. These agreements and the mechanisms they set up provide a very detailed body of law. Similarly, the TPP investment chapter is hailed as the "gold standard" in international investment law, the structure of which is said to reflect hard lessons learned from past mistakes. Its underlying, evolved regulatory approach may be seen to add clarity and predictability to the current regime – at a time when investor-State arbitration faces its greatest ever legitimacy crisis in the public arena – by reducing the discretion, or leeway, arbitral tribunals would otherwise enjoy when applying and interpreting broadly-drafted clauses. The inclusion of cultural concerns in the text of investment treaties empowers States to take into account cultural heritage in their regulatory policies. However, whilst these treaties represent a deliberate effort by States to negotiate the sort of exceptions that they expect to see arbitral tribunals apply, it is important to fully consider how this might play out in cases with a cultural heritage element.

CETA, EU-Vietnam FTA, and TPP reflect a notable shift towards more precision and detail in treaty-drafting practice, and a further enshrining of States' inherent right to regulate in furtherance of "legitimate policy objectives". However, they differ in the extent to which they articulate cultural heritage protections. For instance, the preamble to CETA expressly affirms that, as parties to the 2005 *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Canada and the EU will preserve, develop and implement their cultural policies, to support their cultural industries for the purpose of strengthening the diversity of cultural expressions, and to preserve their cultural identity, including through the use of regulatory measures and financial support.

This protection of States' right to regulate in the furtherance of "the promotion and protection of cultural diversity" also forms a central part of CETA's investment chapter.

In arguably less forceful language, the TPP also mentions cultural considerations in its preamble, recognizing "the importance of cultural identity and diversity […] and that trade and investment can expand opportunities to enrich cultural identity and diversity at home and abroad." The absence in the TPP of any mention of international instruments for the protection of culture, such as the *UNESCO Convention*, stands in stark contrast to CETA. Further, whilst CETA lists "cultural diversity" as a legitimate policy objective within the ambit of States' right to regulate, the TPP misses this opportunity, and only lists

other sectors such as public health, safety, the environment, public morals, etc. In so doing, the TPP appears to suggest that more trade and investment can only have a positive impact on culture, and fails to acknowledge the potential threats to cultural heritage imposed by foreign investors.
As these brief remarks foreshadow, it is indeed time to dig deep and get to the bottom of the interplay between investment law and the protection of cultural heritage. This will enable us not only to better understand the dynamic at play, but also to identify the best ways forward to protect – and hopefully harmonize – both fields' sometimes incompatible objectives.

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"Correcting Arbitral Tribunals: The Impetus for the Creation of an Appellate Mechanism to Review Errors of Law" (*ICSID Review, January 2017*)
"The Right to Regulate: Towards a New Regulatory Paradigm under Recent Free Trade Agreement Investment Chapters? A Dissection of the Trans-Pacific Partnership, Canada-EU Comprehensive Economic and Trade Agreement, and Singapore-EU Free Trade Agreement" (*under consideration by Hart Publishing in an edited volume of papers presented at the Bucerius Law Journal's International Investment Law Conference 22-23 April 2016*)
"The Interplay between Cultural Heritage Protections in Regional Trade Agreements and Investor-State Arbitration: A Dissection of the Cultural Exceptions in CETA, EU-Vietnam FTA, and TPP" (*anticipated in January 2017*, Scientific Committee of the International Conference UNESCO World Heritage Between Education and Economy – A Legal Analysis)
Principles of Bifurcation in Investor-State Arbitration" (*anticipated in January 2017,* in a special issue of *The Law & Practice of International Courts and Tribunals*, edited by Attila Massimiliano Tanzi & Filippo Fontanelli)
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The Treatment of Cultural Goods and Services in Trade Agreements: the Best, the Good and the Bad Practices of Canada, the EU and Some Other Countries (Véronique Guèvremont Ivana Otasevic)

For decades, the issue of coexistence of different cultures in the era of globalization arises. Several States are concerned about the supremacy of certain foreign cultures at whose expense the national cultural expressions, reflecting a particular culture, would find themselves condemned to the status of survival or even disappearance. The right of States to intervene for the protection of this culture, however, clashes with its international commitments in sectors other than cultural, and especially those arising from trade agreements. Faced with such a situation, members of the international community provided the international legal order with a *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted in Paris on 20th October 2005 (the 2005 Convention).
Our paper has as main objective to evaluate the behavior of the Parties to the 2005 Convention when negotiating and adopting bilateral and regional trade agreements. We will focus more specifically on the implementation of Articles 16 (Preferential treatment for developing countries) and 21 (International consultation and coordination) of the 2005 Convention, as reflected in the implementation of seventy-five bilateral and regional agreements since the

adoption of this legal instrument. Particular attention will be paid to the positions taken by the historical defenders of the 2005 Convention, such as Canada and the European Union, in the context of the CETA negotiations, TPP and TTIP.
Moreover, facing the rise of digital technologies in several areas of cultural industries and considering their impact, both real and potential, on the diversity of cultural expressions, our paper will give a special attention to the trade agreements that deal specifically with electronic commerce (e-commerce). Thus, in order to assess the real impact of the 2005 Convention on regional and bilateral agreements, especially those concluded by Canada and the EU, we will consider various legal techniques used by those States allowing them to protect and promote the diversity of cultural expressions within these agreements.

Véronique Guèvremont teaches international law with focus on culture, cultural diversity, trade and sustainable development. As an expert in trade and cultural policies, she was actively involved in the negotiation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. She published a book on WTO and Non Trade Values. She conducted several projects on the treatment of cultural goods and services in trade agreements. Recently she also published several articles and reports on the protection of cultural diversity in the digital environment. She is co-founder on the International network of Lawyers for the Diversity of Cultural Expressions and holds a new UNESCO Chair on the Diversity of Cultural Expressions (to be launched in November 2016)

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