

IMT School for Advanced Studies, Lucca

Lucca, Italy

**Religious Cultural Heritage and Political Contestation:
the Role of UNESCO**

**The Cases of the Old City of Hebron, the Four Medieval Monuments
in Kosovo and Metohija and the Temple of Preah Vihear**

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Bibliography

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Publications

1. *UNESCO, Religious Freedoms and World Cultural Heritage in the Old City of Jerusalem: the line of fire between challenges, comparisons and new perspectives*, (Stato, Chiese e Pluralismo Confessionale, 37/2018).
2. Referee of the book “The Art of Law in the International Community”, (Mary Ellen O’Connel, Cambridge University Press, May 2019), published in I- CONnect, October 2019.
3. *Cultural Heritage Law in Israel: From the Incorporation of Pre-Existing Laws on Cultural Heritage to a New Concept of Cultural Heritage in a Context of Competing Sovereignty*, (Diritto Ecclesiastico, 3-4/2019).
4. Cronache Amministrative 2014-2016, Rivista Trimestrale di Diritto Pubblico (Cultural Heritage Legislation, Labour Legislation, Educational Legislation, Health Legislation), (RTDP 3/2020).
5. Cronache Amministrative 2017-2019, Rivista Trimestrale di Diritto Pubblico (Cultural Heritage Legislation, Labour Legislation, Educational Legislation, Health Legislation), (RTDP 4/2020).
6. *The role of UN in time of political changes: Jerusalem and the West Bank Cultural Heritage Law in a Context of Competing Sovereignty*, *Revista General de Derecho Publico Comparado*, (RGDPC 28/2020).
7. Cronache Amministrative 2020-2021, Rivista Trimestrale di Diritto Pubblico (Cultural Heritage Legislation, Labour Legislation, Educational Legislation, Health Legislation).

Presentations

1. 1-3 July 2019, ICON-S Public Law in Times of Change?, Pontifica Universidad Católica de Chile: "The role of UN in time of political changes: the West Bank Cultural Heritage Law in a Context of Competing Sovereignty and the Creation of New National Identities through Religious Heritage Sites".
2. 7-8 September 2020, Tools for the Future: Legislation, Legal Structures and their Impact on the Art Market (Research Centre of the Slovenian Academy of Sciences and Arts/ France Stele Institute of Art History ZRC SAZU): "Palestine and UNESCO: Legislation, Legal Structure and the Art Market in a Context of Contested Sovereignty".
3. 6-9 July 2021, ICON-S (Online Conference), The Future of Public Law: "The Impact of UNESCO's Decisions and Contested Religious Heritage: Critical Issues and Challenges to the (Neutral) Application of UNESCO's Rules".

Abstract

Religious cultural heritage listed by UNESCO as World Heritage Sites or World Heritage Sites in Danger is chosen as a leading category of cultural heritage, taking into consideration that it is the object of claims between States. These two aspects are the ground for political claims on contested territories. Specific cases of contested religious heritage rooted in contested territories, such as the Palestinian-Israeli, Kosovo-Serbian and Cambodian-Thailand cases, are the object of the current examination.

In particular, three elements will be taken into consideration: a) how UNESCO and National Governments build the Outstanding Universal Value of these selected cases; b) how UNESCO considers the element of contestation in the decisional-making process related to the listing processes of contested sites; c) how intangible heritage has a relevance as a tool to enforce the political claims of parties.

In this perspective, UNESCO's decisions seem to have different impacts (*enforcement of national states/ political entities, impairment of national states/political entities, definition of borders*) while managing conflicts of sovereignties between States through religious cultural heritage.

"Enforcement of national states/political entities" is a recurrent expression used throughout the dissertation. The concept seems to be problematic if analyzed exclusively from the perspective of the classical theories of international law, but it is crucial to consider the context in which it has been coined and applied. More specifically, it is employed in occasion of this PhD thesis with specific reference to the nomination process of the City of Hebron/ Al-Khalil Old Town as an endangered site claimed by Israel and recognized by UNESCO as Palestinian (*Palestine vs. Israel, Chapter IV*). *"Impairment of national states/political entities"* is another phrasing frequently used throughout the dissertation. Once again, the concept seems to be problematic if analyzed exclusively from the perspective of the classical theories of international law, but the context in which it is directly referred to the case of the Four Medieval Monasteries, physically located in Kosovo and claimed by Kosovo, but listed by UNESCO in the Serbian List of the World Heritage in Danger (*Serbia vs. Kosovo, Chapter IV*). The last formulation, that on the *"definition of borders"*, is employed with explicit reference to the case of the Temple of Preah Vihear, located in the contested borders between Cambodia and Thailand, recognized by UNESCO as Cambodian and strenuously claimed by Thailand. The decisions taken by UNESCO in the three instances have straightforward political impacts thus resulting in the enforcement and/or impairment of States or definition of disputed borders.

Introduction

“Like art and politics, art and religion nourish each other in all cultures. [...] Much cultural property has been destroyed for political and religious reasons. As with politics, so with religion: What is useful and acceptable is encouraged, preserved, and exploited. What is uncongenial is discouraged and repressed”².

Religious cultural heritage is intrinsic in the memory and belief of people since time immemorial: in prehistoric times and before the advent of the three biggest monotheistic religions, people were used to invoke deities and spirits through shamans or artistic representations of what was believed to be sacred. For this reason, this research wants to put emphasis on religious cultural heritage. There are several aspects that are both the intrinsic qualities of this category and at the same time fundamental tools to examine the content and the impact of UNESCO's decisions.

The intrinsic qualities of this category, and namely, the emotional involvement, the ritualistic, the cultural, the art-historical and the architectural dimensions contribute to create a political prestige and a nationalistic aura that have oftentimes been the ground of frictions for the exercise of sovereign powers. In other words, the intrinsic qualities of religious cultural heritage become vehicles of powers, identity and geographical markers: in this sense, they assume a political connotation that is frequently legitimized through decisions taken by global institutions.

As a consequence, these intrinsic qualities of religious cultural heritage become all but neutral. This feature is the engine of the research. The aim is to shed a light on the dynamics behind some UNESCO's nominations. In this regard, common features and problems related to contested religious heritage are brought to life. Different approaches towards religious cultural heritage have been developed throughout the years by people and by national states, but the approach adopted by UNESCO and national governments in the selected case studies is worthy of investigation. The reason to investigate more deeply in the panorama of UNESCO's decisions is that these nominations challenge the rules that UNESCO itself creates and applies in different ways and with different results in the sensitive scenario of global nominations, thus shaking the cultural and political sensitivity of people and states. In this perspective, contested religious cultural heritage is an instrument to question the traditional pillars of UNESCO's system. The main reference is to the concepts of Outstanding Universal Value, Authenticity, Originality, Evaluation of the Values constituting the OUV, Decisional-

² J.H MERRYMAN, The Public Interest in Cultural Property, California Law Review, Vol. 77, no. 2, 1989, p. 352.

making Processes, Use of the Instruments set forth by UNESCO, such as Conventions and Operational Guidelines, and Intangible Heritage: their use acquires an extreme relevance within such a sensitive decision-making process. Hence, religious cultural heritage included in UNESCO's systems of protection is chosen as a leading category of cultural heritage, taking into consideration that it is the object of claims between States, thus creating the ground for political claims on a contested territory.

Specific cases of contested religious heritage, such as the Case of the Town of Hebron/Al-Khalil (Palestine vs. Israel), the Four Medieval Monuments (Kosovo vs. Serbia) and the Temple of Preah Vihear (Cambodia vs. Thailand) will be used to support the main hypothesis of the research. In order to assess the impact of UNESCO's decisions in a critical key, three elements will be taken into consideration: a) how UNESCO and National Governments build the Outstanding Universal Value in general and more specifically within the selected cases; b) how UNESCO considers the element of contestation in the decisional-making process related to the listing of contested sites; c) how intangible heritage has a relevance both in ordinary nominations and as a tool to enforce the claims of parties in case of contested heritage.

In this perspective, four are the main research questions of this project, thus representing the *fil rouge* along which the General Part of the research (chapters I, II, III) and the Special Part/Case Studies (chapter IV) spin around:

- 1) Are State Parties forging the formulation of the Outstanding Universal Value according to the political circumstances and public interests they want to emphasize through UNESCO's nomination? Is UNESCO evaluating the OUV in a scientific and impartial way or rather, is this evaluation implying a wide and flexible use of the instruments set forth by UNESCO? Is this instrumental use a physiology or a pathology?
- 2) The element of contestation is an additional factor that challenges an impartial and neutral evaluation of the OUV: what is the relevance of these political claims in the nomination process of the selected case studies?
- 3) Are the architectural techniques of construction, rituals practiced in sacred spaces, liturgies, and mythology (traditionally classified as intangible heritage) a sufficient tool to claim the ownership of (tangible) contested religious sites?
- 4) To what extent Cultural Heritage, and mainly Religious Cultural Heritage, represent the vehicle throughout which UNESCO has

enforced, impaired, defined the boundaries of National Identities in areas of competing sovereignty? Is Religious Cultural Heritage used as a political tool to enforce, impair national identities or define their boundaries?

These questions raise several problems, concerns and criticisms. In order to dismantle the challenges that UNESCO and National Governments find themselves in, the dissertation is divided in two parts.

The first three chapters are of a general nature and represent the structure that is going to be repeated in the special part. The last chapter examines those problems disclosed in the previous chapters with specific reference to the case of Hebron/Al-Khalil Old Town located in Palestine and claimed by Israel, the Four Medieval Monasteries located Kosovo and inscribed as Serbian, the Temple of Preah Vihear located in the disputed border between Cambodia and Thailand.

Chapter I wants to investigate the concepts of Outstanding Universal Value, Integrity and Authenticity related to Religious Cultural Heritage, considering that UNESCO is contemplating properties for inscription in the World Heritage List or in the List of the World Heritage in Danger if they possess Outstanding Universal Value. The examination envisages some critical considerations on the identification and recognition of the Outstanding Universal Value, the artistic, architectural, archaeological and cultural values behind it, their roles and uses. Indeed, the main purpose of Chapter I is that of eradicating the postulation that the Outstanding Universal Value has a universal conception, formulation and evaluation. It is not clear how, when and why certain religious sites are more Outstanding than other properties. These issues are indeed opening other tangled and unsolved aspects, such as those related to the instrumentalization/politicization of UNESCO's instruments and to their neutral and impartial application while shaping the OUV of religious sites.

Chapter II wants to take into consideration the element of contestation in UNESCO's nomination processes. The existence of holy sites, and namely, their physical presence in a circumscribed territory, is the object of claims for the exercise of sovereign powers in a contested territory. It is indeed relevant to try to understand if this last element is taken into consideration as an active element in shaping the value of religious sites in their cultural and legal dimension, especially when it comes to the relationship between States and UNESCO. In this perspective, States and UNESCO's decisions dealing with contested and

religious cultural heritage are a good ground to examine how UNESCO's instruments are used. In particular, the Tentative List, the World Heritage and the List of the World Heritage in Danger, are tools from which further reflections on the use of cultural heritage and on the use (neutral or not) of these legal instruments can be developed. The first aim of the chapter is to analyse UNESCO's mechanisms that States activate in order to include cultural sites on the World Heritage List, thus trying to understand which public interests are involved. The second aim is to shed a light on the inextricable link between the element of contestation of religious sites and their political use in UNESCO's decisions. Additionally, contestation acquires a more consistent dimension when religious sentiments are involved. Indeed, by designating (religious and contested) cultural heritage as representatives of the very best of the nation, States in the first place and then UNESCO are taking a decision that has a sensitive content and has an impact on the political structure of involved States. In this regard, I am wondering if public interests and sensitive issues are related to the existence of a conflict between sovereign powers, or rather, if this is a circumstance seen also in ordinary nomination processes that does not prejudicate a neutral and impartial application of UNESCO's rules. I am wondering if the existence of political, nationalistic, cultural and economic interests is a physiology or a pathology within the nomination process and to what extent the element of contestation is assuming a political connotation in Governments and in UNESCO's nomination processes. These reflections on the rules of elaborated by UNESCO impact also the traditional theories on the sovereignty of States, perhaps causing its erosion.

Chapter III wants to shed a light on intangible cultural heritage, that progressively became part of nomination processes dealing with non-contested and contested religious heritage. The value attributed to religious cultural heritage of Outstanding Universal Value is emphasized by the presence of intangible elements, such as architectural techniques of construction (based on religious lifestyles), religious rituals, liturgies and mythology. Although tangible and intangible heritage has been so far regulated as legally separated fields in UNESCO's practice, there are many examples of how intangible heritage has progressively become a substantial part of tangible heritage's nomination processes. In this regard, the current chapter wants to investigate rituals and architectural techniques of construction, conventionally known as ICH, as elements that progressively enter in UNESCO's nomination dossiers, both in situation of peace and in circumstances of conflict between States. Several problems derive from these reflections. I am wondering if these aspects are indirectly used to strengthen or impair the Outstanding Universal Value of sites inscribed

in the World Heritage List, if, when the territory and religious cultural heritage are contested between two distinct political entities, intangible heritage is used as a tool to undermine, define or strengthen political and cultural identities. More specifically, I am inquiring the role of rituals, mythology, liturgies and architectural techniques of construction as tools and evidence to claim the tangible aspects, thus enforcing the claims for the exercise of sovereign powers. In this perspective, if ICH follows UNESCO's listing mechanisms, including the attempt of evaluating in an objective way something that is intrinsically subjective, additional issues are related to the use of intangible heritage as a tool and instrument to attribute a national identity to those manifestations of the intangible heritage, thus being forced or enclosed within political/territorial borders.

The last part of the dissertation (Chapter IV) wants to study the attitude of UNESCO's decisions in three difficult nominations. On the one side, they present close interactions in view of the characteristics of the properties —they are all religious heritage sites deemed to possess OUV, and the political circumstances affecting the properties are not to be belittled because they are all object of conflict and claims between two States. On the other side, consistent differences are related to the impact of UNESCO's decisions in the political set up of these concerned States. The similarities and the discrepancies common to the three cases are challenging the neutral and impartial application of UNESCO's rules. The chapter opens a detailed overview based on the analysis of significant case studies (Special Part/Case Studies).

The first part analyses the tricky nomination of Hebron/Al-Khalil Old Town (List of the World Heritage in Danger), located in Palestine and sternly claimed by Israel. The quest starts from the evaluation of the OUV of the town made by the Palestinian Government and approved by the World Heritage Committee in 2017. The circumstances of this nomination, the way the OUV has been built by the Palestinian Government and assessed by UNESCO, the relevance given to the element of contestation, and the importance of intangible heritage (religious practices, architectural techniques of construction based on a religious lifestyle) are leading us to question if it is really possible to affirm that UNESCO's instruments are used in a neutral, objective and impartial way in such a sensitive context of competing sovereignty. Rather, since the impact of UNESCO's decision is noteworthy, I am wondering if it is not becoming a matter of exercise of discretionary powers in a pathological context of legal, political, cultural and religious friction.

The second part examines the risky nomination of the Four Medieval Monasteries (List of the World Heritage in Danger), located in Kosovo, listed as Serbian in 2004-2006, but vehemently claimed by Kosovo. This case as well presents several vulnerabilities and ambiguities when it comes to the analysis of the (Serbian) Outstanding Universal Value of the Monasteries, the State-Building Process occurring in Kosovo, the dispute between Serbia and Kosovo for the exercise of sovereign powers, and the existence of strong intangible heritage elements (rituals, liturgies, religious beliefs) in the nomination dossier. The problem is that in no other similar instances of conflict of sovereignties UNESCO recognized a contested religious heritage site as belonging to a State, notwithstanding its location within the boundaries of the emerging and equally sovereign State of Kosovo.

The third part explores the contentious nomination of the Temple of Preah Vihear (World Heritage List of Cambodia), located in the disputed border between Cambodia and Thailand. Several circumstances make this nomination a peculiar case, especially with respect to the formulation and assessment of the (Cambodian) Outstanding Universal Value, the pronouncement of the ICJ occurred in 1962 and 2013, the existence of an active conflict before and after the nomination, and the presence of intangible heritage elements encased in the nomination dossier (mythology, religious rituals). The critical issue of this nomination is related to the inclusion of the site in the World Heritage List, even though part of the buffer zone of the property is contested by Thailand. Additionally, sovereignty over the property has not been previously assigned to Cambodia nor to Thailand.

The main remark of the research is that the instruments used by UNESCO are demonstrated to be non-neutral: contrariwise, the circumstance of contestation, the intrinsic/subjective attributes of religious heritage and the decisions taken by UNESCO turn out to be powerful vehicles with a strong political impact. The result of UNESCO's decision is impinging.

Generally, all the three cases challenge not only the neutral and impartial application of UNESCO's rules, but also those traditional principles of international law on the sovereignty of states.

The case of Palestine shows that through UNESCO's decision on Hebron the principle on the recognition of states is revitalized and bypassed.

The case of Kosovo dismantles the principle on the exercise of extraterritorial powers by the Serbian State in a territory that is no longer Serbian.

The case of Cambodia and the decision on the Temple of Preah Vihear reinforces the principle on the clear definition and delimitation of national boundaries through UNESCO and ICJ's verdicts.

CHAPTER I

UNESCO and the Values of Religious Cultural Heritage

1. The Protection of Religious Cultural Heritage in the Global Legal Framework

Holy Sites are places where religious faith is expressed. The global protection of human rights, namely of freedom of religion, is the significant starting point for a reflection on the definition of religious heritage sites. From the global perspective, cultural heritage law provides a broad discipline related to the recognition of freedom of religion and worship¹. This is surely the initial stage of that identification process leading to the recognition of some intrinsic cultural values, being then represented by tangible or intangible features, that qualify religious heritage sites.

It is well known that at the universal level the 1948 *Universal Declaration of Human Rights*, whose consuetudinary scope is now widely agreed, recognizes the right of everyone to freedom of thought, conscience and religion². The 1966 *International Covenant on Civil and Political Rights* protects religious freedom, freedom of thought, conscience and religion. The ICCPR stresses the attention on the public dimension of religious freedom and worship, stating that such a right can be manifested either individually or in community with others, in private or public spaces³. At the universal level, also the 1981 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* provides a broad protection of religious freedom⁴. Likewise, the 1992 *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious*

¹ H. BIELEFELDT, N. GHANEA-HEROCK, M. WIENER, *Freedom of Religion and Belief: An International Law Commentary*, Oxford University Press, Oxford, 2016; M. KOSKENNIEMI, M. GARCÍA-SALMONES ROVIRA, P. AMOROSA, *International Law and Religion: Historical and Contemporary Perspectives*, Oxford University Press, Oxford, 2017.

² See Article 2, 18 and 26.2 of the *Universal Declaration of Human Rights*, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

³ In this regard, emphasis shall be added on the recognition of a public dimension related to the practice of worship, enhancing the interrelatedness between freedom of religion and protection of a tangible space where religious freedom is projected. See Article 18, 24 and 27 of the *International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976.

⁴ See Article 1 and 4 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, General Assembly Resolution 36/55 of 25 November 1981; M. D. EVANS, *Religious Liberty and International Law in Europe*, Cambridge University Press, Cambridge, 1997.

*and Linguistic Minorities*⁷ is another instrument related to the protection of religious freedom and religious minorities from the global perspective⁸.

The direct following step implies the identification both within the national and global legal scenario. This leads to the designation of cultural values referred to those places where religious freedom and freedom of worship unfold. Respect of religious freedom is primarily the duty of sovereign States, including the responsibility of framing the safeguard of relevant values, maintaining the places, sites, traditions and rituals that are part of such a relevant religious narrative.

The existing legal framework though, being it applicable in peace time, during armed conflict or occupation, actually gives a definition of what religious cultural heritage is. The framework has some gaps: neither the element of political contestation bearing down on religious cultural heritage, nor the intrinsic values and intangible elements are considered as additional tools of political contestation for the exercise of sovereign powers.

The special protection granted to cultural property through the Law of International Armed Conflicts (LOIAC), including religious properties, gets particularly tangled, although necessary, in case of armed conflict and occupation. They are the circumstances where tangible and intangible heritage are inevitably at risk⁹. The 1889 *Convention with*

⁷ See Article 1 and 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly resolution 47/135 of 18 December 1992.

⁸ Additionally, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1969 American Convention on Human Rights, the 1981 African Charter on Human and Peoples Rights, the 1994 Arab Charter on Human Rights, 1998 Asian Human Rights Charter have a prominent position in supporting the global framework from the regional perspective.

⁹ In this perspective, the destruction of religious buildings in order to annihilate wholly or in part a national, ethnic, racial or religious group is not expressed as a crime of genocide according to the Convention on Genocide of 1948. Indeed, this possibility was explicitly excluded, as emerges from the work preparatory to the Protocol; The ICC indicted Al Mahdi on several charges of war crimes, for intentional attacks against ten religious and historic buildings and monuments. All the buildings had been under UNESCO protection and most of them had been listed as world heritage sites. This statement is particularly meaningful because the ICC strengthens the link between cultural-religious property and cultural identities, while conferring solemnity to the WHC and UNESCO's efforts in protecting those places, Situation in the Republic of Mali in the Case of the Prosecutor v. Ahmad Al Faqi Al Mahdi, app. no. ICC-01/12-01/15, ICC (Public Reparation Order), 17 August 2017. In this regard, the Law of International Armed Conflicts has provided three main principles of conduct of hostilities: prevention against all threats stemming from armed conflicts; principle of distinction between, respectively, civilian/cultural property and cultural property/heritage; relative proportionality related to the calculation of

*Respect to the Laws and Customs of War on Land*¹⁰, the 1907 Convention (IV) *respecting the Laws and Customs of War on Land*¹¹, the 1922/1923 *Hague Rules of Air Warfare*¹², the 1949 Fourth Geneva Convention and its two Additional Protocols (1977)¹³, and the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* and its two Protocols (1954 and 1999)¹⁴, are the main background rules whose aim is the protection and preservation of cultural property of the land.

The centrepiece of the relevant treaty-law system is the *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954 Hague Convention) and the *Regulations for the Execution of the Convention*, concluded in 1954. These treaties provide a detailed legal framework for the protection of cultural property during armed conflicts, including a specific section for the case of belligerent occupation. Indeed, it is not possible to deny the existence, since time immemorial, of customary

incidental damages; R. O'KEEFE, R. KOLB, R. HYDE, *An Introduction to the International Law of Armed Conflicts*, Hart Publishing, Oxford, 2009, p. 230; Y. DINSTEIN, *The International Law of Belligerent Occupation*, Cambridge University Press, Cambridge, 2009, p. 31; E. BENEVISTI, *The International Law of Occupation*, Oxford University Press, Oxford, 2012; N. LUBELL, *Human Rights Obligations in Military Occupation*, in *International Review of the Red Cross*, Vol. 94, Spring 2012; R. O'KEEFE, C. PÉRON, T. MUSAYEV, G. FERRARI, *Protection of Cultural Property. Military Manuals*, UNESCO Publishing, Sanremo, 2016.

¹⁰ Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 29 July, 1899, International Committee of the Red Cross.

¹¹ One of the purposes for which the First Hague Peace Conference of 1899 was convened was "the revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified" (Russian circular note of 30 December 1898). The Conference of 1899 succeeded in adopting a Convention on land warfare. The Convention and the Regulations annexed to it were revised at the Second International Peace Conference in 1907. The two versions of the Convention and the Regulations differ only slightly from each other, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, International Committee of the Red Cross; D. SCHINDLER, J. TOMAN, *The Laws of Armed Conflicts*, Martinus Nijhoff Publisher, Dordrecht / Geneva, 1988, pp.69-93; R. O'KEEFE, C. PÉRON, T. MUSAYEV, G. FERRARI, *Protection of Cultural Property, Military Manual*, Sanremo, UNESCO, 2016.

¹² Rules Concerning the Control of Wireless Telegraphy in Time of War and Air Warfare, Drafted by a Commission of Jurists at the Hague, December 1922-February 1923, International Committee of the Red Cross.

¹³ The Geneva Conventions and their Additional Protocols are international treaties that contain the most important rules to limit the barbarities of armed conflicts. They protect people who do not take part in the hostilities (civilians, doctors, aid workers) and those who can no longer fight (wounded, sick, prisoners of war), Convention IV, Relative to the Protection of Civilian Persons in Time of War, Geneva, August 1949, International Committee of the Red Cross.

¹⁴ UNESCO, Convention for the Protection of Cultural Property in the Event of an Armed Conflict, The Hague, Netherlands, 1954.

norms under which belligerents are required to spare cultural heritage, including religious property, in such situations¹⁵.

Within the scope of the Hague Convention, examples of the sorts of property that include religious cultural property are referred to as immovable cultural property, meaning buildings and other monuments of historic, artistic or architectural significance, whether *secular or religious*, as well as archaeological sites, irrespective of its ownership or origin. Cultural property includes also movable cultural property, by which is meant works and objects of art (such as paintings, drawings, sculptures and so on), antiquities, manuscripts and books, whether individually or in collections, as well as archives relevant from the artistic, historical, archaeological or scientific point of view¹⁶.

Simultaneously, the law which protects such heritage is not limited to the Law of International Armed Conflict. Cultural property benefits from the protection of other fundamental instruments, such as the UNESCO Cultural Heritage Conventions. Especially in recent years UNESCO has played a leading role in the development and promotion of a powerful normative related to the protection of cultural and natural heritage. Considering that at least the 20% of the properties inscribed within the World Heritage List are religious heritage sites, a corpus of standard-setting documents exists on the subjects of monuments and sites. Mainly, the 1972 World Heritage Convention is a noteworthy example of such a purpose. Additionally, the safeguard offered by the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (WHC) supports the already existing framework for the protection of cultural property during armed conflicts and occupation. It has gained a privileged position because it serves as the most appropriate legislative structure underlying the identification and protection of cultural heritage, including religious cultural heritage.

¹⁵ Cultural property continues to enjoy legal protection also in case of military occupation, where such harm usually results from violations of the enemy troops' obligations to ensure the protection of both the people and the property that results into their power. More precisely, if the occupation is long-lasting, it may involve profound changes to the economic, social and cultural fabric of the concerned occupied population and may be liable to undermine the cultural identity of individuals, Article 5 (Occupation), Chapter I, General Provisions Regarding Protection, UNESCO, Convention for the Protection of Cultural Property in the Event of an Armed Conflict, The Hague, Netherlands, 1954.

¹⁶ Article 1 (Definition of Cultural Property), Chapter I, General Provisions Regarding Protection, UNESCO, Convention for the Protection of Cultural Property in the Event of an Armed Conflict, The Hague, Netherlands, 1954.

Surprisingly, within the definition of cultural and natural heritage¹⁷, there is no mention to the religious character of a cultural or natural property inscribed in the World Heritage List or in the World Heritage in Danger List. On the basis of the relevant provisions existing in the field of international cultural heritage law¹⁸, we could assume that religious cultural heritage is the property or heritage which, on religious grounds, has been specifically designated by each State as being of *universal* relevance for archaeology, history, art and architecture. This property might include churches, monasteries, shrines, sanctuaries, mosques, synagogues, temples, sacred landscapes, sacred groves, and other landscape features, etc. Religious sites would then result from the combined works of nature and of man, and sacred areas including archaeological sites which are of *Outstanding Universal Value* from the historical, aesthetic, ethnological or anthropological points of view¹⁹. What is more, the range of possible elements related to religious heritage or sacred spaces is almost all-encompassing, including both tangible and intangible elements. It might include complexes of buildings, single edifices, sites of archaeological or historical significance combined with their religious meaning, objects which have a religious relevance in religious celebrations, ancient works of art, ethnographic items, landscapes and topographical features, natural features endowed with a special cultural, artistic and /or architectural significance²⁰.

¹⁷ Article 1 states that: "For the purpose of this Convention, the following shall be considered as "cultural heritage": monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view", UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

¹⁸ The reference here is to Article 1 of the Hague Convention (1954), Article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Article 1 and Article 2 of the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).

¹⁹ Filling the Gaps: An Action Plan for the Future / La Liste du Patrimoine Mondial: Comblent les lacunes- UN Plan D'action pour le futur, ICOMOS, München, Monuments and Sites, 2001, Vol. XXI; The Nara Document on Authenticity, ICOMOS, 1994; UNESCO/IUCN Guidelines for the Conservation and Management of Natural Sites, 2008; Conservation of Living Religious Heritage- Papers from the ICCROM 2003 Forum on Living Religious Heritage Sites: Conserving the Sacred, ICCROM Conservation Studies, Rome, 2005.

²⁰ T. TSIVOLAS, *Law and Religious Cultural Heritage in Europe*, Springer International Publishing Switzerland, 2014.

One of the Convention's major innovation is the creation of a World Heritage Committee and the institution of Advisory Bodies²¹. They are responsible for the correct interpretation of the 1972 WHC²² and for the recognition of the *Outstanding Universal Value* of selected properties through the application of legal canons, standards and institutional procedures for its recognition established by the World Heritage Committee²³. Cultural heritage bearing an Outstanding Universal Value is often protected by the 1972 WHC, which establishes a regime of identification, description, recognition of the properties' OUV. The protection legally takes place through the inscription of the heritage sites on the World Heritage List or World Heritage in Danger List. Within the scope of the 1972 WHC, the items protected are those pertaining to the cultural or natural heritage, which are listed as world cultural heritage from the point of view of history, art, science, aesthetics, ethnology and anthropology²⁴.

What emerges from this global scenario is that the above-mentioned element of contestation, occurring within the three selected cases (Palestine vs. Israel, Serbia vs. Kosovo, Cambodia vs. Thailand), is

²¹ Article 8, 13 and 14 of the WHC, ICOMOS, the International Council on Monuments and Sites, are appointed together with ICCROM and IUCN as advisory bodies of the World Heritage Committee. More in details, ICOMOS is the Advisory Body that is most directly connected with archaeological, art-historical and architectural cultural heritage. It has several scientific committees, such as the International Committee for Cultural Landscapes, Intangible Heritage, Rock Art, Archaeological Heritage Management and Underwater Cultural Heritage. The main aim is to promulgate and support the consistent amount of international covenants and charters, such as the 1964 Venice Charter for the Conservation and Restoration of Monuments, J. R. WELCH, I. LILLEY, *Beyond the Equator (Principles): A forum on Community Benefit Sharing in Relation to Major Land Alteration Projects and Associated Intellectual Property Issues in Cultural Heritage Held at the Meeting of the Society for American Archaeology*, Honolulu, International Journal of Cultural Property, Vol. 20/2013, p. 476. As for the two other Advisory Bodies, IUCN and ICCROM, they do seem to focus on a training function. In the first case, IUCN is the international body in charge of adopting and implementing measures for the safeguard of natural heritage, with a special focus on business and biodiversity, environmental law, climate change, forests, water, marine and polar species and ecosystem management. In the second case, ICCROM mostly focuses on the conservation of cultural heritage, with a special focus on cultural heritage destroyed or damaged by natural events or wars.

²² Article 8, Convention Concerning Protection of the World Cultural and Natural Heritage, UNESCO, Paris, 16 November, 1972.

²³ J. R. WELCH, I. LILLEY, *Beyond the Equator (Principles): A forum on Community Benefit Sharing in Relation to Major Land Alteration Projects and Associated Intellectual Property Issues in Cultural Heritage Held at the Meeting of the Society for American Archaeology*, Honolulu, International Journal of Cultural Property, Vol. 20/2013, p. 476.

²⁴ Article 1 and 2, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; F. J. CARRERA HERNÁNDEZ, *La UNESCO y la Gestión del Patrimonio Mundial: Mecanismos de Protección y Garantía*, in *La Protección Jurídico Internacional del Patrimonio Cultural: Especial Referencia a España*, Dirección: C. R. Fernández Liesa, J. Prieto de Pedro, Coordinación: F. Vacas Fernández, P. Zapatero Miguel, Colección *El Derecho de la Globalización*, Colex, n. 18, 2009, pp. 135-140.

deemed to be legally relevant when religious cultural heritage involves an arena of contestation. In these cases, sacred symbols can be transformed into emblems or victims not only of a political struggle for the exercise of sovereign powers, but even of armed conflict or occupation by enemy forces.

We should wonder if sacred places, along with all the related structures, objects and sites, are used as tangible medium throughout which people could advance political, statehood and self-determination claims.

In this perspective, is the identification of the Outstanding Universal Value manipulated according to the prevailing interests in ordinary situations or especially in circumstances of struggle for the exercise of sovereign powers through cultural heritage? Is this use representing a physiology or a pathology related to peculiar circumstances?

2. The Outstanding Universal Value and its Political Use: The Operational Guidelines

Over the centuries monuments and buildings have often been built in holy places to praise and worship God. Many of them are great examples of human genius, and they are chosen by State Parties and UNESCO as representatives of fundamental cultural phases of architecture, art, painting, archaeology, history, and so on.

Yet, it is not clear how and when religious cultural heritage acquires an additional *universal* artistic, archaeological, architectural or cultural value, what is the artistic value of religious heritage sites, how does UNESCO shape the concept of artistic, architectural, archaeological, cultural, and aesthetic values that found the Outstanding Universal Value of religious sites and what are UNESCO's consideration in assessing the values of contested sites in a neutral and impartial way.

Do sacred spaces have *universal* "artistic, architectural, archaeological and cultural" qualities that constitute both their Outstanding Universal Value, and their presence in the territory as identity markers in UNESCO's practice?

Outstanding Universal Value is the pillar and milestone of UNESCO's current cultural heritage legal system. The deconstruction of this concept of evaluation is certainly a slippery slope, but it is essential

in order to understand the use of (religious and contested) cultural heritage and the problems deriving from choices that certainly raise political sensitivity²⁵.

What is the Outstanding Universal Value and how has it been built throughout the years? Is the Outstanding Universal Value really universal? Is it universal in its perception and is it really possible that UNESCO assesses cultural values in a scientific and impartial way? Do legal tools, canons, and procedures set forth by UNESCO guarantee a neutral and impartial evaluation of subjective values?

The preamble of the World Heritage Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) presupposes “that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole”. For this reason, “a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value” was drafted²⁶. This system of protection must be organized on a permanent basis and in accordance with *modern scientific methods*²⁷.

According to UNESCO’s current definition and to the latest version of the Operational Guidelines for the Implementation of the World Heritage Convention, the Outstanding Universal Value is the cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole²⁸.

In the case of cultural heritage, the Outstanding Universal Value is referred to monuments, groups of buildings and sites and the value that these sites bear is so exceptional as to transcend national boundaries. Speaking of monuments²⁹, these are identified as “architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of

²⁵ P. LASCOUTES, P. GALÈS, *Gli Strumenti per Governare*, Prefazione S. Cassese, Milano, Bruno Mondadori, 2009.

²⁶ Preamble, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

²⁷ Preamble, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

²⁸ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para.49.

²⁹ Article 1, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

view of history, art or science". Speaking of groups of buildings³⁰, these are "groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science". Speaking of sites³¹, these are "works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view".

Thus, article 1 states that some cultural values intrinsic to monuments, groups of buildings and sites should be protected because, regardless of borders and in a worldwide perspective, they are relevant from the point of view of history (e.g. "old age value" or "commemorative value"), from the point of view of art (e.g. "artistic value" or "aesthetic value") and from the point of view of science (e.g. "scientific value")³².

Is this framework suggesting an equal evaluation by all people and institutions around the world?

What is clear is that in order to acquire a prominent status in the system of UNESCO, these values should amount to "outstanding" and "universal" in their measurement. Even though these values are said to transcend national boundaries, the Outstanding is defined as a surplus with respect to the "generally documented cultural heritage"³³, because they do represent the very best of the cultural heritage located within national boundaries internationally recognized as to designate sovereign states.

This general setting clashes with some concrete decisions taken by UNESCO. Indeed, the term universal is referred to the values gained by this cultural heritage acknowledged in a "general and worldwide" perspective, thus belonging to the mankind as a whole: what happens

³⁰ Article 1, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

³¹ Articolo 1, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

³² J. JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6.

³³ J. JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, p. 8, and Annex 1G by Christina Cameron, Keynote Paper in Kazan (2005).

for the OUV of those contested religious sites that, as an ultimate result, are used to strengthen or weaken specific national entities or define their disputed borders?

Before the 1972 World Heritage Convention being adopted, the concept of Outstanding Universal Value was not explicitly mentioned in any legal document. Rather than be centred on a global legal system based on the identification and classification of the cultural heritage with OUV, UNESCO's early action seemed to be inspired by the essential principles leading the work of the League of the Nations and its International Committee of Intellectual Cooperation. In particular, during the '50s, the terrible damages caused by the WWII conferred urgent priority to the reconstruction and restauration of those "glorious sites of the past", "monuments of art", "masterpieces of the past [that] expressed at once the greatness of civilization"³⁴. Although not legally structured, the idea of protection of values generally shared by the mankind (through books, works of art, sites of history and science) was substantially perceived as a universal inheritance and as evidence of civilization³⁵.

It is only in 1976 that the initial formulation of Outstanding Universal Value was drafted for the first time in UNESCO's legal documents³⁶. Experts agreed on the need to clarify what *universal* meant and which criteria were necessary in order to measure the outstanding universal value of cultural heritage. In the first place, universal value was said to be inherent to cultural heritage with an *artistic value*, described as a consistent and founding element of the outstanding. It was referred to as "original and unique creation, of which the exceptional quality is *universally recognized* by competent specialists in the fields concerned"³⁷. In the second place, the universal value was

³⁴ Monuments and Sites of History and Art and Archaeological Excavations: Problems of Today, UNESCO, Museums, Vol.3, n. 1, 1950; Per la Salvezza dei Beni Culturali in Italia, Atti e Documenti della Commissione d'Indagine per la Tutela e la Valorizzazione del Patrimonio Storico, Archeologico, Artistico e del Paesaggio, Vol. I-II-III (Sezione II, Da Atti e Convegni di Enti Comunitari), Casa Editrice Colombo, Roma, 1967.

³⁵ Monuments and Sites of History and Art and Archaeological Excavations: Problems of Today, UNESCO, Museums, Vol.3, n. 1, 1950, pp. 6-7.

³⁶ UNESCO Meeting in Morges (1976), Informal Consultation of Intergovernmental And Non-Governmental Organizations On The Implementation Of The Convention Concerning The Protection Of The World Cultural And Natural Heritage, Morges, 19-20 February 1976, Final Report.

³⁷ J. JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, First Definitions of OUV by the Committee, Annex 1 A: UNESCO Meeting in Morges (1976), Annex 1 B: ICCROM on OUV (1976), Annex 1 C: ICOMOS on World Heritage Criteria (1976); UNESCO Meeting in

inherent to cultural heritage with an *historic value* depicted, in variable degrees, as “the uniqueness or extreme rarity of the document”, or “the degree of novelty or importance of the influence exercised in time and/or space by the work concerned”, and “the importance for the comprehension of the advancement of related historic events”³⁸. In the third place, universal value was inherent to cultural heritage with a *typological value*, portrayed as the type of value requiring explicit identification and distinction compared to the historic value, under which it would normally be considered. The report also refers to the different values that had to be considered in order to *measure* the OUV, and particularly the artistic, architectural, intellectual, social, historic, philosophical, and (global) religious values in the above-mentioned categories of cultural heritage. More specifically, these are some of the criteria to *measure* the OUV: i) Properties which represent a unique artistic achievement, including the masterpieces of internationally renowned architects and builders; ii) Properties of outstanding importance for the influence they have exercised over the development of world architecture or of human settlements (either over a period of time or within a geographical area); [...] vi) Properties associated with and essential to the understanding of globally significant persons, events, religions or philosophies.

It is possible to notice a shift on the content of the artistic and aesthetic values that identifies the OUV. Indeed, the unicity of an artistic or aesthetic achievement is not equal as being *universally recognized* by competent specialists in the fields concerned, as it appears in the previous version. At the same time though, only those masterpieces produced by internationally known architects and builders, or properties associated with and essential to the understanding of globally significant persons were deemed to have outstanding universal value. In this perspective, there seems to be a legal contradiction between what is chosen as unique or rare, and what is internationally and globally recognized as peculiar or singular.

The ICOMOS report to the 1976 Expert Meeting gave a further reflection on the notion of the Outstanding Universal Value, and, as noted above, provided the first draft of criteria to be used in the evaluation.

Morges (1976), Informal Consultation of Intergovernmental And Non-Governmental Organizations On The Implementation Of The Convention Concerning The Protection Of The World Cultural And Natural Heritage, Morges, 19-20 February 1976, Final Report.

³⁸ UNESCO Meeting in Morges (1976), Informal Consultation of Intergovernmental And Non-Governmental Organizations On The Implementation Of The Convention Concerning The Protection Of The World Cultural And Natural Heritage, Morges, 19-20 February 1976, Final Report.

As a general comment on the concept of World Heritage, ICOMOS noticed that:

“The whole concept of a world heritage is relatively new and depends upon an increasing awareness of the shared burdens and responsibilities of mankind as well as upon modern methods of transport and communication. It seems right, therefore, that the World Heritage Committee should avoid restricting its choices to the best-known properties, but should also include these other properties, perhaps little known, but with great potential for aesthetic, educational and scientific value if made known to a wide public”³⁹.

Additionally, in order to be eligible for inclusion in the World Heritage List, properties making up the cultural heritage must satisfy certain specific criteria of Outstanding Universal Value, and must also satisfy the criteria of unity and *integrity of quality* (deriving from setting, function, design, materials, workmanship and condition). As with the concept of OUV, these are currently debated and controversial issues: we should wonder if they are easily subject to political instrumentalizations⁴⁰ and manipulations.

In this regard, we should not forget that State Parties are the primary authority in charge of selecting cultural heritage. This passage is necessary in order to build the statement of its outstanding universal value upon the selected properties. Their artistic, historical or typological values are indeed constructed, enhanced, and demonstrated by States. They do adapt the narrative of the Outstanding to the criteria and canons progressively set forth and renewed by the World Heritage Committee throughout the years. Indeed, normative activities carried out both by UNESCO and by various national institutions help to define and standardize canons of art, architecture, historical, cultural and religious relevance⁴¹. In other words, an apparently rigid normative activity helps building criteria throughout which States abide to values assumed to be universal.

Later on, the Committee took the ICOMOS criteria as basic reference and adopted the draft Operational Guidelines in its first

³⁹ JOKILEHTO, *The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties*, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, II. What is Outstanding Universal Value (OUV)?, p. 12.

⁴⁰ See more in details at Paragraph 3 of the Current Chapter, Authenticity and its Political Use.

⁴¹ S. LABADI, *UNESCO, Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions*, Lanham, MD: AltaMira Press, 2013, p. 13

session in 1977⁴². In the draft version (1977) the Guidelines do not specifically define OUV, but they do defer the measurement of the OUV to two sets of criteria (one for natural heritage and one for cultural heritage). They do admit that: “It is not intended to provide for the protection of all properties and areas of great interest, importance, or value, but only for a select list of the most outstanding of these from an international viewpoint”⁴³. Indeed, in a subsequent report on the World Heritage Criteria, experts have affirmed that the analysis of the Convention was enabling a distinction between “what is *essential* and what is *marginal* in the very notion of a universal cultural heritage”⁴⁴. This point is particularly important, as it gives the idea that the threshold of the outstanding was and it is still based on subjective considerations that allow States to stretch the margins of what deserves to be under international protection and what does not.

The 1977 Operational Guidelines also stated that: “The definition of *universal* in the phrase Outstanding Universal Value requires comment. Some properties may not be recognized by all people, everywhere, to be of great importance and significance. Opinions may vary from one culture or period to another. As far as cultural property is concerned, the term *universal* must be interpreted as referring to a property which is *highly representative* of the culture of which it forms part”⁴⁵. In the first place, this implies that the non-recognition by all people, everywhere, of the great importance and significance of a property is a subjective judgement. The latter results in an extrinsic process of evaluation, that opens the way to political choices made by State parties. In many instances, these political choices related to what is considered to have an Outstanding Universal Value raise a considerable degree of religious, cultural and political discretion. This is particularly true with reference to the high representative character of cultural heritage, to what is considered to be marginal or essential, and to the circumstance of the contestation of the property. In the second place, UNESCO takes decisions that are political in their contents and have an impact on the political backgrounds of States. Furthermore, these decisions are based on the description, evaluation, and justification of the outstanding made

⁴² UNESCO, CC-77/ CONF. 001/8, Operational Guidelines for the World Heritage Committee, Paris, 30 June 1977.

⁴³ UNESCO, CC-77/ CONF. 001/8, Operational Guidelines for the World Heritage Committee, Paris, 30 June 1977, paragraph 6.

⁴⁴ JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, Annex 1D, Michel Parent, Report on the World Heritage Committee, 1979, p. 65.

⁴⁵ UNESCO, CC-77/ CONF. 001/8, Operational Guidelines for the World Heritage Committee, Paris, 30 June 1977, paragraph 7.

by States. Can we really speak of a neutral use of the Outstanding Universal Value?

As a way of example, the *Fasil Ghebbi (Ethiopia)* in the Gondar Region were among the first UNESCO World Heritage Sites proposed in 1978 (under criteria (ii) and (iii)) and nominated in 1979. The evaluation of the property made by ICOMOS points out the national and political significance of the complex of building as residence of the Ethiopian emperors in the 16th and 17th century. Within the report, ICOMOS recognizes its national significance as a unique artistic, architectural and religious achievement that sees the interaction between cultural elements related to the Ethiopian Orthodox Churches, Jews and Muslims. However, further expert opinion was needed regarding the significance of the political/religious architectural complex from the universal point of view⁶⁶. Eventually, the OUV of the property has been recognized in 1979, but there is no clear explanation regarding the (debated) content of the OUV recognized to the property.

In 1980, a further version of the Operational Guidelines was adopted⁶⁷. In order to be of Outstanding Universal Value, a cultural property must meet one or more of the six specified criteria, and also meet the test of *authenticity*⁶⁸. In addition, the relative state of preservation constituting the authenticity of the property had to be evaluated as a result of a *comparative study* with other sites of similar characteristics: this postulation was meant to guarantee an evaluation of the Outstanding Universal Value based on a scientific method. Arguably, any comparative assessment presupposes that there is a homogeneous and not contested consensus on to the way in which States read history, art, architecture, and religious values. Hence, in cultural heritage discourses, can a universal general consensus be reached on the way art, history, religion, and architecture are interpreted? What happens when the property is disputed and it is the object of a long-standing political struggle for the exercise of sovereign powers? Can we take into consideration this political circumstance while attempting to measure scientifically the Outstanding Universal Value of similar properties?

⁶⁶ ICOMOS, Advisory Body Evaluation, Fasil Ghebbi, Gandar Region, Ethiopia, N. 18, 7 June 1978; World Heritage Committee, CC-79/CONF.003/13 Rev., Report of the Rapporteur on the Third Session of the World Heritage Committee, Paris, 30 November 1979; WHC 13-37. COM/20, Adoption of Retrospective Statement of Outstanding Universal Value, Paris 5 July 2013.

⁶⁷ JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, Annex 1D, Michel Parent, Report on the World Heritage Committee, 1979.

⁶⁸ WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, October 1980.

Differently from the nomination of the *Fasil Ghebbi*, in the nomination of the *Historic Centre of Warsaw* (Poland), proposed in 1978 and deferred until 1980, a question emerged as to whether the site met the requirement of authenticity. There was no doubt as to the universal (religious and commemorative) significance of the events that led to the destruction and reconstruction of the town, including the iconographic and documentary historical records⁴⁰. It seems that the amendments made to the 1977 OG's version run concurrently with the discussion for the nomination of the Historic Centre of Warsaw. The addition of *criterion (vii)* (meet the test of authenticity in design, materials, workmanship or setting (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and *to no extent on conjecture*)), although not being clarified, seems to be made to justify the outstanding universal value of an almost entirely reconstructed town.

Several versions of the Operational Guidelines have been adopted in 1983⁴¹, 1987⁴², 1988⁴³, 1992⁴⁴, 1994⁴⁵, 1996⁴⁶, and in 1999, where changes to the 1997 Operational Guidelines were made, following a meeting of experts in the field of the World Heritage Global Strategy for Natural and Cultural Heritage⁴⁷. During the meeting, suggestions were made regarding the definition of authenticity and integrity, and moreover, on the definition of the outstanding universal value. In

⁴⁰ ICOMOS, Advisory Body Evaluation, The Historic Center of Warsaw, The Peoples' Republic of Poland, 1978; C. CAMERON, From Warsaw to Mostar: World Heritage Committee and Authenticity, APT Bulletin, Journal of Preservation Technology, Vol. 39, No. 2/3, 2008; Memory of the World Register, Warsaw Reconstruction Office, Directorate for the Reconstruction of Warsaw and Department of Historical Architecture of the Warsaw Reconstruction Office and the Conservator Office for the Capital City of Warsaw, Ref. N. 2010-39.

⁴¹ WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, November 1983.

⁴² WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, January 1987.

⁴³ WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention December 1988.

⁴⁴ WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, 27 March 1992.

⁴⁵ WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, February 1994.

⁴⁶ WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, February 1996.

⁴⁷ WHC.99/2, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, March 1999; JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, Annex 1 E: World Heritage Expert Meeting, Amsterdam (1998).

particular, regarding the latter, the experts stated that: “The requirement of Outstanding Universal Value should be interpreted as an outstanding response to issues of universal nature common to or addressed by all human cultures”⁹⁷.

As a way of example, Members of the World Heritage Committee and World heritage experts were often mentioning iconic works in an effort to clarify the notion of Outstanding Universal Value. This iconic value or aura in cultural heritage are believed to be possessed by those structures and places, such as the *Church and Dominican Convent of Santa Maria delle Grazie with The Last Supper* by Leonardo da Vinci (1980)⁹⁸, the *Taj Mahal* (1983)⁹⁹, or the *Cathedral of Notre Dame* (1991)¹⁰⁰. They are depicted as having an intrinsic and unquestionable value, as always been referenced and lauded throughout the centuries and around the world. On the one side, this led to a *stereotyped* representation of cultural heritage, meaning that these iconic monuments seem to possess an objective beauty ascribed by designated experts¹⁰¹. On the other side, this also gradually led to a political use of the Outstanding Universal Value: States can choose which values represent the very best of their identities, then adapting representative values to the standards set forth by the

⁹⁷ JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, Annex 1 E: World Heritage Expert Meeting, Amsterdam (1998), pp. 66-67.

⁹⁸ The religious complex bears an unquestionable outstanding universal value (criteria I and i), because the Last Supper is a unique artistic realization, with a universal value. 39COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, 2015; ICOMOS, Advisory Body Evaluation, Ensemble architectural de Santa Maria delle Grazie, avec la Cène de Léonard de Vinci, Italie, N. 93 bis, 1980.

⁹⁹ Inscribed under criterion i, the site is referred to as one of the most famous funeral monuments in the world. Its religious relevance is enhanced by the masterpiece made by several thousands of masons, marble-workers, mosaicists and decorators working under the orders of the architect of the emperor, Ustad Ahmad Lahori, ICOMOS, Advisory Body Evaluation, Taj Mahal, India, N. 252, 1983; 36 COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, 2012; 37 COM 7B.103 Omnibus Decision, 2013.

¹⁰⁰ 43COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, Inscriptions on the World Heritage List, 2019; ICOMOS, Advisory Body Evaluation, Notre Dame cathedral, Palais du Tau and former Abbey of Saint Remi, France, N. 601, 1991; this religious heritage site's OUV is related to the new architectural techniques of the 13th century and to the harmonious marriage of architecture and sculpted decoration, a masterpiece of Gothic art (criterion i). Additionally, these places were part of the coronation ceremony, the result of a perfect balance between Church and State which thus made the French monarchy a political model throughout Europe until modern times (criterion vi). The perfection of the architecture and the sculptural ensemble of the church were such that numerous later edifices were influenced by it (criterion ii).

¹⁰¹ F. FRANCIONI, F. LENZERINI, The future of the World Heritage Convention: Problems and prospects. In F. Francioni and F. Lenzerini, eds. The 1972 World Heritage Convention: A commentary. New York: Oxford University Press, pp. 401-410.

WHC. Even if the process is based on rules made by global and national bodies, the recognition of the Outstanding Universal Value is an extrinsic process, made by national and international institutions, and it cannot be said to be totally impartial. Following the approach adopted in the iconic heritage sites' dossiers, the Outstanding Universal Value was still identifying *universal* artistic, historical, architectural, archaeological and cultural peculiarities that should be perceived and appreciated worldwide. At the same time, these values of great importance to humanity and addressed by all human cultures should also be scientifically measured according to the (newly) established concept of cultural diversity that postulates the unicity and subjectivity of the values constituting the OUV. Basically, in UNESCO's practice, there is awareness of the relative character of these values. At the same time though, a standardized way of measuring the OUV is legally built.

Later on, in 1999 some changes are made to criteria i), ii), iv). In general terms, there is a more structured and detailed procedure to test the OUV, both in terms of State parties presenting properties for nominations, and also in terms of evaluation processes undertaken by the WHC and Advisory Bodies. However, although criteria have been further clarified, there is still much ambiguity on the content and use of the OUV.

For instance, the *Historic Monuments of Ancient Nara* (1998) represents at the same time the inclination to broaden the scope of what is deemed to have an Outstanding Universal Value and an attempt to rationalize relative values. On the one side, these values included intangible values as well, such as those techniques of architectural construction undergoing a religious and ritual process for the construction of wooden sacred spaces. They are enhanced in the report as a tool of political sovereignty. These are described as outstanding manifestations of the use of religious space which is unique to Shintoism and Buddhism in ancient Japan. On the other side, the basic information of the site, and the assessment of Outstanding Universal Value are scrupulously connected to comparative studies of other inscribed sites, assessment of authenticity and integrity in comparison with similar properties, maps of the location and of major excavated remains, detailed architectural history, inventory of architectural assets, photographic and cinematographic documentation, and juridical data⁶².

⁶² World Heritage Committee Nomination Documentation, *Historic Monuments of Ancient Nara*, Agency for Cultural Affairs Government in Japan, Japan, N. 870, 1998; ICOMOS, Advisory Body Evaluation, *Historic Monuments of Ancient Nara*, Japan, N. 870, 1998; 38COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, Inscriptions on the World Heritage List, 2014.

In 2005, it is possible to see a further update of those criteria that identify the Outstanding Universal Value's threshold⁹³. According to the 2005 version of the Operational Guidelines, the 1994 Nara Document on Authenticity are incorporated and the criteria for natural and cultural properties appears unified for the first time. Additionally, the conditions of authenticity, integrity and comparative studies with similar properties acquire a "more scientific" dimension. On the one side, the list of what constitutes the Outstanding Universal Value of natural and cultural heritage sites seems to be more detailed in its content. Formal procedures and specific criteria are part of this effort to standardize this designation across diverse cultural heritage, with different geographical, political, legal, cultural and religious backgrounds. On the other side, the qualifications for a cultural site are: being a "masterpiece of human creative genius"; being an exhibition of an important interchange of human values on developments in architecture or technology, monumental arts, town planning or landscape design; being a representation of a unique or at least exceptional testimony to a cultural tradition; being an outstanding example of a type of building or architectural or technological ensemble or landscape; being a direct or tangible association with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.

Can we argue the way in which these abstract criteria pertaining to the OUV are constructed? Is there an attempt carried on by ICOMOS experts and evaluators to use uniform scientific techniques and terminology to root their assessments of OUV in a scientific and impartial way⁹⁴? What is relevant in this regard is that the content of the OUV is culturally, politically, and religiously related. Is this legal standardization offering national institutions the possibility to better

⁹³ JOKILEHTO, The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, IL06. Operational Guidelines, 2005, p. 13; Annex 1F: World Heritage Expert Meeting, Kazan (2005), pp. 69-71; Annex 1G: Christina Cameron, Keynote Paper in Kazan (2005), pp. 71-75.

⁹⁴ V. SCHMUTZ, M. A. ELLIOTT, World Heritage and the Scientific Consecration of "Outstanding Universal Value", *International Journal of Comparative Sociology*, Vol. 58(2), 2017, pp. 140-159; L. MESKELL, UNESCO's World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation, *Current Anthropology*, Vol. 54, N. 4, 2013; JW MEYER, P. BROOMLEY, The Worldwide Expansion of "Organization", *Sociological Theory*, Vol. 31, 2005, pp. 366-389, 2013; P. CHONG, Legitimate Judgement in Art, the Scientific Word Reversed?, *Social Studies of Science*, Vol. 43, 2013, pp. 265-281; S. TIMMERMANS, S. EPSTEIN, A World of Standards but Not a Standard World, *Annual Review of Sociology*, Vol. 36, 2010, pp. 69-89.

construct and articulate the substance of the OUV according to the interests that should prevail? Is this manipulation a general practice or, rather, is it related to situations of conflicts? The open problem is that when national governments adapt the description and justification of the OUV to the rules set forth by the WHC, this does not guarantee an impartial evaluation of the assessed property.

There seems to be an inner contradiction in this attempt of reconducting to the same legal container (Outstanding Universal Value), opposite concepts (universality and subjectivity of those values that characterizes the OUV) that cannot be neither appreciated universally, nor measured scientifically.

Indeed, if we do believe that a property represents a unique characterization of the values of a culture, what is the aim of measuring the Outstanding Universal Value through comparative studies of similar properties? Is the Outstanding Universal Value enhancing cultural diversity and subjective/peculiar values regardless of the differences in political and cultural or legal backgrounds where the sites are located?

In 2013, 2015, 2016, and 2017, the Operational Guidelines do not present significant content changes. On the one side, according to UNESCO's decisions, the tenor of the OUV as an administrative/political instrument in the hands of national governments starts to be very clear. On the other side, notwithstanding the peculiarity of certain values that ground the OUV, the attempt of standardize and institutionalize it as passible of scientific evaluation is even clearer.

Initially, UNESCO was postulating a universal perception of these values adopted to measure the OUV. In a second phase of its legal activity it has developed legal criteria, procedures, guidelines and mechanisms in order to include cultural diversity, rarity, unicity and authenticity of these values within the concept of OUV. In the third phase of UNESCO's activity, *modern scientific methods* have been increasingly introduced in order to assess the OUV of what is referred to as unique (and subjective) from the point of view of art, history, architecture, aesthetic, and science. Indeed, according to several scholars⁸, the use of OUV in cultural heritage decisions underwent

⁸ V. SCHMUTZ, M. A. ELLIOTT, World Heritage and the Scientific Consecration of "Outstanding Universal Value", *International Journal of Comparative Sociology*, Vol. 58(2), 2017, pp. 140-159; JOKILEHTO J., CAMERON C., The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties, *ICOMOS*, XVI, 2008; S. LABADI, UNESCO, Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions, Lanham, MD: AltaMira Press, 2013; T. M. SCHMITT, Global Cultural Governance: Decision-Making Concerning World Heritage Between Politics and Science, *Erdkunde*, Vol. 63, No. 2, 2009, pp. 103-121; G. BELCHER, Values in World Heritage Sites,

massive rationalization (the so-called wide-ranging formalization and standardization⁶⁰) and became increasingly legitimated in scientific terms, thus reflecting what has been defined by some as the “rationalization of virtue and virtuosity”⁶¹, by others as “reiterative universalism”⁶², or as the expanding cultural authority of science⁶³ in cultural matters. This is certainly an issue: the scientific measurement through laws and canons of a set of values that raises political and religious sensitivity is certainly a slippery slope and it is tremendously ambiguous.

Is there a universal, unequivocal evaluation and appreciation of art, aesthetic, architecture, and archaeology that can be scientifically measured and institutionalized through strict legal criteria and procedures? This question raises several problems related to the legal ambiguity of the OUV. Furthermore, the developments referred to the OUV show some clashes emerging on the use of the OUV. Sometimes it is a tool to reinforce or build national identities, and other times it is a tool to weaken the adversary state.

Currently, the Committee considers a property as having Outstanding Universal Value if it meets one or more of the ten criteria, and if it satisfies the requirement of integrity and/or authenticity⁶⁴. No consistent changes have been made to the 2005 Version of the Operational Guidelines and later versions. Rather, a major shift is remarkable considering the typology of properties nominated from 2005 onwards and the political circumstances that surrounds these nominations.

In other words, according to the last version of the Operational Guidelines, the legal dimension of the OUV can be compared to an artificial container that leaves enough space to political instrumentalizations, especially if the heritage has a strong religious foundation and it is contested by two peoples claiming that heritage for

in *Cultural Heritage Ethics: Between Theory and Practice*, Constantine Sandis (eds.), Open Book Publishers, Cambridge, 2014.

⁶⁰ V. SCHMUTZ, M. A. ELLIOTT, *World Heritage and the Scientific Consecration of “Outstanding Universal Value”*, *International Journal of Comparative Sociology*, Vol. 58(2), 2017, pp. 140–159;

⁶¹ BOLI J., *The Rationalization of Virtue and Virtuosity in World Society*, in: Djelic ML and Sahlin-Andersson K (eds), *Transnational Governance*, Cambridge: Cambridge University Press, 2006, pp. 95–118.

⁶² S. LABADI, UNESCO, *Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions*, Lanham, MD: AltaMira Press, 2013, pp. 18–22, pp. 61–67, pp. 73–74, p. 83, 85, 88, 89, 98.

⁶³ DRORI GS, JANG YS., MEYER JW., *Sources of Rationalized Governance*, *Administrative Science Quarterly* 51, 2006, pp. 205–229.

⁶⁴ WHC. 19/01, *Operational Guidelines for the Implementation of the World Heritage Convention*, 10 July 2019, para. 49–53.

the exercise of sovereign powers, for the recognition of their statehood, delimitation of borders or in state building processes. This is particularly true if we consider that UNESCO is increasingly trying to apply scientific methods, legal standards, legal procedures and canons to artistic, cultural, archaeological, aesthetic and architectural values. Even though UNESCO itself admits the subjective character and the uniqueness of these values, there is still much ambiguity under two perspectives.

First, on the national level, the reports for nominations are presented by States, with governments forging and adapting the Outstanding Universal Value. Is this approach equivalent to the use of the OUV as a political and administrative instrument?

Second, on the global level, the scientific evaluation and the measurement of OUV made by the Advisory Bodies is based on something that is *ab initio* and intrinsically subjective. Moreover, through the analysis made from 1977 to 2019, it is possible to notice that these criteria that identify the OUV are adapted and modified according to the cultural heritage to be nominated⁷¹.

Hence, can we assume that the measurement of subjective values through modern scientific methods is neutral and non-political in its content?

When experts have recognized that artistic, architectural, historical and religious values inherent to the OUV cannot be universally appreciated, this does not imply a neutral use nor this does guarantee strict scientific and impartial criteria of measurement. Indeed, the “scientific measurement” of these values is a legal responsibility primarily attributed to national states. As sovereign states, they do have huge interests in having cultural heritage sites being labelled as outstanding. Can differences in the evaluation of the OUV impact the way cultural heritage is used for nation-enforcement purposes, state-building purposes or definition of borders? If the property is contested and the OUV is recognized by UNESCO, this acknowledgement inevitably has an incredible legal value and a political impact.

In particular, the analysis and deconstruction of the concept of Outstanding Universal Value as a political tool is mirrored in the three

⁷¹ The author explains the main values for which 106 sites have been nominated for inclusion on the World Heritage List. She points out how these values have been used for the representation of the nation, the past and cultural diversity and the construction of national collective identities. The exclusions of specific themes and groups of the population as well as their histories and values from these representations are highlighted, S. LABADI, Representations of the Nation and Cultural Diversity in Discourses on World Heritage, *Journal of Social Archaeology*, Vol. 7, No.2, 2007, pp. 147-170.

main phases of UNESCO's attitude towards the evaluation of religious cultural heritage. During the first phase, a universal conception of artistic, aesthetic, historic, architectural and religious values is postulated. During the second phase, the awareness of the subjectivity of artistic, aesthetic, historic, architectural and religious values is admitted. During the third phase, the attempt of a scientific measurement of subjective values through legal standards and canons set forth by UNESCO is implemented. On the one side, the political consequences of such a flexible use of the OUV are hitting. On the other side, following the process of globalization, these methods of universal evaluation used by national and global institutions in order to establish the value of cultural heritage ends up in the mortification of the same value inherent to cultural heritage⁷².

The examples brought above (the Fasil Ghebbi, the Historic Centre of Warsaw, the Church and the Dominican Convent of Santa Maria delle Grazie with the Last Supper of L. Da Vinci, the Taj Mahal, the Cathedral of Notre Dame, and the Historic Monuments of Ancient Nara) illustrate the progressive flexibility on the use of the concept of OUV. They are ordinary cases of non-contested heritage: yet problems are found both in terms of ambiguity and public interests stemming from the formulation of the OUV. When contestation is an element that involves the properties to be listed, additional problems arise. In this perspective, three are the main examples of an arguable use of the OUV both by state parties and by UNESCO: the four Monasteries in Kosovo (2004-6), the Cambodian Temple of Preah Vihear (2008), and the Palestinian City of Hebron/Al Khalil Old Town (2017)⁷³. Can we affirm that UNESCO is in the position of attributing a nationality to the Outstanding Universal Value? Is it taking a decision that, although being referred to subjective values, is raising political sensitivity and it has an impact on the political setup of States? Especially these three cases of contested religious heritage induce us to reflect more carefully on the use of political powers by UNESCO when contested religious heritage is at stake. Is this ambiguous use a general practice or rather, is it related in a more stringent manner to situations where problems of territorial integrity, self-determination, recognition of statehood and their interaction with the rules of UNESCO occur? What is the difference in

⁷² F. LANZERINI, *Intangible Cultural Heritage: The Living Culture of Peoples*, *The European Journal of International Law*, Vol. 22, No. 1, 2011.

⁷³ The analysis will be developed more in details in Chapter IV (Special Part/ Case Studies, UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

the assessment of the OUV, both by Governments and UNESCO, in non-disputed and in contested properties?

3. Authenticity and its Political Use

As for the Outstanding Universal Value, the concepts, reinterpretations, and uses of authenticity became a paramount throughout the years. This evolving concept pertains and it is included within the “legal box” of the OUV. It progressively became a tool to evaluate cultural heritage for inclusion in the World Heritage List.

Authenticity is one of the most ambiguous and debated notions in the field of conservation of cultural heritage. It pertains once again to the way institutions choose to interpret, preserve and use cultural heritage. In the field of works of art, authenticity has much to do with issues related to fakes, forgery, and counterfeit art²⁴ as a cultural problem that needs legal regulation and application²⁵.

In UNESCO's practice, authenticity is a fluid concept with no uniform legal definition and application: it underwent many changes and, since it is a parameter to measure the “amount” of OUV in nominated cultural heritage, it reflects several understandings and uses made by State Parties and UNESCO. More in details, the word authenticity does not appear in the 1972 UNESCO Convention. Rather, it appears in the first version of the Committee's Operational Guidelines for the Implementation of the World Heritage Convention (1977). It is significant to note that these guidelines are adjusted periodically by the Committee in response to evolving perceptions and uses of the concepts of OUV, authenticity, artistic, aesthetic, architectural, historical and religious values.

Can differences in the interpretation of authenticity impact the OUV and the way cultural heritage is used for nation-enforcement purposes, state-building purposes or definition of borders? In particular, the analysis and deconstruction of the concept of authenticity as a political tool reflects the three main phases of UNESCO's attitude towards the evaluation of (religious and contested) heritage. Indeed, political motives have never been explicitly mentioned in UNESCO's nomination processes. However, several cases highlight the use of the OUV, of authenticity and (artistic, aesthetic, historical, architectural, and

²⁴ D. LOWENTHAL, *Counterfeit Art: Authentic Fakes?*, International Journal of Cultural Property, Vol.1, Issue One, Cambridge University Press, 2007.

²⁵ Professor J.H. Merryman is of the opinion that “Laws imposing criminal penalties on actions that most people do not regard as seriously offensive will not be aggressively enforce and rigorously applied”, J. H. MERRYMAN, *Counterfeit Art*, International Journal of Cultural Property, Vol.1, Issue One, Cambridge University Press, 2007.

religious) cultural values as administrative and political tools in the hands of States.

Authenticity currently represents the cultural values “truthfully and credibly expressed through a variety of attributes”⁷⁶. Arguably, it is possible to affirm that these cultural values, their truthfulness and credibility are subjective values, vague in their contents and in UNESCO’s practice. As a consequence, these values can be easily used as political tools by State Parties. Additionally, if authenticity and the (subjective) cultural assumptions embedded in it are generally ascribed to heritage sites which are materially *original* or *genuine* as they were constructed, aged or weathered in time⁷⁷, then there is no space for flexible uses of this notion. Namely, it would not be possible to justify the OUV of reconstructed or non-authentic cultural heritage sites. Indeed, notwithstanding the formal rigidity of this assumption, in the aftermath of the Nara Document on Authenticity, experts admitted that authenticity should not be judged neither in universal terms, nor in a strict sense. Contrariwise, it should be judged in its own cultural contexts. Several nomination processes challenge the traditional conception of authenticity as originality in form and material of heritage sites, thus witnessing different understandings of the concept of authenticity both by State Parties and by UNESCO.

Deciding what is authentic and what is not authentic is an extrinsic process made by State Parties. While embedding cultural and subjective assessments, it is also a power-laden process⁷⁸, constructed on the basis of what State Parties consider to be a cultural, artistic, aesthetic, historical, religious and political priority. This issue, especially when related to the debate on the subjectivity of the OUV and the impossibility to measure it in a scientific and impartial way, seems to be particularly controversial. This has an impact on the way State Parties build the OUV of heritage sites and on the use of cultural heritage. As a consequence, the grey area that does not allow a uniform evaluation of authenticity and integrity induce more careful reflections on the partial use of this notion both by State Parties and then by UNESCO. Do State Parties and

⁷⁶ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019.

⁷⁷ According to the Shorter Oxford English Dictionary and to the author, the word authentic may be understood as original, first hand (as opposed to copy), or as real, actual, genuine (as opposed to pretended), J. JOKILEHTO, Treatment and Authenticity, in Management Guidelines for World Cultural Heritage Sites, ed. B. Feilden and J. Jokilehto, ICCROM-UNESCO-ICOMOS, Rome, 1998, p.16.

⁷⁸ H. C. ALBERTS, H. D. HAZEN, Maintaining Authenticity and Integrity at Cultural World Heritage Sites, Geographical Review, Vol. 100, No. 1, 2010, pp. 56-73.

UNESCO use the concept of authenticity and integrity in an impartial and scientific way that is detached from political instrumentalizations?

From the nineteenth century onwards, especially in the field of architectural restoration of buildings, there was a friction between the “stylistic restauration”, “conservation” or “preservation” and “reconstruction”. The first one was intended as the recreation of elements often characterized by the addition of components that may or may not have ever existed before⁷⁹. The act of restoring is thus a practical expression of a judgement and it is intimately related to an extrinsic process that initiates and which in turn directly alters it. As a way of example, Piero Gazzola stated that:

“Architectural restorations have invariably borne the imprint of their period and of the restorer’s personality. From Roman times (e.g. the Teatro di Marcello) down to the first quarter of the twentieth century, the restorer has relentlessly imposed his own idiom on whatever monument he was restoring, so that restoration throughout this period could be described as a sort of outer garment of varying transparency which gave a new appearance to the monument. Restoring a work meant, quite simply, adapting it to fulfil some new function and to satisfy the aesthetic canons of contemporary taste. From the Renaissance onwards the restorer, whether he was a Michelangelo or some anonymous engineer, often treated the monument he was working on as raw material to be fashioned into something more elaborate. As a result, this process has gravely impaired the authenticity of many restored monuments”⁸⁰. In this perspective, restauration was defined as not appropriate, because the act of copying historic elements for repairs resulted in the loss of authenticity⁸¹.

⁷⁹ J. NAIFEH, *Reinterpreting the Authenticity of Reconstructed World Heritage Properties for the Twenty-First Century*, *DePaul Journal of Art, Technology and Intellectual Property Law*, Vol. 29, No. 1, 2018, pp. 1-80.

⁸⁰ P. GAZZOLA, *Restoring Monuments: Historical Background*, in *Preserving and Restoring Monuments and Historic Buildings*, UNESCO, Paris, 1972.

⁸¹ “In the early part of the last century, certain extremely elaborate parts of Gothic buildings were replaced by cast-iron elements (e.g. the spire of Rouen Cathedral, which caused an outcry at the time, still exists). Upon deterioration should they be replaced by the kind of stone used originally or should cast-iron be used again? It would not be permissible, for instance, to remove Vasari’s altars from the Church of Santa Croce in Florence, since they are beautiful in themselves, we must not be guilty of the mistake made by Vasari himself in destroying those already in existence (a characteristic example of a lack of critical sense in the man who was in fact the founder of modern criticism). In the case of later substitutions, we are nearly always justified in replacing the substituted element by another more adequate one. But each case must be considered on its merits. The only

Differently, conservation was referred to as the respect for historical materials, including all the alterations, additions and changes made to the “original” objects and materials throughout the years. In other words, it refers to the maintenance of a site in its original condition to the greater possible extent, taking measures to protect it from further damages. In this regard, emphasis was added on the material authenticity and documentary value of the monument⁸. Therefore, the

general rule is that a thorough preliminary investigation which takes account not only of the original forms but of all subsequent changes must always be made before embarking on any restoration whatever. Should the prime consideration be to restore a work of art to its original form, or should it be approached first and foremost as a part of a cultural heritage? In pursuit of an imaginary ‘ideal of beauty’ having no historical or critical justification, some architects, again, want to correct ‘errors’ committed by the original builders. Others, on the contrary, believe that the best form of restoration is none at all, but it is difficult to justify simply leaving a monument in ruins, even if reconstruction inevitably entails certain alterations. The Parthenon can serve as an example. Most of its constituent materials were left in a heap after it had been partially destroyed by bombardment during one of the wars between Venetians and Turks. After Lord Elgin had purchased the Parthenon marbles from the Turkish Governor, the dismantling of both the inner frieze and of the pediments continued, with the result that part of the architrave which still stood was destroyed. When the colonnade was eventually reconstructed, cement replicas had to be used to replace the missing pieces. Replacing the whole frieze would have involved too much restoration, but one side was entirely reconstructed. The hardness of the marble was a saving factor and thus the monument was fairly well preserved despite the violence of the explosion, so that the position of the columns was still discernible. In any case, the situation is better now than when the columns of the right façade lay strewn on the ground; at the same time, the ruined walls of the inner sanctuary still bear witness to what has happened”, P. SANPAOLESI, *Restoring Monuments: Historical Background, in Preserving and Restoring Monuments and Historic Buildings*, UNESCO, Paris, 1972, pp.50-51; “In general the reconstruction of buildings should be largely confined to cases of outstanding importance, such as the Parthenon. Although it had been used successively as an orthodox church and a mosque, the Parthenon had undergone no major alterations: the naos, the colonnade and the roof had survived. [...] Except for the pieces salvaged by Lord Elgin, the debris remained, and was still there some forty years later, when it was decided to piece together the broken parts of the Parthenon. This operation, a typical example of anastylosis, concentrated on the lateral colonnades, and was carried out successfully. [...] It was decided not to make any attempt at copying, but rather to leave the traces of the damage suffered by the Parthenon which now forms part of its history. The restorers adopted the sound practice of replacing the core of the column by material designed to guarantee its solidity, and facing it, on the outside, with plaster containing powder of the same Pentelic marble as that originally used, to match the colour as closely as possible. No attempt was made to reproduce the design. The exterior of the monument, after the repairs to the great breach, was completely restored. The anastylosis of the Parthenon may be said to be wholly successful, allowing a general view of the monument as a whole and an uninterrupted view of the outer colonnade”, P. SANPAOLESI, *Restoring Monuments: Historical Background, in Preserving and Restoring Monuments and Historic Buildings*, UNESCO, Paris, 1972, pp. 159-162.

⁸ The main critics to the “stylistic restauration” or “romantic restauration” approaches were John Ruskin, William Morris, and Boito, J. JOKILETHO, *A History of Architectural Conservation: The Contribution of English, French, German, and Italian Thought towards an International Approach to the Conservation of Cultural Property*, D. Phil Thesis, The University of New York, England, Institute for Advanced Architectural Studies, 1986,

sole act of maintaining was deemed to be appropriate and conservation became the predominant approach of care for historic buildings in Europe. Later on, the modern conservation theory which was based on the study of the use, artistic and historical functions of the monument started prevailing and became the current policy as reflected on the 1964 Venice Charter, ICOMOS, and ICCROM operating schemes. Reconstruction encompasses the building of a new structure based on historic design and it is mainly used when buildings have suffered extensive and irreparable damages. These three approaches are also witnessing different attitudes toward authenticity and integrity. Preservation and restoration best satisfy demands for sustaining the authenticity of a site, while reconstruction techniques may maintain integrity. Throughout the historical debate on what is (arguably) considered to be authentic, genuine or original, clear tensions emerge also in relation to the choices and best techniques selected to preserve the authenticity and the integrity of heritage sites³.

After, the World-War first, the International Museums Office arranged the International Conference of Experts for the Protection and Conservation of Artistic and Historical Monuments in Athens (1931). The aim was the discussion of doctrines and general principles⁴, establishment of administrative and legal measures regarding historical monuments⁵, aesthetic enhancement of ancient monuments⁶, use of

(recomposed in PDF format in 2005), pp. 4; J. H. STUBBS, *Time Honored: A Global View of Architectural Conservation*, Hoboken, New Jersey: John Wiley & Sons, Inc., 2009.

³ H. C. ALBERTS, H. D. HAZEN, *Maintaining Authenticity and Integrity at Cultural World Heritage Sites*, *Geographical Review*, Vol. 100, No. 1, 2010, pp. 56-73; The author is of the opinion "Natural and Human Disaster continue to destroy historic urban fabrics worldwide. While residents would often like to see their cities rebuilt "as they were", most scholars of heritage fiercely reject identical reconstructions by arguing either that they are "fake" simulations, or that they epitomize undemocratic urbanization processes", F. PIAZZONI, *What's Wrong with Fakes? Heritage Reconstructions, Authenticity, and Democracy in Post-Disaster Recoveries*, *International Journal of Cultural Property*, Vol. 27, 2020.

⁴ Article 1, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁵ Article 2, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁶ Article 3, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

restoration materials⁸⁷, deterioration of ancient monuments⁸⁸, definition of techniques of conservation⁸⁹ and international cooperation in matter of conservation of monuments⁹⁰. In particular, those participant states agreed upon the need of avoiding restorations *in toto* unless it appeared to be indispensable, thus recommending the respect of any historic and artistic work of the past, without excluding the style of any given period⁹¹. The Athens Charter also highlighted the historical function of restauration and conservation of historic monuments as historical evidence⁹². In the case of ruins, scrupulous conservation was necessary, and steps should be taken to reinstate any original fragments that may be recovered (*anastylosis*), whenever this was possible. In all the cases, the new materials used in restauration processes should be recognisable from the original⁹³. The Athens Charter for the Restoration of Historic Monuments focuses on tangible elements and respect for existing materials, calling for minimal interventions in the built fabric to prevent a "loss of character and historical values to the structures" and for the reburial of archaeological resources. It does not use the word authenticity, nor does it offer much guidance in cases of wholesale urban reconstruction⁹⁴.

The post-WWI debate on the reconstruction and conservation of monuments and works of art was demarcated by the establishment of UNESCO in 1945 and ICCROM in 1956. Hence, those issues related to restauration, conservation and preservation acquired a more institutionalized dimension. Following the Athens Charter and the creation of these new two institutional bodies, the 1964 International

⁸⁷ Article 4, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁸⁸ Article 5, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁸⁹ Article 6, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁹⁰ Article 7, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁹¹ Article 4, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁹² Article 3, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁹³ Article 6, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931, ICOMOS.

⁹⁴ C. CAMERON, From Warsaw to Mostar: World Heritage Committee and Authenticity, APT Bulletin, Journal of Preservation Technology, Vol. 39, No. 2/3, 2008.

Charter for the Conservation and Restoration of Monuments and Sites, known as the Venice Charter, was established. This Document emphasizes the modern conservation techniques, even though they should be used only when other techniques are inadequate. Like the Athens Charter, it generally focuses on the preservation of existing fabric and it specifically regulates the reconstruction work for archaeological sites, while remaining silent on the question of large-scale reconstructions⁸⁵. Differently from the Athens Charter, it uses the word authenticity in the preamble, pointing out the duty to conserve historic monuments "in the full richness of their authenticity." In other words, authenticity is identified as an historic value.

Later on, the first version of the Operational Guidelines (1977) included the test of authenticity among those criteria to identify the OUV in heritage sites. In particular, explicit reference is made to "authenticity in design, materials, workmanship and setting; authenticity does not limit consideration to original form and structure but includes all subsequent modifications and additions over the course of time which in themselves possess artistic or historical values"⁸⁶. However, with respect to the two previous documents dealing with the conservation, preservation and restorations, it is possible to detect how the concept of authenticity started becoming broader in its connotations, at least from a definitional perspective. Indeed, according to this formulation, heritage sites whose authenticity and integrity do not refer to the originality of the monument in a strict sense (material and shape) should not be a priori excluded if the changes and additions are recognized to have an artistic or historical value. On the one side, authenticity refers to design, materials, workmanship and setting without further clarification on the content of these elements. On the other side, authenticity is not impaired by those modifications and additions whose artistic and historical value is recognized. In this circumstance, the choice of what has an artistic and historical value has a political impact.

3.1 Authenticity and its Uses: The Cases of Rock-Hewn Churches of Lalibela, the Historic Centre of Warsaw, the Rila Monastery, the Mostar Bridge and the Old Town of Timbuktu.

The Rock-Hewn Churches of Lalibela were among the first UNESCO World Heritage Sites listed in 1978. The evaluation of the property made by ICOMOS points out the religious significance of the

⁸⁵ International Charter for the Conservation and Restoration of Monuments and Sites, The Venice Charter, 1964, Adopted by ICOMOS in 1965; J. JOKILEHTO, Questions of Authenticity, *Conversaciones...con Herb Stovel*, Nüm. 8, Dicembre 2019, pp. 55-72.

⁸⁶ UNESCO, CC-77/ CONF. 001/8, Operational Guidelines for the World Heritage Committee, Paris, 30 June 1977, para. 9.

property. The religious value of the property is then connected to its artistic and historical relevance, meant as preservation of the churches and maintenance of their religious functions in their original settings⁹⁷. Before the nomination, no interventions of restauration have been undertaken, and the property was defined as authentic. In this perspective, it seems that this nomination corresponds to the conventional conception of authenticity. More specifically, the possession of the Outstanding Universal Value was represented by those (subjective) values recognized in the property. These elements are enhanced by the Ethiopian Government as unique artistic achievements in a universal perspective, characterized by the preservation in their original configuration.

Contrariwise, the proposal for the nomination of the Historic Centre of Warsaw (1978) challenged this classical understanding of authenticity. Authenticity was certainly said to include all subsequent modifications and additions over the course of time which in themselves possess artistic or historical values⁹⁸. In this context though, originality and integrity were found in documents produced by the “BOS Archive”, established with the aim of rebuilding a city that has been methodically destroyed for political reasons. Inventory records found in the collection were made in the field, based on personal observations, but *authentic* and *integral* as part of a thematic collection⁹⁹. This *documentary* authenticity and integrity, rather than in design, materials, workmanship and setting, were said to be a constitutive part of the OUV of a historic town destroyed and reconstructed at least for the 85%. According to some scholars’ opinion, before the Nara Document on Authenticity being adopted, the treatment strategies for cultural-heritage sites “must maintain authenticity” by maximizing retention of “historical material”, by ensuring “harmony with original design and workmanship”, by not allowing “new additions to dominate over the original fabric but respecting the archaeological potential”¹⁰⁰. Nonetheless, this position

⁹⁷ Églises creusées dans la roc de Lalibela, Ethiopie, (Evaluation of Property), ICOMOS, Paris, N. 18, 7 June 1978; World Heritage Committee, CC-78/CONF.010/10 Rev., Final Report, Paris, 9 October 1978.

⁹⁸ C. CAMERON, From Warsaw to Mostar: World Heritage Committee and Authenticity, APT Bulletin, Journal of Preservation Technology, Vol. 39, No. 2/3, 2008; Memory of the World Register, Warsaw Reconstruction Office, Directorate for the Reconstruction of Warsaw and Department of Historical Architecture of the Warsaw Reconstruction Office and the Conservator Office for the Capital City of Warsaw, Ref. N. 2010-39.

⁹⁹ Memory of the World Register, Warsaw Reconstruction Office, Directorate for the Reconstruction of Warsaw and Department of Historical Architecture of the Warsaw Reconstruction Office and the Conservator Office for the Capital City of Warsaw, Ref. N. 2010-39, para. 4.1.

¹⁰⁰ J. JOKILEHTO, Treatment and Authenticity, in Management Guidelines for World Cultural Heritage Sites, ed. B. Feilden and J. Jokilehto, ICCROM-UNESCO-ICOMOS,

clashes with several nominations made during the '80s. Indeed, during the '80s, the World Heritage Committee's position changed again. It stressed that reconstruction was acceptable only if it was carried out on the basis of complete and detailed documentation on the original and *to no extent on conjecture*¹⁰¹. This new formulation is following the nomination of the Historic Town of Warsaw as a town that, although almost entirely reconstructed, possessed OUV under *criteria (ii) and (vi)*. Basically, the strict sense of authenticity has gone lost with this nomination, although there is no disagreement on the OUV of the site as a tool for social, cultural, religious and national identity reconstruction. More specifically, "the will of the nation brought to life again a city of which 85% was destroyed"¹⁰², and this political will justified a repackaged consideration both of the OUV and authenticity. However, it is not clear what is the meaning of *to no extent on conjecture*. Additionally, the property including its state of preservation should be evaluated relatively, that is, it should be compared with that of the property of the same type, dating from the same period, both inside and outside the State Party's property¹⁰³.

Another meaningful example of the debate on authenticity and integrity is represented by the Rila Monastery, a hermit canonized by the Orthodox Church. The monastery was destroyed by an extensive fire at the beginning of the nineteenth century, and rebuilt between 1834 and 1862. In 1982, ICOMOS opposed to the nomination of the site because it did not meet the test of authenticity, but it suggested its nomination under criterion *(vi)* (be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance)¹⁰⁴. In particular, the

Rome, 1998, pp. 59-75; S. LABADI, *World Heritage, Authenticity and Post-Authenticity*, S. Labadi and C. Long (eds.), 2010.

¹⁰¹ WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1980, Para. 18, lett. b; the same formulation appears also in WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1983, in WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1987, WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1988.

¹⁰² The Historic Centre of Warsaw, Poland, (Evaluation of Property) ICOMOS, Paris, N. 30, 7 June 1978, pp. 2; UNESCO, CC-80/CONF.016/10, Paris, 29 September 1980; WHC, Decision Conf. 016V.12, Consideration of Item 4 of the Agenda, Nominations of the World Heritage List (inscribed sites), Paris, 29 September 1980.

¹⁰³ WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1980, Para. 19, lett. a.; this formulation is removed from the WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1983, from the WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1987, and from the WHC/2, Revised, Operational Guidelines for the Implementation of the World Heritage Convention, 1988.

¹⁰⁴ Rila Monastery, Bulgaria, (Evaluation of Property), ICOMOS, N. 216, 29 April 1982; Another example of nomination that contrasts with the universal perspective of the OUV

site was evaluated “as a symbol of the 19th Century Bulgarian Renaissance which imparted *Slavic cultural values* upon Rila in trying to re-establish an uninterrupted historical continuity”. On the one side, the Operational Guidelines state that properties should be selected on the basis of criterion (vi) only if there is a conjunction with other criteria and in special circumstances. On the other side, the authenticity requirement was not met in the evaluation made by ICOMOS in 1982. In the first evaluation expressed by ICOMOS, the authenticity test was not met since Rila, as the Historic Centre of Warsaw, was almost entirely reconstructed. Later on, the authenticity of the property was found on the importance of the site as a literal, religious and artistic centre for the Bulgarian identity imparted with Slavic values that reminded Slavic sovereignty. This connotation of authenticity as an identity provider and based on nationalistic (subjective) values confers the nomination a clear political feature. Eventually, in the light of the Nara Document on Authenticity, the property is said to fully endorse authenticity in relation to location, context, concept, usage, function, tradition, spirit and feeling¹⁰⁵.

The debate on authenticity reached a total and consistent shift through the Nara Document on Authenticity, adopted in 1994¹⁰⁶. Gradually, authenticity ended up contrasting with and rejecting the materials-based test of authenticity as derived from the Athens Charter and the Venice Charter. Authenticity becomes a symbolic definition that impersonates subjective values. These subjective values are *cultural diversity*, *heritage diversity*, and *cultural values* as a main criterion for

and with the idea of the preservation in the original configuration is represented by the 1985 French proposal to inscribe the Historic City of Carcassonne. The nomination was initially deferred on the grounds that the ramparts had undergone consistent modifications in the 19th Century which impinge upon the authenticity of the site, C. CAMERON, From Warsaw to Mostar: World Heritage Committee and Authenticity, APT Bulletin, Journal of Preservation Technology, Vol. 39, No. 2/3, 2008, p.21; In the report, Any evaluation of the authenticity of Carcassonne must begin with an evaluation of the historical value of the 19th century restoration by Viollet-le-Duc. It has long been held that the work that he carried out would not be acceptable in the light of modern conservation theory and principles, as enunciated in the 1964 Venice Charter. However, ICOMOS has devoted much consideration in the past three years to its perception and definition of "authenticity." The 1994 Nara Document asserts that "it is ... not possible to base judgements of value and authenticity on fixed criteria. On the contrary, the respect due to all cultures requires that cultural heritage must be considered and judged within the cultural contexts to which it belongs", The Historic Fortified Town of Carcassonne, France, (Evaluation of Property) ICOMOS, N. 345 Rev, 28 June 1996.

¹⁰⁵ Within the debate on authenticity, another challenging nomination is represented by the Great Mosque and Hospital of Divrigi, Turkey, ICOMOS, Advisory Body Evaluation, N. 358, December 31, 1985.

¹⁰⁶ ICOMOS, The Nara Document on Authenticity, 1994; S. LABADI, World Heritage, Authenticity and Post-Authenticity, S. Labadi and C. Long (eds.), 2010.

explaining authenticity and the process of conservation. However, these are again very broad and ambiguous concepts, that raise political sensitivity.

On the one side, there is awareness that “all judgements about values attributed to cultural properties as well as the credibility of related information sources may differ from culture to culture, and even within the same culture. It is thus not possible to base judgements of values and authenticity within fixed criteria. On the contrary, the respect due to all cultures requires that heritage properties must be considered and judged within the cultural contexts to which they belong”¹⁰⁷. On the other side, authenticity is presented as a tool to cope with the forces of globalization, homogenization and aggressive nationalisms. In particular, the essential contribution made by the consideration of authenticity in conservation practices is to clarify and illuminate the collective memory of humanity, while at the same time avoid the suppression of the cultures of minorities¹⁰⁸.

Indeed, although the definition of authenticity is not provided, several articles of the Nara Document on Authenticity have been integrated within the 2005 Operational Guidelines, where the property must also meet the conditions of integrity and/or authenticity to be deemed of Outstanding Universal Value¹⁰⁹. By embedding the Nara Convention’s subjective and culturally related values within a set of rules, a normative effort is made by the World Heritage Committee. The aim is to institutionalize and rationalize something that is not objective. This approach is contradictory with respect to the statement contained in the Nara Document on Authenticity on the impossibility to base judgements of values, authenticity and truthfulness within fixed criteria. As a way of example, Article 9 of Nara is reproduced in Paragraph 80 of the OGs: “the ability to understand the value attributed to the heritage depends on the degree to which information sources about this value may be understood as *credible* or *truthful*. Knowledge and understanding of these information sources¹¹⁰, in relation to original and subsequent characteristics of the cultural heritage, and their meaning, are the requisite bases for assessing all aspects of authenticity”¹¹¹. Article 11 is

¹⁰⁷ ICOMOS, The Nara Document on Authenticity, 1994, para. 11.

¹⁰⁸ ICOMOS, The Nara Document on Authenticity, 1994, para. 4 (Preamble).

¹⁰⁹ WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005, Para. 78.

¹¹⁰ “Information sources” are defined as all physical, written, oral, and figurative sources, which make it possible to know the nature, specificities, meaning, and history of the cultural heritage, WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005, para.84, and Nara Document on Authenticity, 1994, (Definitions).

¹¹¹ WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005, Para 84.

then reproduced in Article 81 of the OGs. It states that judgments about value attributed to cultural heritage, as well as the credibility of related information sources, may differ from culture to culture, and even within the same culture. The respect due to all cultures requires that cultural heritage must be considered and judged primarily within the cultural contexts to which it belongs"¹¹². Article 13 of the Nara document is then replicated in Article 82 of the OGs with an extended version of the Nara list of "information sources", such as *form and design, materials and substance, use and function, traditions and techniques, location and setting, spirit and feeling*¹¹³. Additionally, through the Declaration of S. Antonio (1996), the same consideration made for the OUV can be reiterated. A general mechanism to evaluate authenticity, and hence the OUV, is established. Within this mechanism, those indicators (Reflection of the True Value, Integrity, Context, Identity, Use and Functions), which are mostly subjective and relative, are used to measure and assess conservation and authenticity. The Operational Guidelines also include the management systems, language, and other forms of intangible heritage derived from the conclusions of the Great Zimbabwe Meeting and the Riga Charter on Authenticity and Historical Reconstruction in Relation to Cultural Heritage¹¹⁴. Depending on the type of cultural heritage, and its cultural context, properties may be understood to meet the conditions of authenticity if their cultural values (as recognized in the nomination criteria proposed) are *truthfully* and *credibly* expressed. On the one side, no further explanation of these concepts is provided. On the other side, the judgments made by experts on the truthfulness and credibility of those values expressed by cultural heritage, induces to the elaboration of specific artistic, historic, social, and scientific dimensions of the cultural heritage being examined¹¹⁵. This is again a judgement whose application has a political impact and, even if legal standards are provided, it cannot be said to be impartial in its content.

¹¹² WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005.

¹¹³ Paragraph 83 clarifies that Attributes such as spirit and feeling do not lend themselves easily to practical applications of the conditions of authenticity, but nevertheless are important indicators of character and sense of place, for example, in communities maintaining tradition and cultural continuity, WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005.

¹¹⁴ The meeting focused on authenticity in the African Context, and on the importance of management system and other forms of intangible heritage in order to determine the features of authenticity, Expert Meeting, Great Zimbabwe, 2000.

¹¹⁵ WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005, Para. 84; The Riga Charter on Authenticity and Historical Reconstruction in Relation to Cultural Heritage, ICCROM/Latvian National Commission for UNESCO/State Inspection for Heritage Protection of Latvia, [in cooperation with: World Heritage Committee and Cultural Capital Foundation of Latvia], Riga, Latvia, 23-24 October 2000.

In 2005, it is possible to see a further update of those criteria that identify the authenticity in cultural heritage. Mainly, these legal changes coincide with and, at times, follows disastrous political and belligerent events. These events confer a specific political feature to the use of authenticity and become representative of this adjustment on the conception and use of the authenticity.

The nomination of the *Mostar Bridge* (Bosnia and Herzegovina) is the first of these instances. With the fall of the Communist regime in Eastern Europe and the dissolution of Yugoslavia, Bosnia and Herzegovina declared independence in March 1992. Afterwards, the region fell into what became known as the Bosnian War, an ethno-religious conflict between Serbians, Bosnians, Croatian Orthodox Christians, Catholics and Muslims. In this belligerent circumstance, much of the historic city centre was ruined, including mosques, churches and buildings whose recognized artistic and historical values were attached to the nation, including the Mostar Bridge¹⁶. Naturally, the tricky part of the nomination was authenticity. Even though the reconstruction was appropriately documented, it actually was a reconstruction. However, the reconstruction symbolized the post-war restauration of the country. ICOMOS recognized that in this case authenticity is not related to invented or manipulated results, but rather, the reconstructed bridge has a kind of truthfulness, even though a considerable portion is not of identical or original pieces. Additionally, its nomination as a World Heritage Site (solely under *criterion (vi)*) follows UNESCO's intervention for the reconstruction of the bridge and it coincides with the enactment of the 2005 Operational Guidelines¹⁷.

¹⁶ J. NAIFEH, Reinterpreting the Authenticity of Reconstructed World Heritage Properties for the Twenty-First Century, *DePaul Journal of Art, Technology and Intellectual Property Law*, Vol. 29, No. 1, 2018, pp. 39-47; A. J. RIEDLMAYER, Destruction of Cultural Heritage in Bosnia-Herzegovina, 1992–1996: A Post-war Survey of Selected Municipalities, in Riedlmayer, A. J., *Bosnia-Herzegovina Cultural Heritage Report*, Cambridge, Massachusetts, 2002; F. MANISCALCO, The loss of the Kosovo Cultural Heritage, Retrieved from Al Quds University, Institute of Islamic Archaeology, Web Journal on Cultural Patrimony, 2/2006; K. J. DETLING, Eternal silence: the destruction of cultural property in Yugoslavia, *Maryland Journal of Law and Trade*, Vol. 17, No. 1, 1993; P. J. BOYLAN, The concept of cultural protection in times of armed conflict: From the crusades to the new millennium, In N. Brodie & K. W. Tubb (Eds.), *Illicit antiquities. The theft of culture and the extinction of archaeology*, Oxfordshire: Routledge, 2002; A. CASSESE, *International criminal law*. Oxford: New York, 2003; M. BALCELLS, Left Behind? Cultural Destruction, the Role of the International Criminal Tribunal for the Former Yugoslavia in Detering it and Cultural Heritage Prevention Policies in the Aftermath of the Balkan Wars, *European Journal on Criminal Policy and Research*, Vol. 21, No. 1, 2015.

¹⁷ Old Bridge Area of the Old City of Mostar, Bosnia and Herzegovina, (Evaluation of Property), ICOMOS, N. 946 Rev., 2005; World Heritage Committee Decision, The Old City

The cultural site of *Timbuktu* (Mali) is another of these examples. It has been inscribed to the World Heritage List in 1988. It is composed of three great mosques, sixteen mausoleums and other holy public spaces. The site is deemed to have an Outstanding Universal Value because the mosques and the holy places have played an essential role in the spread of Islam in Africa (criterion (ii)). The mosques (Sidi Yah, Sankore and Djingareyber) bear witness to the golden age of the intellectual and spiritual capital at the end of the Aksia dynasty (criterion (iv)). The mosques and mausoleums are witnesses of the urban establishment of Timbuktu, including its traditional characteristic construction techniques where ancient rituals are used in order to maintain the structures (criterion (v)). ICOMOS agreed that the site's authenticity is also linked to these (religious) traditional construction techniques that are necessary for the maintenance and use of the sacred spaces¹¹⁸. The events committed in 2012 and 2013 by Islamic militants led to a consistent destruction of the sacred spaces. In this case, the concept of authenticity of an already nominated property acquires a meaning of (political) reconstruction and it is strictly related to the intangible heritage of the traditional construction techniques, as enforced by the ICC's ruling¹¹⁹.

Throughout the years, other attributes have been attached to the concept of authenticity. As a way of example, the concept of *sense of the place* became one of the connotations of authenticity. In particular, it has been referred to as the need to identify the values of tangible and intangible heritage. Direct attention is addressed to integrity and authenticity as tools to determine the role of historical-evidential, aesthetic, and socio-cultural values¹²⁰. Differently from the Athens Charter, authenticity is not limited to its historical value, but, according to several nominations with clear political features, there is also an aesthetic, and socio-cultural value attributed to the concept of authenticity.

of Mostar, Bosnia and Herzegovina, No. 946 Rev., 2005; 38COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, Inscriptions on the World Heritage List, 2014.

¹¹⁸ The Old Town of Timbuktu, Mali, ICOMOS, N. 119, December 22, 1987; World Heritage Committee Decision 36COM 8C.1, ICOMOS, Establishment of the World Heritage List in Danger (Inscribed Properties), 2012; World Heritage Committee Decision 43 COM 8C.2, Update of the List of World Heritage in Danger (Retained Properties), 2019.

¹¹⁹ Situation in the Republic of Mali in the Case of the Prosecutor v. Ahmad Al Faqi Al Mahdi, app. no. ICC-01/12-01/15, ICC (Public Reparation Order), 17 August 2017.

¹²⁰ The International Declaration of Jerusalem on Christian Zionism, 2006; ICOMOS Charter on the Preservation of the Spirit of the Place, Quebec Charter, 2008.

With respect to the 2005 Operational Guidelines' version, no significant changes are made in the latest version of the OG¹²¹. What is relevant in this context is that the examples of nominated properties (1977-2020) exemplifies the dichotomy between authenticity as the original state of the building, the Nara Document on Authenticity and its further uses. This means that authenticity is not inherent in (religious) objects, buildings or monuments. Rather, it is a quality that is culturally and politically constructed. It varies according to the values attached to it. This is the result of an extrinsic process made by Governments and International Institutions through canons and standard. Indeed, on the one side, descriptions of the state of conservation are also overwhelmingly used in nomination dossiers to strengthen such an image of continuity and stability of the nation¹²². On the other side, according to UNESCO's practice, the legal boundaries of what is considered to be authentic are stretched and modified in relation to specific nominations. In other words, the concept of authenticity is reshaped according to the political needs and events that characterizes a property undergoing a nomination process.

This aspect is particularly relevant if we consider three examples of a political adjustment to the concept of authenticity made both by State Parties and UNESCO: the four Monasteries in Kosovo (2004-6), the Cambodian Temple of Preah Vihear (2008), and the Palestinian city of Hebron (2017).

4. The Outstanding Universal Value of Religious Cultural Heritage: the Lack of a Scientific, Universal and Impartial Evaluation in UNESCO's Legal Framework.

One should wonder why that specific religious heritage is selected. This aspect involves also some considerations concerning the "artistic, architectural, archaeological and cultural values" of (religious) heritage sites. How do UNESCO and State Parties assess and shape the values related to (religious and contested) heritage sites? This becomes a decisional making process with a political content able to raise cultural sensitivity.

¹²¹ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 79-86; WHC Decision 39 COM. 11.

¹²² S. LABADI, Representations of the Nation and Cultural Diversity in Discourses on World Heritage, *Journal of Social Archaeology*, Vol. 7, No.2, 2007, pp. 147-170; S. LABADI, World Heritage, Authenticity and Post-Authenticity, S. Labadi and C. Long (eds.), 2010.

The value of religious heritage sites is primarily symbolic. It is connected and enhanced through connotations recognized by national authorities and UNESCO as “artistic, architectural, archaeological and cultural features” of Outstanding Universal Value. As previously introduced, this aspect is blended with an external attribute of the site, that of being a religious site claimed by two sovereign powers¹²³. We should bear in mind that a wide variety of cultural sites presenting these values are also religious sites, but not all religious sites or religious artefacts have these values. Yet, they are selected because they have an Outstanding Universal Value. However, not every example of religious art is also sacred art¹²⁴. Sacredness is a quality that transcends the material domain of religion and associates itself with the divine. Its function is not of a descriptive nature, but of a transforming one. Religious icons such as Christian icons, or statues of certain deities in the Hindu sphere, are considered sacred, as they possess a distinct quality by which the worshipper is transformed to a state of transcendence¹²⁵. Lastly, the intimacy between art and religion has prevailed beyond historical convolutions, transformations, and permutations in global cultural and religious values. From their inexplicable differences within individual cultures to their inherent and unconscious manifestations in the human psyche, the numerous conjunctures between art and religion persist even if the intensity of their relationship varies with time, place, political circumstances, and it seems to be particularly tenuous in contemporary Western cultures¹²⁶.

According to UNESCO's practice, the asset of this special category comprising both movable, immovable, cultural and natural elements having an artistic, aesthetic, historical and architectural relevance could be analysed according to the following categories¹²⁷:

¹²³ J.H MERRYMAN, *The Public Interest in Cultural Property*, California Law Review, Vol. 77, no. 2, 1989, pp. 339-364; D. CHUTE, *Sacred, Holy or Religious Art?*, Blackfriars, Vol. 36, No. 418, 1955, pp. 570-579.

¹²⁴ J. SAWARD, *The Beauty of Holiness, and the Holiness of Beauty: Art, Sanctity and the Truth of Catholicism*, Ignatius Press, 1996; P. FINGESTEN, *Toward a New Definition of Religious Art*, College Art Journal, Vol. 10, No. 2, 1951, pp. 131-146; H. HOWART, *Jewish Art and the Fear of Image*, Commentary, IX, 2, 1950, pp. 142-150;

¹²⁵ ICCROM, *Conservation Studies, Conservation of Living Religious Heritage*, Papers from the ICCROM 2003 Forum on Living Religious Heritage: Conserving the Sacred, 2005, p. 94-98.

¹²⁶ J.H MERRYMAN, *The Public Interest in Cultural Property*, California Law Review, Vol. 77, no. 2, 1989, p. 351.

¹²⁷ T. TSIVOLAS, *Law and Religious Cultural Heritage in Europe*, Springer International Publishing Switzerland, 2014.

- Sacred objects relating to religious history deemed to have an artistic value;
- Original engravings, prints and lithographs, rare manuscripts, incunabula, old liturgical books, documents, publications or publications of religious interests singly or in collections;
- Artistic or historical elements which have been dismembered from religious monuments or archaeological sites;
- Religious property of artistic interest or architectural interest, such as: religious properties, paintings and drawings produced entirely by hand on any support and in any material;
- Original works of statuary religious art and sculpture in any material;
- Religious Monuments, architectural works, works of monumental sculpture and painting, sacred elements or structures of an archaeological nature, and combinations of such features which are of outstanding universal value from the point of view of history, art and science;
- Groups of Religious Buildings, groups of separated or connected buildings which, because of their architecture, their homogeneity or their place in the religious landscape, are of outstanding universal value from the point of view of history, art or science;
- Religious Sites, resulting from the combined works of nature and of man, and sacred areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view¹²⁸.

However, this artificial categorization does not explain what is the content of these values and when or how religious heritage becomes of Outstanding Universal Value. Indeed, this is again related to a (political) judgement that has changed throughout the years²⁹. When it

¹²⁸ T. TSIVOLAS, *Law and Religious Cultural Heritage in Europe*, Springer International Publishing Switzerland, 2014.

¹²⁹ In 1976 (ICOMOS draft): "Properties which represent a unique artistic achievement, including the masterpieces of internationally renowned architects and builders"; In 1977 (First session of WH Committee): "Represent a unique artistic or aesthetic achievement, a masterpiece of human creative genius"; In 1983: "Represent a unique artistic achievement, a masterpiece of human creative genius"; In 1996: "Represent a masterpiece of human creative genius."

The perception of criterion (i) seems to have changed over time even though in principle it continues to refer to major examples of human creative genius. The Committee has generally insisted that the use of this criterion should be restricted to cases that really merit it. In a paper presented at the Consultative Body meeting at UNESCO in 1998 (WHC98/CONF.201/INF.11), the representative of Malta stated that the words defining criterion (i) should be interpreted as follows: "Masterpiece": should be taken to mean a complete and perfect piece of workmanship, an outstanding example; "Creative": should be taken to mean inventive, original as either a) first in a movement / style or b) the peak of a movement / style; "Genius": should be taken to mean with a high intellectual

comes to religious cultural heritage and UNESCO, the monumental character is surely intertwined with an artistic dimension that pushes toward the preservation, conservation and enhancement of religious sites³⁰. This dimension is an “inexhaustible fountain of opportunities for artistic creation”³¹, also defined in Western societies as a “secular enjoyment of religious beauty”³². The latter is also recognized by those States that, although secular in many instances, cannot remain culturally color-blind when the aesthetic beauty and artistic magnitude of the various religious sites are at stake for nomination in the World Heritage List or World Heritage in Danger List. Indeed, the relevant decisions made by State Parties show that what is deemed to be worthy of protection and preservation in light of their artistic value is subjective and grounded on political considerations. Any such judgement dealing with artistic and architectural relevance is based, by its very nature, on experiences regarding beauty, taste, art, conservation and preservation choices limited to a specific cultural and political background. The interesting part is indeed related to the perception of these values in religious heritage sites as addressed by UNESCO, the World Heritage Committee and the Advisory Bodies in contexts of competing sovereignty. If the identification of the Outstanding Universal Value at a national level is based on a specific cultural background, the decision made by the World Heritage Committee should not be based on subjective consideration of the artistic and aesthetic qualities of the site. On the other side, there cannot be a universal perception passible of standardized scientific evaluations. Are these evaluations detached from political considerations?

As a way of example, some contested sites’ dossiers highlight the art-historical and architectural value of the site, connecting this value

/symbolic endowment, a high level of artistic, technical or technological skills. “A masterpiece of human creative genius” needs therefore to be interpreted as: “An outstanding example (or the peak) of a style evolved within a culture, having a high intellectual or symbolic endowment, and a high level of artistic, technical or technological skills.” In the 2005 OG, criterion (i) refers simply to “a masterpiece of human creative genius”. In the previous editions, the definition referred to “a unique artistic or aesthetic achievement, a masterpiece of human creative genius”.

³⁰ Meeting of Experts on Sites and Monuments of Art and History, The Protection of Town with an Artistic Value, UNESCO/MUS/ Conf. 1/ 16, Paris, 14 October 1949; M. WYNN, Faith and Place, an Essay in Embodied Religious Epistemology, Oxford, Oxford University, 2009.

³¹ M. WEBER, Religious Rejections of the World and Their Directions, in Hans Gerth H. & Wright Mills C., from Max Weber, Essays in Sociology, Routledge, 1948, pp. 323-359.

³² W. BERCKEN, The Ambiguity of Religious Aesthetics. Reflections on Catholic and Orthodox Religious Art, in W. Bercken (Ed.), Aesthetics as a Religious Factor in Eastern and Western Christianity: Selected Papers of the International Conference held at the University of Utrecht, the Netherlands, Leuven, 2004; J. BLACKKE, On Defining Cultural Heritage, International and Comparative Law Quarterly, no. 49, 2000, pp.61-85.

to their religious significance, and, in many cases, making it instrumental to political discourses and purposes.

For the Old City of Jerusalem (1981), it is evident that *criterion* (ii) is taken into consideration with regard to the major religious monuments of the city¹³³, such as the Church of the Holy Sepulchre or the Dome of the Rock which have respectively exerted a considerable influence on the development of Christian and Muslim religious architecture¹³⁴. There is emphasis added on the spiritual and religious relevance of Jerusalem rather than on specific artistic or architectonic qualities of the religious sites, and yet, there is Outstanding Universal Value. In this case, the values constituting the OUV of the (religious and contested) site have no national identity. Moreover, the nomination dossier speaks of a lifestyle with an outstanding universal value, where the artistic and architectonic values can be extracted, thus resulting in a fusion with its religious relevance¹³⁵.

More importantly, these considerations seem to be particularly true if analysed in the context of three selected cases.

For each case, one should wonder if the global rules set forth by UNESCO are used neutrally both by national and global institutions while building and assessing an evaluation of the OUV of religious sites. If they are not used neutrally, especially in cases of contestation, the recognition and evaluation of the OUV becomes an administrative instrument in the hands of Governments and global institutions. As a consequence, these intrinsic values of contested religious heritage are instrumental to enforce, impair or define conflicting sovereign powers. On the one side, if the political impact, sensitivity and interests are consistent and evident results in UNESCO's decisions, it is dubious whether this attitude is a physiology or a pathology with respect to the body of rules elaborated by UNESCO. On the other side, it is dubious if this is a pathology related to specific instances of contestation, or, rather, it is a natural and ordinary attitude of Governments and Global

¹³³ Criterion (ii): exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design.

¹³⁴ ICOMOS, Advisory Body Evaluation, No. 148, Jerusalem; State of Conservation Report, CLT-82/ CH/ CONF. 014/3, Paris, 13 May 1982; State of Conservation Report, CLT-82/CONF. 014/6, Paris, 20 August 1982.

¹³⁵ ICOMOS, World Heritage List, The Old City of Jerusalem (Al-Quds) and its Walls, No. 148, 1981.

Institutions while choosing, selecting and building the heritage sites' OUV.

CHAPTER II

Contestation and Religious Cultural Heritage: the Role of Governments and UNESCO

1. The National Dimension of the Nomination Process: the Political Impact of the Selection Process

The use of powers in the field of cultural heritage take place when States use legal instruments, procedures, and mechanisms set forth by UNESCO to designate cultural heritage as the very best of the Nation. As addressed in the previous chapter, this is an evaluative process. The main ambiguity is that the evaluation of religious cultural heritage with OUV does not seem to be based on scientific standards of evaluation. Rather, it is driven by political and cultural variables, nationalistic and identity considerations. What creates the Outstanding Universal Value of religious cultural heritage is an extrinsic process of evaluation. It is undertaken by individuals, religious groups, and mainly Governments, who link the notion of OUV and its declinations to a given site. This definition of OUV is adapted to global standardized requirements, as set forth by UNESCO¹³⁶. Accordingly, declinations such as authenticity and integrity might change from a country to another, from a cultural background to another, from group to group, and so on. Authenticity must be considered and judged primarily by Governments within the cultural contexts to which it belongs¹³⁷. This implies a political choice related to what is deemed to be “authentic” at a national level. While preparing nomination documents, State Parties have to identify, describe and enhance the features that constitute the potential Outstanding Universal Value, including integrity and authenticity¹³⁸.

First, the activation of this mechanism for the nomination of sites involves several national and global public and private actors, actively participating to the listing of cultural heritage under UNESCO’s remit. Speaking of cultural heritage, its significance as a symbolic and most representative attribute of the Nation (and those outstanding aspects that the society or the religious group view as valuable) can be protected if identified.

¹³⁶ S. LABADI, UNESCO, Cultural Heritage, and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions, Archaeology in Society, AltaMira Press, 2012.

¹³⁷ ICOMOS, The Nara Document on Authenticity, 1994, para. 11; WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005, para. 78.

¹³⁸ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 79-95.

Indeed, the primary step to protect cultural and natural heritage is taken by each State Party to the Convention. Art. 4 of the 1972 WHC clarifies that it is a duty to each State Party to ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage [...] situated on its territory¹³⁹.

Second, from the technical point of view, the system conceived by the 1972 Convention requires adjustments to be made at a national level. They involve the identification, existence and adequacy of national rules to protect that heritage¹⁴⁰. For this reason, some obligations are levied on States. Among them, they should set up within their territories, one or more services for the protection, conservation and presentation of the cultural and natural heritage, thus developing scientific, technical studies and research on concerned heritage¹⁴¹. Most importantly, States should adopt appropriate general policies, intended as legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of heritage¹⁴². Although some procedural requirements are imposed and foreseen by UNESCO's bodies, such as those related to the formulation of the Outstanding Universal Value, authenticity and integrity, Governments are not told which domestic laws and regulations are to be adopted unless they are able to provide a legal background for the protection of cultural heritage¹⁴³. In any case, these laws and regulations should be in accordance with the World Heritage Convention¹⁴⁴. On the one side, within the general legal scenario, these laws adopted in order to implement the 1972 WHC are still domestic from a structural point of view. They are adopted by national governments and they do represent

¹³⁹ Article 4, Chapter II (National Protection and International Protection of the Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

¹⁴⁰ L. CASINI, *La Globalizzazione dei Beni Culturali*, Il Mulino, 2010, pp. 29-79; L. CASINI, *Italian Hours: The Globalization of Cultural Property Law*, *International Journal of Constitutional Law*, vol. 9, no. 2, 2011, p. 380.

¹⁴¹ Article 5, Chapter II (National Protection and International Protection of the Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

¹⁴² Article 5, Chapter II (National Protection and International Protection of the Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

¹⁴³ S. BATTINI, *The Procedural Side of Legal Globalization: The Case of the World Heritage Convention*, *International Journal of Constitutional Law*, vol. 9, no. 2, 2011, pp. 341-343.

¹⁴⁴ For further reference on domestic regulation adopted by State Parties in violation of the 1972 World Heritage Convention, see the case of the Oryx Sanctuary and the Dresden Elbe Valley. These properties have been placed in the List of the World Heritage in Danger, and then deleted from the World Heritage List following their Governments' domestic decisions in contravention of the Operational Guidelines; WHC, 31COM 7B.11, State of conservation of World Heritage properties, Arabian Oryx Sanctuary, Oman, 2007; WHC, 33COM 7A.26, Dresden Elbe Valley, Germany, (C 1156), 2009.

the will of a specific political community. On the other side, this means that a specific political community exists and it is able to express this political will through cultural heritage, according to the system set forth by the World Heritage Convention.

Third, even in ordinary situations, the identification of the OUV is a process throughout which cultural heritage acquires a sensitive dimension: decisions as to what will be listed as worthy of protection are taken by national authorities and other involved stakeholders. In most cases, they do raise several public interests, concerns, debates, oppositions and clashes both in ordinary circumstances and in cases of contested religious heritage.

How do Member States formulate the Tentative List? Is there any difference in the formation of the Tentative List, acceptance of nominations in the World Heritage List/ World Heritage in Danger List? Is this discrepancy most evident in ordinary situations of peace or in situations of conflict for the exercise of sovereign powers, enforcement of national identities or definition of borders?

1.2. The Tentative List

The Tentative List is the first legal instrument used by Governments, intended as an inventory of the property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the World Heritage List⁴⁵. The inventory shall include documentation about the location of the property considered and its significance. From the technical point of view, the use of this instrument by Governments suggests that cultural heritage considered by State Parties for nomination is located within recognized territorial boundaries. The 1972 Convention and the Committee though are not ensuring the protection of all properties of great interest, importance or value. They limit nominations to a select list restricted to the most representative pieces of the outstanding from an international and global point of view⁴⁶. It is not automatic that a property of national and/or regional importance proposed by Governments in the Tentative List will automatically be inscribed in the World Heritage List⁴⁷. An important point to clarify is that: the sole responsibility for the content of each Tentative List lies with the State Party concerned. The publication of the

⁴⁵ Art. 11.1, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage) UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 62-76.

⁴⁶ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 52.

⁴⁷ Operational Guidelines for the Implementation of the World Heritage Convention, WHC 19/01, 10 July 2019.

Tentative Lists does not imply the expression of any opinion whatsoever of the World Heritage Committee or of the World Heritage Centre or of the Secretariat of UNESCO concerning the legal status of any country, territory, city or area or of the State's boundaries¹⁴⁸. Throughout the process, State Parties are required to prepare their Tentative List with the participation of a wide variety of stakeholders, including site managers, religious communities, local and regional governments, local communities, NGOs and other interested parties and partners¹⁴⁹. They should therefore include details of those properties which they consider to be of potential Outstanding Universal Value and which they intend to nominate during the following years. Upon reception of the Tentative Lists from the States Parties, the World Heritage Centre checks for compliance of the documentation with the Tentative List submission format and/or the Tentative List Submission Format for Future Transnational and Transboundary Nominations¹⁵⁰. When all information has been provided, the Tentative List is registered by the Secretariat and transmitted to the relevant Advisory Bodies for information, with a summary of all Tentative Lists annually presented to the Committee. The Secretariat, in consultation with the States Parties concerned, updates its records, in particular by removing from the Tentative Lists the inscribed properties and nominated properties which were not inscribed¹⁵¹.

¹⁴⁸ WHC, Decision 41 COM 11; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 68.3.

¹⁴⁹ Article 1, 2 and 11.1 of the UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; Decision 39 COM 11; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 62-76.

¹⁵⁰ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 134-139.

¹⁵¹ Decision 7 EXT. COM 4A; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 68.

As for the content of the Tentative List to be developed by States, reference is made to the selective evidence that supports potential Outstanding Universal Value. States Parties are encouraged to seek as early as possible upstream advice from the Advisory Bodies during the development of their Tentative Lists. In fact, in order to build this statement of OUV, States Parties should consult the analyses of both the World Heritage List and Tentative Lists prepared at the request of the Committee by ICOMOS and IUCN to identify the gaps in the World Heritage List. These analyses could enable States Parties to compare themes, regions, geo-cultural groupings and bio-geographic provinces for prospective World Heritage properties¹⁵². In addition, States are encouraged to consult the specific thematic studies carried out by the Advisory Bodies. These studies are informed by a review of the Tentative Lists submitted by States Parties and by reports of meetings on the harmonization of Tentative Lists, as well as by other technical studies performed by the Advisory Bodies and qualified organizations and individuals. In this perspective, also at a national level State Parties are required to submit persuasive descriptions of their outstanding sites. These descriptions though are based on standardized canons set forth by UNESCO, that include thematic studies and comparative analyses¹⁵³.

We should wonder if the decision-making powers exercised by National Governments are used in order to pursue political interests especially when conflicts for the exercise of sovereign powers persist. At the national stage of the nomination process, is the use of UNESCO's instruments imbued with political interests either in ordinary nomination processes and in situation of conflicts for the exercise of sovereign powers? Is the initial stage of nominations of disputed religious sites detached from political considerations? The analysis should start primarily from the national level, because this is the level where the harshest disputes for the exercise of sovereign powers occur and clashes among public interests arise.

1.3. The Tentative List in Ordinary and Disputed Circumstances: The Cases of the Historic Centre of Lucca, the Old City of Jerusalem and the Case of the Complex of the David Gareji Orthodox Monasteries and Hermitages

¹⁵² Decision 24 COM para. VI.2.3.2 (ii); Decision 39 COM 11; Documents WHC-04/28.COM/13.B I and II <https://whc.unesco.org/document/5297>, (ICOMOS) and <https://whc.unesco.org/document/5298>, (IUCN); WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 71.

¹⁵³ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 72; in this regard, thematic studies are different than the comparative studies or analysis to prepared by States Parties when nominating properties for inscription in the World Heritage List.

The Historic Centre of Lucca (Italy) has been inserted in the Tentative List in 2006, under criteria (ii) and (iv)¹⁵⁴. Some clarifications are worthy of consideration both in relation to the formulation of the nomination dossiers in a non-contested context and in relation to the clashes of interests occurring during the nomination process. As for the first point, it is relevant to clarify that the procedure for inscription in the Tentative List is regulated by several laws. They state that the procedure shall be started by concerned Institutions, Bodies, Public Administrations, Associations and other subjects, that are going to notify the formulation of the dossier to the Commissione Nazionale Italiana UNESCO (CNIU). As a way of example, the mayor of the city proposed the Historic Town of Lucca for its inclusion in the World Heritage List¹⁵⁵. The CNIU, after a first examination, is going to send the dossier to the competent Ministries *ratione materiae* (either the Ministero dei Beni e delle Attività Culturali e del Turismo or the Ministero dell'Ambiente e della Tutela del Territorio e del Mare). Taking into consideration the opinion of the Ministries, the preliminary investigation is concluded with a positive opinion (*parere non ostativo*) submitted by the Central Administrations in the Directive Council of the CNIU: in this case, the properties will be inscribed in the National Inventory. In the second phase, the dossier is transmitted to the Ministero degli Affari Esteri e della Cooperazione Internazionale, that is going to transmit it to the Permanent Italian Delegation for official transmission to the competent UNESCO Secretariats. For the properties inscribed in the National Inventory, a long evaluative procedure for nomination starts, thus including the evaluations of ICOMOS, ICCROM or IUCN. As for the second point, it is good to take into consideration that Italy is a country with a long tradition in the field of cultural heritage legislation and preservation. Nonetheless, despite the lack of conflicts for the exercise of sovereign powers, economic and political interests persist. In particular, these interests are not written in the nomination dossier for the Historic Centre of Lucca, described as an environment where several historical phases have enriched its architecture and, mainly, its Romanesque churches (the Duomo, San Michele in Foro and San Frediano) reflect the economic power of the city. Anyway, the nomination of Lucca was not successful and it is still currently lying in the Tentative List, waiting for further re-examination: on the one side, the nomination was perceived as a tool to boost tourism and prestige of the city; on the other side, it was perceived as a threaten for the celebration of other important events in the city (Lucca Comics & Games).

¹⁵⁴ Historic Centre of Lucca, Ministry of Cultural Heritage, Italy, Tentative List, Ref. No. 340, 2006.

¹⁵⁵ La Nazione, Lucca Scelta dall'UNESCO, Lucca, 8 Settembre 2012.

The nomination process becomes extremely tricky if cultural heritage is contested between two sovereign powers with religious sentiments involved. Moreover, the traditional principle on State sovereignty, its constitutive elements and correlated principles —self-determination, state recognition, delimitation of political boundaries, are consistently challenged by this administrative process that originates from the national level and ends up in global decisions taken by UNESCO and its Institutions¹⁵⁶. Basically, the typology of conflict existing between two sovereign powers is not merely related to the use of armed force, even though it may escalate in the use of armed force. It is not simply connected to those circumstances that require the application of the main international treaties for the protection of cultural heritage in times of armed conflict. The element of contestation is made concrete by this process of identification at a national level, that is in substance connected to the element of the religiosity of cultural heritage. This is an intrinsic element that constitute the Outstanding Universal Value of the property and it is an element that foments the claims of the parties contesting the property. Indeed, given the context of competing sovereignty, the role of National Governments, administrative bodies and stakeholders involved at this stage is crucial, but the process is far from being plane¹⁵⁷. More specifically, the role of these Governments as main actors in the nomination process becomes fundamental because of the intrinsic religious value and because of the element of contestation itself.

As for the first element —*religiosity*, there is a *spatial* notion of religious cultural heritage being traced, also following the broad definitions provided by the World Heritage Convention (1972). This category is primarily referred to: *religious monuments* (such as architectural works, works of monumental sculpture and painting, sacred elements or structures of an archaeological nature, and combinations of such features, which are of Outstanding Universal Value from the point of view of history, art or science); *groups of religious buildings* (such as groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the religious landscape, are of Outstanding Universal Value from the point of view of history, art or science); *religious sites* (such as works of man or the combined works of nature and of man, and sacred areas, including

¹⁵⁶ For further details, see Paragraph 3 of this Chapter (The Erosion of the Traditional Doctrine on the Sovereignty of States through UNESCO's Rules and Cultural Heritage: Open Issues).

¹⁵⁷ See Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

archaeological sites, which are of Outstanding Universal Value from historical, aesthetic, ethnological or anthropological points of view)¹⁵⁸.

As for the second element—*political contestation*, this dimension is intertwined with the significance of religious cultural heritage. The latter is a symbol of the culture, whose values and intangible aspects, such as rituals and architectural techniques of construction, interact with contestation. Indeed, the political sensitivity attached to contested religious heritage acquires a consistent and unquestionable dimension: Governments' decisions have a particularly relevant, although divergent, political impact. This is patent in the cases of The Old City of Hebron (Palestine vs. Israel), in the Medieval Monuments and Wall Paintings in Kosovo (Serbia vs. Kosovo) and in Temple of Preah Vihear (Cambodia vs. Thailand). In fact, this is the role of religious cultural heritage from which it pulls out its powerful political dimension. Decisions as to what and how is deemed worthy of protection and preservation is generally made by State authorities at the national level and by intergovernmental organizations at a global level. For this reason: "one of the main problems associated with cultural heritage is the subjective definition adopted by states "particularly when influenced by political motivations", state-centric approach, also in accordance with national legislative (even constitutional) provisions, locally-driven administrative actions and regional fiscal projects. Within this context, the regulation of religious cultural heritage, along with its specific elements, remains *prima facie* an issue of the associated normative

¹⁵⁸ T. TSIVOLAS, *Law and Religious Cultural Heritage in Europe*, Springer International Publishing Switzerland, 2014; T. TSIVOLAS, *The Legal Foundations of Religious Cultural Heritage*, Religions, Vol. 10, no. 283, 2019, Introduction; P. PETKOFF, Finding a Grammar of Consent for 'Soft Law' Guidelines on Sacred Places: The Legal Protection of Sacred Places within the Existing Public International Law Instruments and Grass-root Approaches, in *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Medierranean*, Edited by Silvio Ferrari and Andrea Benzo, Farnham: Ashgate Publishing, 2014; S. BARBAGALLO, The Universal Value of Ecclesiastical Property, *Uniform Law Review*, UNIDROIT, Oxford University Press, Vol. 20, N.4/2015, pp.583-593; J.A. ESTRELLA FARIA, The International Protection of Religious Cultural Property, *Uniform Law Review*, UNIDROIT, Oxford University Press, Vol. 20, N.4/2015, pp. 594-609; L. HAMMER, Cultural Heritage Protection and Sacred Spaces Considering Alternative Approaches From Within the Human Rights Framework, *Columbia Human Rights Law Review*, Vol. 49, 2017, pp. 73-113; J. BLAKE, On defining the cultural heritage, *International and Comparative Law Quarterly*, Vol. 49, 2000, pp. 61-85; A. FORNEROD, *Le régime juridique du patrimoine religieux*, Paris, L'Harmattan, 2013; A. FORNEROD, *Funding Religious Heritage*. Farnham: Ashgate, 2015.

framework imposed and monitored, in each and every case, primarily by the respective sovereign states”¹⁵⁹.

Given the political impact of the decisions taken by national authorities, they do represent an occasion for further reflection. In fact, legal and administrative problems arise from longstanding conflicts, that have an impact on decisions— primarily taken at the national level, then transposed at an international level.

There are two emblematic examples of contested religious sites currently in the Tentative List.

The first example is the case of Jerusalem. After Israel declared it, complete and united, the capital of the State¹⁶⁰, UNESCO has started a series of massive interventions in Jerusalem, trying to contrast the occupation of Jerusalem and the alteration of the world heritage sites’ *status quo* through the protection of its holy sites. Most notably, since 1967, UNESCO has increasingly played a dominant role in the Old city of Jerusalem, connecting the Muslim religious heritage sites to the more general problem of self-determination of the Palestinian People and clarity of disputed borders. UNESCO’s powers were exercised in the field of the preservation of cultural heritage in a contested area. It took place through legislative instruments (World Heritage List), but also through practical plans (2008 UNESCO *Action Plan for the Safeguarding of the Cultural Heritage of the Old City of Jerusalem*¹⁶¹), resolutions (*Resolution 200 EX/PX/DR.25.2: “Occupied Palestine”*¹⁶²) and decisions that take political sensitivity up. UNESCO is indeed able to exert moral and political pressure on countries by issuing reports and taking decisions that demonstrate its intention of impacting national policies in flagrant violation of international rules. The inefficiency of this legal mechanism for “naming and shaming” can be envisaged though, at least for the Old City of Jerusalem and provided the lack of cooperation by the Israeli side, on the ground of enforcement and compliance to the 1954 Hague Convention and 1972 World Heritage Convention. This statement is particularly true if the results of the 2008 *Action Plan for the Safeguarding of the Cultural Heritage of the Old City of Jerusalem* are considered. On the

¹⁵⁹ T. TSIVOLAS, *The Legal Foundations of Religious Cultural Heritage*, Religions, Vol. 10, no. 283, 2019, Introduction; T. TSIVOLAS, *Law and Religious Cultural Heritage in Europe*, Springer International Publishing Switzerland, 2014.

¹⁶⁰ Basic Law, “Jerusalem: the Capital of Israel”, 5 August 1980, available online on the website of the Israel Ministry of Foreign Affairs.

¹⁶¹ UNESCO, Executive Board, 180/EX 10, Preservation of Jerusalem Cultural Heritage, Action Plan, Paris, 5 October, 2005.

¹⁶² UNESCO, Executive Board, Programme and External Relations Commission, Occupied Palestine, 200 EX/PX/DR.25.2 Rev. Paris, 12 October 2016.

one hand, the specific aim was to exercise its powers to restore and revitalize targeted areas of the Old City, namely the Cotton Market in the Arab neighbourhood, including one of the entrance gates to the Al Haram Sharif compound. UNESCO has found that this area of the Arab neighbourhood was mostly affected by the lack of a national and local cultural policy that would include some areas so far exempted from plans of urbanistic revitalization. The *"modification of juridical status of the property diminishing the degree of its protection"*, the *"significant loss of historical authenticity"* and the *"important loss of cultural significance"* as far as the *"lack of conservation policy"*, the *"threatening effects of town planning"*, *"ascertained danger"* and *"potential danger"* are the dominant reasons grounding UNESCO's positions.¹⁶³ On the other hand, it makes little reference to the political circumstances and tensions that would have diminished its freedom of action in Jerusalem. It fails in considering the limitations imposed by the presence of the IDF (through checkpoints and accesses) and by the construction of the fence. What is more, it does refer to the quartier's religious heritage sites restauration with no reference to an extensive urban revitalization, social and water supply infrastructures amelioration and plans of building synagogues and yeshivas in the area involved within the project. Eventually, the implementation of this plan had a very limited impact with respect to its potentialities and did not meet the expectations of those minority religious groups involved.

Two are the peculiar facts related to the case of Jerusalem. First, the inscription of Jerusalem as an independent world heritage site is an exceptional circumstance: the site does not belong neither to the Israeli, nor to the Jordanian, nor to the Palestinian World Heritage Site List. This proves that in this case UNESCO avoided to take a decision related to the attribution of a nationality to a contested site. Indeed, Jerusalem has been inserted in the List of the World Heritage in Danger as an independent site proposed by Jordan, with UNESCO refusing the attribution either to Israel and Palestine in order to avoid further political escalations¹⁶⁴. Second, in 2000, the Permanent Israeli Delegation has proposed Jerusalem as Israeli World Heritage site. The nomination concerned "Jerusalem - the Old City and Ramparts to include Mount Zion" proposed by Israel as an extension to the "Old City of Jerusalem and its Walls" already inscribed in the World Heritage List in 1981, upon proposal by Jordan. The Committee at its 25th Session (Helsinki, 2001)

¹⁶³ UNESCO, Decision WHC 31 COM 7A.18, Application of the Reinforced monitoring mechanism at the property since 2007 and Document CLT 82/CH/CONF.015/8; 29 COM 7A.31; 30 COM 7A.34; World Heritage 32 COM, WHC-08/32.COM/7.A. Add.2, State of conservation of the properties inscribed on the List of World Heritage in Danger, 27 June 2008.

¹⁶⁴ WHC, 06COM X.28-35 - Nomination of the "Old City of Jerusalem and its Walls" to the list of World Heritage in danger, 1982.

endorsed the recommendation of the 25th session of its Bureau (Paris, June 2001) *“to postpone further consideration of this nomination proposal until an agreement on the status of the City of Jerusalem in conformity with International Law is reached, or until the parties concerned submit a joint nomination”*. It should be noted that, the UNESCO General Conference in its Resolutions 32C/39 and 33C/50, affirmed that: *“(...) nothing in the present decision, which is aimed at the safeguarding of the cultural heritage of the Old City of Jerusalem, shall in any way affect the relevant United Nations resolutions and decisions, in particular the relevant Security Council resolutions on the legal status of Jerusalem”*¹⁶⁵. In this case, UNESCO implicitly considered the long-standing struggle for the exercise of sovereign power, thus preventing Israel from proceeding with the extension of the nomination proposed in the Tentative List by Israel.

The second example of contested religious site, currently on the Tentative List, is represented by the Complex of the David Gareji Orthodox Monasteries and Hermitages, proposed in 2007 by the Ministry of Culture, Monuments Protection and Sport of Georgia, and claimed by Azerbaijan. Politically, the dissolution of the Soviet Union led to freedom, independence, and sovereignty of its former member republics, but borders were not clearly demarcated. The non-demarcated borders are still currently the object of disputes, and these religious monasteries scattered in close proximity of the borders are the target of such claims¹⁶⁶. The David Gareji is a complex of monasteries and hermitages located in Eastern Georgia, 25 km away from Tbilisi, on Iori plateau near the border of Georgia and Azerbaijan. In the Tentative List proposed by Georgia, the complex is said to include nineteen Medieval Monasteries with approximately 5 000 cells for monks. In other sources, the complex is said to comprise twenty-one identified monasteries and hermitages¹⁶⁷. According to the statement of the OUV, the David Gareji is defined by the Georgian Ministry of Culture, Monuments Protection and Sport as one of the most important landmarks of Georgia for many reasons. Among these reasons, historical, artistic and religious attributes

¹⁶⁵ WHC/19/43.COM/ 7 (Site proposed by Jordan), WHC/19/43.COM/7A.Add, WHC/19/43.COM/7A.Add.2, WHC/19/43.COM/7A.Add.3 and WHC/19/43.COM/7A.Add.3.Corr.

¹⁶⁶ Tentative List, Georgia, David Gareji Monasteries and Hermitages, Ministry of Culture, Monuments Protection and Sport of Georgia, Ref. No. 5224; M.POPKHADZE, Georgia and Azerbaijan’s David Gareja Monastery Conundrum, Foreign Policy Research Institute, 2019; C. THOMPSON, EIB-Institute, Luxembourg, The 7 Most Endangered in Europe: David Gareji Monasteries and Hermitages, Georgia, Technical Report, Programme run by Europa Nostra, the Voice of Cultural Heritage in Europe, in partnership with the European Investment Bank Institute.

¹⁶⁷ C. THOMPSON, EIB-Institute, Luxembourg, The 7 Most Endangered in Europe: David Gareji Monasteries and Hermitages, Georgia, Technical Report, Programme run by Europa Nostra, the Voice of Cultural Heritage in Europe, in partnership with the European Investment Bank Institute, p. 2.

of the complex are enhanced. Additionally, in the view of State Party, it is unreasonable to apply comparative regional analysis to this property. The monasteries are deemed to have a unique significance from the historical, artistic and archaeological perspective, thus bearing the traditional principles of sustainable living directly linked to the masterpieces of Georgian Medieval art. The link between art, religion and the Georgian political identity is emphasized. The foundation of monastic centres in the first half of 6th century in the Gareji desert was connected with the name of one of the 13 *Assyrian Fathers*, St. David named Garejeli and his disciples Lukiane, Dodo and others. Along with the Lavra founded by St. David Garejeli, they laid the foundation of the monasteries of Virgin (Dodos Rka) and St. John the Baptist (Natlismtsemeli). Additionally, this link between art, religion and the Georgian political identity is strengthened for the existence of rock-cut monasteries and magnificent murals containing the portraits of Georgian Kings, served as one of the most important monastic and pilgrimage centres of Georgia. Some unique mural paintings are preserved in the Gareji monasteries, the oldest of which go back to the 8th century. Analysis of the surviving remains leads to the conclusion that till the end of the 10th century they only partially painted the interiors of Churches: usually just the apse and dome, but sometimes the northern wall as well. The most ancient mural paintings are found in the Dodos Rka Monastery, on an apse of one of the small Churches. Mural paintings of the 10th century are to be found in the Tsamebuli Monastery and Udabno Monastery, actually located in in the border. The turn of the 12th and 13th centuries witnessed the creation of the mural paintings of Bertubani Monastery, the finest achievement of the Gareji School. They are very impressive free style works and are distinguished by complete renditions of Life of the Virgin Mary. There is a political problem though: the Gareji school of painting connected to the Georgian identity, is found also in a Monastery actually located in Azerbaijan¹⁰⁰. First, no mention to the element of contestation is made. Second, UNESCO did not explicitly express any opinion on matters related to the David Gareji nomination, not even asking for deferral of the nomination, but there is a peculiar fact to be pointed out. Among the monasteries, five of them (Laura, Udabno, Natlismtsemeli, Dodorka and Bertubani) have a greater religious significance and have been the destination of several pilgrimages and religious activities. All the monasteries laying in the Georgian side are property of the Georgian Patriarchy and are under the responsibility for their proper preservation is of the Ministry of Education, Science, Culture and Sport of Georgia, through the National Agency for Cultural Heritage Preservation. Among these important monasteries though,

¹⁰⁰ Tentative List, Georgia, David Gareji Monasteries and Hermitages, Ministry of Culture, Monuments Protection and Sport of Georgia, Ref. No. 5224.

some of them are located in Azerbaijan, hence a political impasse emerges and clashes with the proposal made by Georgia. As a way of example, the Bertubani Monastery is located beyond the border of Georgia, although included in the Tentative List, and it is completely inaccessible by Georgian officials and scholars. The Chichkhituri Monastery, also included in the Tentative List, is partially accessible under special conditions. For political reasons related to existence of the contestation of some important religious building, the Georgian Ministry cannot until present address the problem of conservation of David Gareji desert in a comprehensive way. In the Georgian system, each monument worthy of protection is registered with a document named passport in which all the available info is collected (including historical information, some images, drawings, a map, eventually also data regarding the area of the zone to be protected around the monument). In the case of the David Gareji monasteries, only nine passports are available in Georgian and/or Russian language and contain some synthetic Soviet time documentation. Hence, there are criticalities both related to the documentation and preservation of the complex and to the effective political control exercised by the Georgian Ministry ¹⁶⁹.

Are these two cases exemplifying how the Tentative List can be used as a primary political statement? Is the acceptance or denial of the proposals contained in the Tentative List either a threshold or a blockage of a global administrative process leading (or not) to decisions with a strong political impact?

2. The Global Dimension of the Nomination Process

The cases of sites proposed in the Tentative List (the Historic Centre Lucca, the Old City of Jerusalem, the Complex of the David Gareji Orthodox Monasteries and Hermitages) demonstrate the difficulties and the variety of interests raising during the initial stage of the nomination process. More specifically, notwithstanding the existence of the same legal circumstances, the result of UNESCO's decisions is not uniform. Is this witnessing a different use of political powers stemming from the same legal instruments?

¹⁶⁹ C. THOMPSON, EIB-Institute, Luxembourg, The 7 Most Endangered in Europe: David Gareji Monasteries and Hermitages, Georgia, Technical Report, Programme run by Europa Nostra, the Voice of Cultural Heritage in Europe, in partnership with the European Investment Bank Institute, pp.36-37.

The 1972 World Heritage Convention establishes a system made by three components: a decision-making body, an administrative secretariat, and various consultative organs¹⁷⁰. The decision-making body is the *World Heritage Committee*, composed of 21 members that meet at least once a year (June/July). The WHC establishes its Bureau, which meets during the sessions of the Committee as frequently as deemed necessary. Committee decisions are said to be based on *objective and scientific considerations*, recognizing that such decisions depend upon: i) carefully prepared documentation; ii) thorough and consistent procedures; iii) evaluation by qualified experts; iv) if necessary, the use of expert referees¹⁷¹. More specifically, from the procedural point of view, the decisions taken by the Committee, comparable to those of a Parliament, are mostly related to:

¹⁷⁰ For further Details, see the UNESCO Constitution, and the UNESCO Rules of Procedure of the General Conference, 28 May 2020, Adopted by the General Conference at its 3rd session and amended at its 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 37th, 39th and 40th sessions; See also: 3 C/110, Vol. II, pp. 89-90, 92-111; 4 C/Resolutions, p. 85; 5 C/Resolutions, pp. 130-33; 6 C/Resolutions, pp. 85-6; 7 C/Resolutions, pp. 106-8; 8 C/Resolutions, pp.14-17; 9 C/Resolutions, pp.70-l; 10 C/Resolutions, pp. 61-3; 11 C/Resolutions, pp. 12, 94-5; 12 C/Resolutions, pp. 5, 95-7; 13 C/Resolutions, pp. 113-14; 14 C/Resolutions, pp. 107-8; 15 C/Resolutions, pp. 101-6; 16 C/Resolutions, pp. 93-4; 17 C/Resolutions, pp. 113-15; 18 C/Resolutions, pp. 122-3; 19 C/Resolutions, p. 93; 20 C/Resolutions, pp. 141, 160; 21 C/Resolutions, pp. 122-3; 23 C/Resolutions, pp. 110-11; 24 C/Resolutions, p. 168; 25 C/Resolutions, pp. 193-4; 26 C/Resolutions, pp. 133-9; 27 C/Resolutions, p. 102; 28 C/Resolutions, p. 118, pp. 133-34, 143-45; 29 C/Resolutions, pp. 119-26; 30 C/Resolutions, pp. 115-21, 124; 31 C/Resolutions, pp. 105-6; 32 C/Resolutions, pp. 117-18 ; 37 C/Resolutions pp. 81-83; 39 C/Resolution 87; 40 C/Resolutions 81 and 83.

¹⁷¹ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 19-22.

a) identification, on the basis of Tentative Lists and nominations submitted by States Parties, of cultural and natural properties of Outstanding Universal Value and inscription of those properties on the World Heritage List, refusal, referral or deferral of nominations¹⁷²; b) examination of the state of conservation of properties inscribed on the World Heritage List through processes of Reactive Monitoring and Periodic Reporting¹⁷³; c) inscription on, or removal of properties from the List of World Heritage in Danger¹⁷⁴; d) determination and allocation of the resources of the World Heritage Fund in order to assist States Parties in the protection of their properties of Outstanding Universal Value¹⁷⁵; e) definition of the procedure by which requests for International Assistance are to be considered, while carrying out studies and consultations as necessary before coming to a decision¹⁷⁶; f) revision and adoption of the *Operational Guidelines*¹⁷⁷.

The administrative body is the *World Heritage Centre*. This is assisted by a Secretariat appointed by the Director-General of UNESCO. The function of the Secretariat is currently assumed by the World Heritage Centre, established in 1992 specifically for this purpose. The Director-General designated the Director of the World Heritage Centre as Secretary to the Committee. The Secretariat assists and collaborates with the States Parties and the Advisory Bodies¹⁷⁸. In particular, the Secretariat receives the submissions of the properties (Tentative Lists) by

¹⁷² Art. 11.2 and 11.7, Art. 11.1, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

¹⁷³ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 169-176; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 199-210.

¹⁷⁴ Art. 11.4, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 177-191.

¹⁷⁵ Art. 15 and 16, IV, (Fund for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 223-257.

¹⁷⁶ Art. 19, 20, and 21, V, (Conditions and Arrangements for International Assistance), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 236-257.

¹⁷⁷ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 2; the historical development of the Operational Guidelines is available at: <https://whc.unesco.org/en/guidelines/>; see also Chapter I, Paragraph 2, (The Outstanding Universal Value and its Political Use: The Operational Guidelines), and 3, (Authenticity, and its Political Use).

¹⁷⁸ Art. 14, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

State Parties. Then, it is up to the Secretariat to check the compliance of the documentation to the procedural and formal requirements set forth by the Operational Guidelines¹⁷⁹.

As for the consultative organs, a number of research studies, analysis and evaluations are carried out by the Advisory Bodies – ICCROM, ICOMOS, IUCN. They are the WHC’s consultative organs¹⁸⁰, whose evaluations to be presented to the Committee should be objective, scientific and rigorous¹⁸¹. Speaking of Religious Heritage Properties and Sites, there is also a specific ICOMOS Scientific Committee for Places of Religion and Ritual (PRERICO), formally established to research, and provide specialised interests in Monuments and Sites of Religion and Ritual. The safeguard includes spaces of world religions, local traditions and beliefs, religious heritage and sacred places with their intangible significance¹⁸².

All these global institutions, both public and private, have a global task: they are entrusted by States with the process for the recognition of the Outstanding Universal Value of the sites chosen by States and positioned on the Tentative List. More specifically, there are: a) Criteria for the Assessment of the Outstanding Universal Value, including the assessment of the Authenticity and/or Integrity of the site; and b) Protection and Management Plan, that includes Legislative, Regulatory and Contractual Protection Measures, Boundaries for effective protection, Buffer Zones, Management System, Sustainable Use.

a) Assessment of the Outstanding Universal Value, Authenticity and/or Integrity.

First, it is up to the Committee to take the final decision on the basis of the State Parties and Advisory Bodies’ reports. Second, The World Heritage Committee evaluates whether the property has an

¹⁷⁹ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, Annexes.

¹⁸⁰ Art. 8.3, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

¹⁸¹ UNESCO, World Heritage Committee, Decision 28 COM 14B.57.3.

¹⁸² Conservation of Living Religious Heritage- Papers from the ICCROM 2003 Forum on Living Religious Heritage Sites: Conserving the Sacred, ICCROM Conservation Studies, Rome, 2005; 2005 ICOMOS General Assembly Resolution, encouraging the “establishment of an International Thematic Programme for Religious Heritage”; 2011 ICOMOS General Assembly Resolution on Protection and Enhancement of Sacred Heritage Sites, Building and Landscapes; UNESCO MAB/IUCN Guidelines for the Conservation and Management of Sacred Natural Sites, 2008.

Outstanding Universal Value (*Statement of Outstanding Universal Value*)¹⁸³, referred to as cultural and/or natural significance, which is so exceptional as to transcend national boundaries¹⁸⁴. The final statement of Outstanding Universal Value should include a summary of the Committee's determination that the property has Outstanding Universal Value, identifying the criteria under which the property was inscribed. The determination comprises the assessment of the conditions of integrity, authenticity, and of the protection and management, including the regulatory and institutional plan anticipated by Governments¹⁸⁵. In this sense, both the Advisory Bodies and the World Heritage Committee shape the content of the Outstanding Universal Value, of authenticity and integrity through their evaluations and decisions. However, as previously discussed, over the history of the World Heritage List mechanisms, the concept of Outstanding, authenticity and integrity underwent many changes. Especially for criterion (i) though, there still seems to be a monumental and biased understanding of the concept of World Heritage based on the physical, monumental, artistic and architectural beauty of the proposed site. The monumentality of sites tends to be used by European states to present them as icons of statehood. The non-European States Parties use the same techniques and arguments to describe their religious heritage sites, thus privileging specific aesthetic and art-historical point of view as the European ones¹⁸⁶. This is an interesting element while considering that the Outstanding Universal Value, authenticity and integrity of sites are strictly dependent on cultural variables enhanced by States. Nonetheless, the nomination dossiers pretend to be objective, scientific and rigorous evaluations. In this perspective, one may indeed argue that the statements and decisions

¹⁸³ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 154.

¹⁸⁴ WHC-07/31.COM/9 Paris, Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Discussion on Outstanding Universal Value, 23 May 2007; WHC-08/32.COM/9 Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Discussion on Outstanding Universal Value, Paris, 22 May 2008; WHC-09/33.COM/9 Paris, Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Discussion on Outstanding Universal Value, 11 May 2009.

¹⁸⁵ Article 10, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

¹⁸⁶ The author illustrates this position through several examples: The Jesuit Missions of the Guaranis: San Ignacio Mini, Santa Ana, Nuestra Señora de Loreto and Santa Maria Mayor (Argentina); Ruins of Sao Miguel das Missoes (Brazil), Inscription on the World Heritage List, CONF. 009 VIII.29 and Advisory Body Evaluation (ICOMOS), 1983 and 1984; the Jesuit Missions of the Chiquitos (Bolivia), Inscription on the World Heritage List, 14 COM. VII A, and Advisory Body Evaluation (ICOMOS), 1990; S. LABADI, UNESCO, Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions, Lanham, MD: AltaMira Press, 2013.

made by the World Heritage Committee and Advisory Bodies cannot and should not be standardized in such a way to allow only specific cultural values to be Outstanding.

b) Protection and Management Plan, that includes Legislative, Regulatory and Contractual Protection Measures, Boundaries for effective protection, Buffer Zones, Management System, Sustainable Use.

A clear definition of the legislative measures and an adequate delineation of the boundaries of the property should be assured by State Parties when asking for the inscription of the property¹⁸⁷. In other words, the domestic regulatory system becomes the international parameter by which the Member State's respect for the 1972 WHC is measured¹⁸⁸. However, some nominations are not in line with the rule of the clear definition of the legislative measures and adequate definition of borders.

Which instruments do UNESCO's Decision-Making, Administrative, and Consultative organs use to take decisions? The main powers of these global institutions, and mainly those of the World Heritage Committee involve the establishment and management of the World Heritage List and the List of World Heritage in Danger. In the previous phase, that of the Tentative List, it was up to State Parties to take the political responsibility of identifying sites with a potential OUV. From this moment onwards, are UNESCO's Institutions that take the responsibility for decisions. The latter are political when it comes to the analysis of their content and impact.

2.1 The World Heritage List and the List of World Heritage in Danger in Ordinary and Disputed Circumstances: the Cases of the Prosecco Hills of Conegliano, the Temple of Preah Vihear, the Old City of Hebron and the Medieval Monuments in Kosovo

¹⁸⁷ Operational Guidelines for the Implementation of the World Heritage Convention, WHC 13/01, July 2013, para. 97; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 96-119.

¹⁸⁸ WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 96-119; S. BATTINI, The Procedural Side of Legal Globalization: The Case of the World Heritage Convention, *International Journal of Constitutional Law*, vol. 9, no. 2, pp. 352.

With the establishment of the World Heritage List, the World Heritage Committee supports States in identifying the natural and cultural heritage in their territories. On the basis of the Tentative List submitted by State Parties, the WHC publishes the World Heritage List. This document includes an evaluation that refers both the intrinsic value of the property and to the regulatory and institutional system for its protection and management¹⁹⁰. There seems to be no possibility of contradiction, neither with the procedural system itself established by the Committee, nor with the open issues on the territorial integrity and sovereign rights¹⁹¹. Despite that, if one assesses specific instances of non-contested and of contested religious heritage included in the WHL, this conflict actually exists. It presents disruptive elements in terms of public interests and conflicts arising.

As a way of example, an emblematic case is represented by the nomination of the Prosecco Hills of Conegliano (Italy) in 2019 under criterion (v), with the procedure for nomination undertaken in 2008. During the evaluation procedure, ICOMOS has raised concerns. They were related to the property's buffer zone (affected by some areas of low-quality urbanism), infrastructure development, and the poor condition of architecture, monuments and settlement areas, particularly in the buffer zone. Future wind and solar power installations in the buffer zone also created a detrimental impact on the integrity of the setting of the property. Some other issues have been raised for what concerns the increasing production of Prosecco to service the world market. However, the substantial increase in the production of Prosecco within a growing global market is one of those economic interests prevailing and justifying the nomination of the site¹⁹². Are these (economic) interests prevailing in the inscription of the site a physiology or a pathology? Is it normal to consider or not to consider them through the nomination process, thus giving rise to physiologic or pathologic deviations in the application of

¹⁸⁹ Art. 11.2, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 45-119.

¹⁹⁰ S. BATTINI, *The Procedural Side of Legal Globalization: The Case of the World Heritage Convention*, International Journal of Constitutional Law, vol. 9, no. 2, pp. 352.

¹⁹¹ For further details, see Paragraph 3 of this Chapter (The Erosion of the Traditional Doctrine on the Sovereignty of States through UNESCO's Rules and Cultural Heritage: Open Issues).

¹⁹² Le Colline del Prosecco di Conegliano e Valdobbiadene, Italy, No. 1571 Rev., 2019; 42COM 8B.31, Le Colline del Prosecco di Conegliano e Valdobbiadene, Italy, 2018; 43COM 8B.37, Le Colline del Prosecco di Conegliano e Valdobbiadene, Italy, 2019.

UNESCO's rules? Are these various interests considered even in peaceful contexts of non-competing sovereignty?

Even more emblematic is the case of interests prevailing in the nomination of contested religious sites, such as the Temple of Preah Vihear¹⁹³. What is the role of the World Heritage Convention in cases of disputed heritage? Is it related to the interests of the Cambodian Government to have defined territorial borders through UNESCO's decision? Is this political interest prevailing through UNESCO's decision a physiology or a pathology?

*The List of World Heritage in Danger*¹⁹⁴:

Once a property has been listed in the WHL, the international body supports Member States in their efforts to protect and conserve the natural and cultural heritage of humanity. Article 11.4 of the 1972 World Heritage Convention states that: "The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of *List of World Heritage in Danger*, a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately".

The support to endangered properties is activated by a request of international assistance from states. It authorizes the WHC to take

¹⁹³ For more Details, see Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

¹⁹⁴ Art. 11.4, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 177-198.

direct initiatives in order to ensure the protection of the endangered heritage. These actions are partially financed by the World Heritage Fund, made up by Member States' contributions¹⁹⁵.

For what is relevant throughout this dissertation, a prominent role is attributed to the inscription of religious properties in the World Heritage in Danger List, such as the case of the Old City of Hebron/ Al-Khalil Old Town, and that of the Medieval Monasteries of Kosovo and Metohija.

In the light of UNESCO's decisions, as to which State recognize the property, it is not clear how are the contents of cultural, artistic, architectural and intangible values defined, especially if related to disputed religious properties. However, it seems clear that the religious significance grounding their insertion on the World Heritage in Danger list is taking into consideration the artistic, architectural, and traditional-ritualistic values which are representative of a politically disputed territory.

All these aspects have to be acknowledged while trying to understand what is religious cultural heritage. What is its political role through the lenses of UNESCO's decisions and which are the peculiarities of these decisions, and the interests related to it? Which considerations are made by UNESCO while labelling the property "UNESCO World Heritage Site"? The legal mechanism used in nomination processes is relevant throughout the dissertation. It relates to the choice of certain religious sites as symbols of Outstanding Universal Value and to their use as political vehicles towards a specific political direction. Many aspects and problematic issues are common to three main case studies and will be the object of further investigation throughout the dissertation¹⁹⁶.

In this perspective, do UNESCO's decisions have an impact on the concept of sovereignty and derived principles? Is the safeguard offered by UNESCO impacting the tangible and political reality of a site, thus contributing to enforce, change or impair the political setup of a State through religious heritage and, more specifically, through contested religious sites?

¹⁹⁵ S. BATTINI, *The Procedural Side of Legal Globalization: The Case of the World Heritage Convention*, *International Journal of Constitutional Law*, vol. 9, no. 2, pp. 353-354.

¹⁹⁶ See Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

3. The Erosion of the Traditional Doctrine on the Sovereignty of States through UNESCO's Rules and Cultural Heritage: Open Issues.

The issues raised above are related to the use of religious cultural heritage as a symbol of national identity. In this perspective, some additional issues arise with respect to the interaction between the nomination of disputed sites and the principles of *State sovereignty, self-determination, recognition of statehood, state-building processes*¹⁹⁷, and *definition of disputed borders*.

Sovereignty is a milestone of international law, and its meaning has been changing throughout history, assuming different connotations in different political contexts. Much debate surrounds the evolution and the development of this key concept, especially in problematic cases of struggle for the title to sovereign powers.

With the intention of tracing the foundations of such a core concept in international law, we should remember that in the first part of the 20th century, the concept of sovereignty was intended as a function or property of the legal order of the State no longer limited by external values. This postulation entered into a formalization phase, reminiscent of Locke, Bodin, Hobbes, Kelsen and Schmitt's theories¹⁹⁸. At least in the

¹⁹⁷ State-building is the process that depicts strategies to restore or build from scratch the institutions and apparatus of the state (i.e., Parliament, Government, and Bureaucracy). In contrast, the notion of nation-building also refers to the creation of a cultural identity that relates to the particular territory of the state. Most scholars agree that a well-functioning state is a requirement of the development of a nation, and therefore most would also agree that state-building is a necessary component of nation-building. Several authors argue that whilst state-building is something that external actors can engage in the development of a cultural nation is inherently something only the emerging society can itself build. Kosovo is a perfect example of state-building that denotes the transformation of the state of Kosovo from a province, which was considered *de jure* a constituent part of Serbia, to an independent and sovereign State, N. BROVINA, A. RAMADANI, *Process of State Building in Kosovo*, UBT International Conference, 2017; A. ZIMMERMANN, C. STAHN, *Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the Current and Future Legal Status of Kosovo*, *Nordic Journal of International Law*, Issue 4, Vol. 70, 2001, pp. 423-460; S.BIANCHINI, *State Building in the Balkans*, Longo Editore, Ravenna, 1998; A. BALTAG, V. BERBEGA, C. J. BORGES, D. CENUSA, M. HATAY, O. NANTOI, I. ROUBANIS, I. SEVERIN, S. TIIRYAKI, O. TRINGIDES, R. VRABIE, *Managing Intractable Conflicts: Lessons from Moldova and Cyprus*, ed. Mensur Akgün, IKU, Turkey, 2013, pp. 88-108; A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, Wolters Kluwer, CEDAM, 2018.

¹⁹⁸ J. LOCKE, *Saggi sulla Legge Naturale*, Edizioni Laterza, Bari, 2019; J. LOCKE, *Trattato sul Governo*, Pgreco, Roma, 2010; A. di BELLO, *Stato e Sovranità nel De Republica Libri Sex* di Jean Bodin, Liguori Editore, Napoli, 2014; L. VENTURA, *Sovranità: Da Jean Bodin alla Crisi dello Stato Sociale*, Giappichelli, Torino, 2014; T. HOBBS, *Leviathan*, Mint Editions, First Published in 1651, 2020; H. KELSEN, *The Principle of Sovereign Equality of States as a Basis for International Organization*, *Yale Law Journal*, n. 53, 1944; C. SCHMITT,

first part of the 20th century, the emergence of the modern model of external sovereignty can be observed¹⁹⁹. The second part of the 20th century corresponds to the establishment of the new conception of international law as *qua law* of cooperation between sovereign States, thus implying further reflections on the subjectivity of States. More specifically, international sovereignty became a function distinct from the legal persona of the State and finally States can be bound by objective legal norms even if they have not consented to, without the possibility of derogation to imperative norms of *jus cogens*²⁰⁰. Correspondingly, as some authors notice, conceptions of sovereignty often come in pairs and are used to better articulate the concept: i) political/legal sovereignty; ii) internal/external sovereignty; iii) absolute/limited sovereignty²⁰¹. i) As for the first category, it is difficult to conceive the concept of sovereignty without understanding the inextricable link between political sovereignty²⁰² and legal sovereignty²⁰³: there cannot be legal sovereignty if there is no political power to establish its own set of legal rules. In this perspective, the law is a political instrument at the national, regional, international and global level, and legal sovereignty ought to match some form of political sovereignty.

The Nomos of the Earth in the International Law of the Jus Publicum, Telos Press, NY, First Published in 1950, 2003; C. SCHMITT, Constitutional Theory, Duke University Press, Durham, First Published in 1928, 2008.

¹⁹⁹ This is particularly clear if the Case of the S.S. Lotus, 1927, PCIJ, Series A, No. 10 and the Case of the S.S. Wimbledon, 1923, PCIJ, Series A01, are analyzed.

²⁰⁰ Vienna Convention on the Law of Treaties, Art. 53, Vienna, 1969.

²⁰¹ S. BESSON, Sovereignty, Max Planck Encyclopedia of Public International Law, 2011; P. MINKKINEN, Sovereignty, Knowledge, Law, Routledge, New York, 2009; T. E. AALBERTS, Constructing Sovereignty Between Politics and Law, Routledge, London and New York, 2012; T. RISSE, Governance Without a State?: Policies and Politics in Areas of Limited Statehood, Columbia University Press, New York, 2013; S. H. HASHMI, State Sovereignty: State and Persistence in International Relations, The Pennsylvania State University Press, Pennsylvania, 1997; H.J. LASKI, Authority in the Modern State, The Works of Harold J. Laski, Yale University Press, 1919; T. M. FRANCK, The Power of Legitimacy Among Nations, Oxford University Press, New York and London, 1990; S. CASSESE, Oltre lo Stato, Editori Laterza, Bari, 2006.

²⁰² Political sovereignty refers to the power of creating legislation. Sovereignty is a political concept that refers to dominant power or supreme authority. In a monarchy, supreme power resides in the "sovereign", or king. In modern democracies, sovereign power rests with the people and is exercised through representative bodies such as Congress or Parliament. The Sovereign is the one who exercises power without limitation. The term also carries implications of autonomy; to have sovereign power is to be beyond the power of others to interfere.

²⁰³ Legal sovereignty is that authority of the state which has the legal power to issue final commands. It is the authority of the state to whose directions the law of the State attributes final legal force. In general, in every independent and ordered state there are some laws which must be obeyed by the people and there must be a power to issue and enforce these laws. The power which has the legal authority to issue and enforce these laws' is legal sovereignty.

ii) As for the second category, international internal sovereignty refers to the international rights and duties of a State that pertain to its ultimate authority and competence over all people within its territory, and in particular to the correlated principles of territorial and personal jurisdiction, territorial integrity, and of non-intervention. International external sovereignty pertains to the international equal rights and duties of a State in its relations to other States, and in particular to its original legal personality and the correlated principle of State and State agents' immunity²⁰⁴. Hence, while internal sovereignty pertains to all political and legal matters, external sovereignty pertains to questions of coexistence and/or cooperation among distinct sovereign authorities. The latter induces us to consider also the theory of the international subjectivity, that considers States as primary actors enjoying rights and assuming duties in their relations with other international subjects, including corporations²⁰⁵. In this perspective, if an international subject, whose recognition is discussed within the international community, enters into obligations of safeguarding a (contested) religious site, is this act amounting to the recognition of its legal personality and external subjectivity? Contrariwise, if an international subject is prevented from assuming obligations of protecting (contested) religious sites, is this act amounting to the denial of its legal personality and internal/external subjectivity? These considerations are particularly relevant if the relations between UNESCO and States (Palestine, Kosovo, Cambodia) that struggle for political and legal affirmation in the international scenario are assessed.

iii) As for the third category, according to authors such as Hobbes and Bodin, sovereignty can only be absolute, intended as the absolute power of an impartial sovereign over its people. However, from the half of the 20th century onwards, the case of external sovereignty became a limitation to absolute sovereignty: in response to this, the concept of limited sovereignty, intended as the minimum amount of sovereignty that a State must have in order to control its competences (e.g. territorial supremacy, nationality acquisition, immigration control and internal security), has been elaborated²⁰⁶. In other words, sovereignty is a threshold-concept: the threshold itself is contestable and it is not a matter of quantitative degree, but, as stated by the International Court of Justice

²⁰⁴ ICJ, *Nicaragua Case, Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), 1986.

²⁰⁵ S. BESSON, *Sovereignty*, Max Planck Encyclopedia of Public International Law, 2011, p. 13.

²⁰⁶ S. BESSON, *Sovereignty*, Max Planck Encyclopedia of Public International Law, 2011, p. 14.

in the Kosovo Advisory Opinion, it can be lost or gained as it happened in the case of the new independent State of Kosovo²⁹⁷.

Furthermore, sovereignty is not only law-based, but it is also a source of international law. According to Article 1 of the Montevideo Convention on Rights and Duties of States (1933), sovereignty describes the exercise of powers by a State. Sovereign rights of a State can be regarded as constituting of components such as territory with defined boundaries, permanent population, government and the capacity to enter into relations with other states²⁹⁸. According to article 2 (paragraph 1, 4, and 7) of the UN Charter (1945), States are equally sovereign, they shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, and the United Nations are not authorized to intervene in matters which are essentially within the domestic jurisdiction of any state, without prejudice for the application of enforcement measures under Chapter VII of the UN Charter. These definitions risk to be either too strict or too abstract, since they make no reference to the degree of possession of these elements in order to have a State. Indeed, to say that an entity claiming to be a State needs to be able to declare itself as having people, territory and a form of government is really to say very little.

²⁹⁷ ICJ, Advisory Opinion on Kosovo's Declaration of Independence (Accordance with International Law on the Unilateral Declaration of Independence in Respect of Kosovo), 22 July 2010.

²⁹⁸ G. SIMPSON, *Great Powers and Outlaw States: Unequal Sovereign Powers in the International Legal Order*, Cambridge University Press, Cambridge, 2004; M. KOSKENNIEMI, *The Wonderful Artificiality of States*, ASIL Proceedings, 88/22, 1994; R. JACKSON, *Quasi-States: Sovereignty, International Relations and the Third World*, Cambridge University Press, Cambridge, 1990; A. GIDDENS, *The Nation-State and Violence*, Polity Press, Cambridge, 1985; J. DERRIDA, *Force of Law: The Mystical Foundations of Authority*, Cardozo Law Review, Vol. 11, No. 921, 1989-1990; O. SCHACHTER, *The Decline of the Nation-State and its Implications for International Law*, Col JTL, 36/7, 1998; A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, Wolters Kluwer, CEDAM, 2018; R. JENNINGS, *The Acquisition of Territory in International Law*, Manchester University Press, Manchester, 1963; C. FOCARELLI, *Trattato di Diritto Internazionale*, UTET, Milan, 2015; QC M. N. SHAW, *International Law*, Cambridge University Press, New York, Eighth Edition, 2017; J. CRAWFORD, *The Creation of States in International Law*, Oxford University Press, Oxford/New York, Second Edition, 2006; C. GALLI, *Sovranità: Disprezzarla o Deriderla*, Il Mulino, Bologna, 2019; N. IRTI, *La Tenaglia*: In Difesa dell'Ideologia Politica, Editori Laterza, Roma-Bari, 2014; N. IRTI, *Nichilismo Giuridico*, Editori Laterza, Roma-Bari, 2014; N. IRTI, *Norma e Luoghi: Problemi di Geo-diritto*, Editori Laterza, Roma-Bari, 2006; H. WADE, *The Basis of Legal Sovereignty*, Cam LJ 172, 1955; A. ANGHIE, *Imperialism, Sovereignty, and the Making of International Law*, Cambridge University Press, Cambridge, 2005; G. KREIJEN, *The Transformation of Sovereignty and African Independence: No Shortcuts to Statehood*, in *State Sovereignty and International Governance*, Oxford University Press, Oxford, 2002; W. REISMAN, *Sovereignty and Human Rights in Contemporary International Law*, AJIL, 84/866, 1990; H. SPRUYT, *The Sovereign State and its Competitors*, Princetown University Press, 1994; P. WILLIAMS, M. SCHARF, J. HOOPER, *Resolving Sovereignty-Based Conflicts: the Emerging Approach of Earned Sovereignty*, Denv. JILP, 31/349, 2002-2003.

Additionally, they are not suitable to extreme cases of struggle for the exercise of sovereign powers. If claims of aspirant States such as Chechnya, Kosovo, Northern Cyprus, Palestine or Quebec are assessed, several problems arise. In these contexts, the content of sovereignty would be that of affirming the (internal and external) singularity of the State as the primary mode of political organization, putting in question the authority of the State against which they assert their independence and challenging the broader global order of political relations. Not all of such claims and struggles for the title to sovereignty turn out in the same way: in some cases, the struggle continues but the claim to independence goes unrecognized (e.g. Somaliland, 1996)²⁰⁹; in other cases, claims to independence are successful and are attributed the official seal of Statehood by membership in the UN (e.g. Eritrea 1993)²¹⁰.

What happens in twilight zones of partial and difficult recognitions, such as the Palestinian and Kosovo Cases? What is the role of UNESCO's decisions, of its set of rules, and of the claims for statehood through the recognition of their religious cultural heritage? In these contexts, the issue of (contested) sovereignty seems to be directly tied to the problem of the *self-determination* of people (Articles 1 and 55 of the 1945 UN Charter), in turn connected to recognition and state-building. This concept implies a substantive conception of the State rooted in ideas of an existing community and its cultural homogeneity, determined perhaps by religious, linguistic, ethnic and even cultural heritage as a marker of the territory. The sovereignty that this idea demands is not one that could be regulated from the outside, but that inherited in a determinate people with values and interests seeking recognition and confirmation of statehood. More specifically, the self-determination of peoples is a major issue, potentially radical and subversive at the same time, serving to grant statehood to oppressed people and dismantling existing political state structures²¹¹. In this regard, is cultural heritage playing a vehicular role?

²⁰⁹ M. SCHOISWOHL, Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of Somaliland; The Resurrection of Somaliland Against All International "Odds": State Collapse, Secession, Non-Recognition and Human Rights, Martinus Nijhoff Publishers, Leiden/Boston, 2004.

²¹⁰ R. IYOB, The Eritrean Struggle for Independence: Domination, Resistance, Nationalism, 1941-93, Aethiopica, Vol.1, 1998; B. BOUTROS-GHALI, The United Nations and the Independence of Eritrea, The UN Blue Books Series, Vol. XII, New York, 1996.

²¹¹ UN General Assembly Resolution 1514 (XV), 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, OHCHR; UN Declaration on Principles of International Law Friendly Relation and Co-operation among States in accordance with the Charter of the UN, 24 October 1970; Universal Declaration of the Rights of Peoples (The Algiers Declaration), 4 July 1976; Conference on Security and Co-operation in Europe Final Act, (The Helsinki Final Act) Helsinki, 1975; Declaration on the Rights of Indigenous People, OHCHR, 2007; A. CASSESE, Self-Determination of Peoples: A Legal Reprisal, Hersch Lauterpacht Memorial Lectures, Cambridge University Press, Cambridge, 1995.

Recognition, whether constitutive or declaratory, connotes express acceptance by the recognising State(s) of the purported acts or measures being in conformity with international law. This classical theory is the principal device of traditional international law, intertwined with the doctrine of the subjectivity of states. In this regard, much debate is related to the acquisition of the subjectivity of the State through the act of recognition. Can the recognition of a State by other States of the international community or by the UN play a determinant role for the acquisition of subjectivity to the new State?²¹² We should take into consideration that international law was once the predominant set of rules to govern “the relations between [...] co-existing independent communities”²¹³. However, the typology of relations between UNESCO and States seeking for recognition of their properties and the impact of UNESCO’s decisions dealing with cultural heritage has evolved. This evolution originates open issues: in the light of the new rules and decisions taken by UNESCO, we should be aware that the properties are located in territories that are not always under fully independent and sovereign States. Indeed, the interaction between these traditional theories of international law and the new rules of UNESCO is related to the impact of UNESCO’s decisions throughout the nomination processes. Has this traditional way of conceiving national sovereignty and all the connected principles, been progressively displaced by globalization?²¹⁴

We should wonder to what extent UNESCO’s decisions and instruments have been progressively revitalizing, stretching or dismantling/eroding the above analysed theories. In other words, the

²¹² A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, Wolters Kluwer, CEDAM, 2018; C. FOCARELLI, *Trattato di Diritto Internazionale*, UTET, Milan, 2015. QC M. N. SHAW, *International Law*, Cambridge University Press, New York, Eighth Edition, 2017; Crawford J., *The Creation of States in International Law*, Oxford University Press, Oxford/New York, Second Edition, 2006; J. DUGARD, *Recognition and the United Nations*, Cambridge, 1987; H. LAUTERPACHT, *Recognition in International Law*, Cambridge University Press, Cambridge, 1947; S. TALMON, *Recognition of Governments in International Law*, Clarendon Press, Oxford, 1998.

²¹³ The Case of the S.S. Lotus, 1927, PCIJ, Series A, No. 10; A. HERTOGEN, Letting Lotus Bloom, *European Journal of International Law*, Vol. 26, No. 4, 2015, pp. 901-926; M. SCHOISWOHL, Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of Somaliland; The Resurrection of Somaliland Against All International “Odds”: State Collapse, Secession, Non-Recognition and Human Rights, Martinus Nijhoff Publishers, Leiden/Boston, 2004.

²¹⁴ L. CASINI, La Globalizzazione dei Beni Culturali, *Il Mulino*, 2010, pp. 29-79; L. CASINI, Italian Hours: The Globalization of Cultural Property Law, *International Journal of Constitutional Law*, vol. 9, no. 2, 2011, pp. 369-393; S. BATTINI, The Procedural Side of Legal Globalization: The Case of the World Heritage Convention, *International Journal of Constitutional Law*, vol. 9, no. 2, 2011, pp. 343; M. COSSUTTA, *Stato e Nazione: Un’Interpretazione Giuridico-Politica*, Pubblicazioni della Facoltà di Giurisprudenza della Università di Trieste, Milano, Dott. A. Giuffrè Editore, 1999.

set of global rules and procedures for nomination has increasingly played a consistent political impact on the sovereignty of States through decisions on cultural heritage. Is the impact on the political setup of states varying limitedly to those circumstances of disputed sovereignty or, rather, is it related to the general practice on the nomination of sites? Is the element of contestation for the exercise of sovereign powers playing a determinant role in UNESCO's nomination processes, able to change the traditional vision of the principle of the territorial integrity of sovereign states?

The approach and the impact of UNESCO's decisions is extremely variable, and, at times, not understood if analysed from a purely legal perspective.

We should consider religious sites as physical markers of a territory. Additionally, they are meaningful connections between a defined population and its geographical borders. They serve as symbols to identify the legitimacy of that social group (being it national, ethnic or cultural) to possess that heritage site. Claims for the exercise of sovereign powers through religious heritage demonstrate that the past is rooted in that place and continues until present times. Indeed, religious cultural heritage is, in many instances, the historic core of the definition of cultural heritage itself since they were the first structures and places to be considered and labelled as heritage. Through these identity markers, the State, which is an artificial concept, is being materialized²¹⁵. These monuments act as spiritual symbols of collective self-expression and self-identification. In doing so, they mobilise political emotions, draw people together in common acts of self-determination, generate and affirm the consciousness of a collective right to claim a contested territory, building up a strong sense of commitment through religious cultural heritage²¹⁶. In support of that, the most prominent holy places have a complex historical and legal background, mostly characterized by the struggle for the exercise of sovereign powers over a portion of contested territory²¹⁷. In these peculiar contexts, the creation of

²¹⁵ D. KERTZER, *Ritual, politics and power*, New Haven, CT: Yale University Press, 1988.

²¹⁶ S. LABADI, Representations of the nation and cultural diversity in discourses on world heritage, *Journal of Social Archaeology*, 7(2), pp. 147–70; S. LABADI, *UNESCO, Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions*, Lanham, MD: AltaMira Press, 2013.

²¹⁷ Some additional historical events shall be considered as part of this process: in fact, the foundation of nation-states in Europe, the colonisation of entire continents by most of the European Powers, the collapse of the Ottoman Empire after the First World War, the decolonisation process starting from the Second World War, and the dissolution of the Former Republic of Yugoslavia gave rise to a new wave of claims of sovereignty over some emblematic holy places.

UNESCO's nomination mechanisms is not detached from problems. The first systematic contradictions are related to the Tentative List, because it is important to acknowledge that the procedural mechanisms for the Tentative List incorporate politically sensitive issues. One major rule is that only State Parties having signed the Convention, may submit proposals for nomination if the property is included within the boundaries of the State²¹⁸ and if it is provided with an adequate set of national rules to protect and manage the property. All these statements and legal requirements are arguable with respect to cases of contestation. Indeed, on the one side, this legal requirement seems to have been stretched within the three examined cases (Palestine, Kosovo, Cambodia)²¹⁹: is this aspect reflecting UNESCO's attitude to deliberately accept, modify or deny the political setup of States with decisions dealing with cultural heritage? In support of this statement, we should notice that the procedural requirements set forth by UNESCO function as a check for nations disputing sovereignty over cultural heritage in the Tentative List. Indeed, the latter becomes a tool serving as notice that the Government believes the property in question is under its effective sovereignty.

Other frictions emerge with the principles declared in the World Heritage Convention, that limits the sovereignty of State Parties, although fully respecting their sovereignty and territorial integrity. The text of the Convention states that: "1) [...] Without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate; 2) The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage [...] if the States on whose territory it is situated so request. 3) Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage [...] situated on the territory of other States Parties to this Convention"²²⁰.

²¹⁸ A. GALIS, UNESCO Documents and Procedure: The Need to Account for Political Conflict When Designating World Heritage Sites, *Georgia Journal of International and Comparative Law*, vol. 38, no.1, 2009, pp. 205-236.

²¹⁹ See Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

²²⁰ Article 6, II (National Protection and International Protection of the Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972;

This means that on the one side, the scheme limits the sovereignty of signatory States. They lose the absolute freedom to dispose of their cultural heritage, judged as having an OUV under scientific, impartial and standardised evaluations made by States and Global Institutions. On the other side, the acceptance of these limitations implies the recognition of the territory where the property is rooted and of the sovereignty of the State proposing the nomination. Hence, the global dimension clashes with the nationalistic and political use of contested heritage. A disjunction emerges between the set of global rules set forth by UNESCO's bodies in a universal perspective, and the effect of these decisions on domestic legislations. The set of global rules are elaborated in a universal perspective and based on the notion of OUV, while the effects of UNESCO's decisions are confined to the territorial boundaries of States. These statements are coherent, although causing clashes of (public and political) interests, if the political and the legal situation is peaceful, but they do collide in instances of contestation. To a more careful analysis, is the listing practice an indirect and implicit tool for revitalizing, stretching or dismantling/eroding the traditional theories of international law? The main reference is to those theories on the sovereignty of states, recognition of states, and self-determination in cases of state-building processes. These issues are particularly striking in relation to problematic circumstances, such as the Old City of Hebron, the Medieval Monuments and Wall Paintings in Kosovo and the Temple of Preah Vihear. More specifically, those religious heritage sites are all located in close proximity of the political borders, which are contested among two nations. In this respect, the origins of the principle of territoriality determining the allocation of cultural property date back to the Peace of Westphalia, which marked the start of the modern international set of rules²²¹. This principle is credited as a milestone in building the foundations of the international system in the form of a plurality of independent States, with clearly defined, usually centrally governed states, recognizing each other's sovereignty and territorial competences. This classical setting though, seems to be undermined, and the consequences of UNESCO's approaches are variable.

There is an additional problem related to this process of revitalization, extension and erosion of the principle of sovereignty through UNESCO's global rules and decisions. According to UNESCO's administrative procedure and practice, the contestation of a site is not taken into consideration as an active element that justifies a political decision that raises political sensitivity, but it is mentioned as a legal circumstance. Is this a physiology or a pathology if instances of contested religious heritage are taken into consideration?

²²¹ A. CASSESE, *International Law*, 2nd Edition, Oxford University Press, 2005, pp. 22-25.

4. The Element of Contestation in UNESCO's System: Same Legal Backgrounds of Contestation, Different Political Outcomes.

Several issues are related to the way in which National Governments use the Tentative List for political purposes. To the same degree, several criticalities are attached to the impact of UNESCO's decisions both in ordinary and contested circumstances. On a national and on a global scale, these decisions are politically and culturally sensitive.

Substantial gaps are revealed if the nomination rules and procedures are analysed with respect to disputes concerning sites in Eastern Asia, the Middle East and the Balkan areas. Namely, formal provisions requiring global Institutions to take into consideration the element of political contestation is missing. For this reason, it is now time to go more into depth with some considerations on the element of contestation. The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage and the 2019 Operational Guidelines are not totally silent on the matter. Article 11.3 of the 1972 Convention affirms that the inclusion of a property in the World Heritage List requires the consent of the State concerned. The choice of a property situated in a territory, sovereignty or jurisdiction claimed by more than one State shall in no way prejudice the rights of the parties to dispute²²². This provision indicates that if the property is contested, the adversary's consent is not required. Put differently, the World Heritage Committee does not require the consent of the Israeli authorities to inscribe the Old City of Hebron as a Palestinian site. It does not demand the consent of Kosovo to list the Medieval Monuments as Serbian sites in the territory of Kosovo. It does not ask the consent of the Thai authorities for the inscription of the Temple of Preah Vihear as a Cambodian Site. Only the consent of the State submitting sites for nomination is compelling from the legal point of view. Additionally, in the first phase of the nomination process, the WHC exempts the Committee from any responsibility related to those decisions taken at the domestic level. In the second phase of the nomination procedure, and without prejudice to the rights of State Parties to further dispute, if UNESCO takes a decision on the nationality of a contested site, then the political impact of UNESCO's position is pretty clear. The content and

²²² Art. 11.3, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

the aim of this position is evident even if no explicit consideration to the element of contestation is made. The following paragraph (Art. 11. 4 of the 1972 WHC) indicates the legal circumstances for inclusion in the List of the World Heritage in Danger. It points out threats by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration; large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves²²³.

The 2019 Operational Guidelines include more details than the 1972 Convention, developing what the WHC already introduced.

More specifically, reference to conflicts is made in the list of the criteria for the *inclusion of sites on the List of the World Heritage in Danger*²²⁴

²²³ Art. 11.4, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

²²⁴ When referred to cultural heritage, the property is faced with specific and proven imminent danger, such as: (ascertained dangers) a) serious deterioration of materials, b) serious deterioration of structure and/or ornamental features, c) serious deterioration of architectural or town-planning coherence, serious deterioration of urban or rural space, or the natural environment, d) significant loss of historical authenticity, e) important loss of cultural significance; (potential dangers) identified as: a) modification of juridical status of the property diminishing the degree of its protection; b) lack of conservation policy, c) threatening effects of regional planning projects, d) threatening effects of town planning, e) outbreak or threat of armed conflict, f) threatening impacts of climatic, geological or other environmental factors. When referred to natural properties, the property is faced with specific and proven imminent danger, such as: (ascertained dangers) a) serious decline in the population of the endangered species or the other species of Outstanding Universal Value for which the property was legally established b) severe deterioration of the natural beauty or scientific value of the property, as by human settlement, construction of reservoirs which flood important parts of the property, industrial and agricultural development including use of pesticides and fertilizers, major public works, mining, pollution, logging, firewood collection, to protect, either by natural factors such as disease or by human-made factors such as poaching, c) human encroachment on boundaries or in upstream areas which threaten the integrity of the property; (potential dangers) a) a modification of the legal protective status of the area; b) planned resettlement or development projects within the property or so situated that the impacts threaten the property; c) outbreak or threat of armed conflict; d) the management plan or management system is lacking or inadequate, or not fully implemented; e) threatening impacts of climatic, geological or other environmental factors; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 178-182.

and in the *Nominations to be processed on an emergency basis section*²²⁵. Among the *potential dangers* for cultural properties, the outbreak or threat of armed conflict and the modification of juridical status of the property diminishing the degree of their protection are indicated. Nevertheless, the typology of conflict existing between two sovereign powers is not merely related to the use of armed force or threat of armed conflict. It is not simply connected to those circumstances that require the application of the main international treaties for the protection of cultural heritage in times of armed conflict²²⁶. These legal instruments though are applicable once the conflict has already erupted. It also happens that claims on cultural heritage are formalistic and unaccompanied by armed conflicts, but surrounded by economic embargo or any other form of legal and political coercion²²⁷. The circumstance of escalations of violence/use of armed force following Governments or UNESCO's decisions is not *a priori* formally regulated. As for the *modification of the juridical status diminishing the degree of the property's protection*, this could be the symptom of the existence of a political claim or struggle for the exercise of sovereign powers through political and legal policies introduced in the field cultural heritage. Indeed, these policies and domestic decisions are a powerful tool to exert a consistent degree of political and cultural pressure, with UNESCO approving or rejecting these policies with its final statements on the OUV of sites.

In truth, neither the 1972 World Heritage Convention, nor the Operational Guidelines do require the Committee to explicitly and directly consider any relevant political dispute or claim related to proposed sites. Actually, this obligation never existed and there is no mention to the element of claim as an active tool that grounds UNESCO's

²²⁵ WHC, Decision 37 COM 12.II; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 162.

²²⁶ Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, August 1949, International Committee of the Red Cross; UNESCO, Convention for the Protection of Cultural Property in the Event of an Armed Conflict, The Hague, Netherlands, 1954.

²²⁷ UNESCO, World Heritage Committee, 20th Session, Mérida, Mexico, 2-7, 1996, Report of the Twentieth Session, Annex, Report of the Twentieth Session, Annex V, U.N. Doc. WHC-96/CONF.201, 10 March 1997, where different typologies of formalistic disputes are illustrated in relation to cultural sites such as, among the others: Yellowstone National Park (United States of America), Virunga National Park (Zaire), Angkor (Cambodia), Old City of Dubrovnik (Croatia), Arabian Oryx Sanctuary (Oman), Durmitor National Park (Federal Republic of Yugoslavia (Serbia and Montenegro)), Historic Sanctuary of Machu Picchu (Peru), Auschwitz Concentration Camp (Poland), Ancient City of Damascus (Syrian Arab Republic), Fasil Ghebbi (Gondar, Ethiopia) [...]; A. GALIS, UNESCO Documents and Procedure: The Need to Account for Political Conflict When Designating World Heritage Sites, Georgia Journal of International and Comparative Law, vol. 38, no.1, 2009, p. 213.

decisions. From a theoretical point of view, this structure should imply either a neutral use of powers, or a use of a wide range of discretionary powers. This takes place primarily through decisions made by Governments and then by UNESCO's Institutions, when UNESCO takes the responsibility of a political decision already made by domestic institutions. The first hypothesis (neutral use of powers) seems to be quite implausible. First, the intrinsic values of cultural heritage are not themselves neutral, objective or subject to scientific measurement. They cannot be neutral if the site is contested. According to UNESCO's practice, the OUV is an administrative instrument and an artificial container forged by State Parties²²⁸. Second, there are many valuable heritage sites, either religious and contested, that are not inscribed in the World Heritage List. Can we affirm that they do not possess Outstanding Universal Value because they are not included in UNESCO's system? Are they *less outstanding* because they are not labelled as UNESCO's World Heritage Sites? Additionally, the element of religiosity is making this process even less neutral. Should UNESCO take into consideration these political circumstances to avoid decisions that are political in their contents and have a political impact? Indeed, there is an inner contradiction in UNESCO's legal and administrative procedure. The second hypothesis (use of a wide range of discretionary powers) finds a consistent confirmation in several cases of longstanding struggles for the exercise of sovereign powers. What is sure is that, even if contestation and claims on religious cultural heritage are not the object of a specific legal provision, the results of these decisions have a political impact. What is not clear, instead, are the different political outcomes deriving from the application of the same procedure for the nomination of sites.

Why did the Committee decide to inscribe Jerusalem as an independent site, but decide to inscribe the Temple of Preah Vihear thus attributing a specific political identity to the site? Why did the Committee decide to immediately inscribe the Old City of Hebron as a Palestinian site and the Monasteries located in Kosovo as Serbian sites? What is the object of a general practice in UNESCO's decisions and what is indeed peculiar and related to the specific case characterized by conflicts for the exercise of sovereign powers?

These cases present similarities both in terms of legal backgrounds from which the conflict originates and procedures applied to nomination processes. However, different choices, different political stances and effects result from UNESCO's decisions. In all the three

²²⁸ See Chapter I, Paragraph 2, The Outstanding Universal Value and its Political Use: The Operational Guidelines.

instances, political contestation is a common element. Most importantly, changes in the political structure of these States are the (indirect) result of UNESCO's decisions on their contested religious heritage.

CHAPTER III

Intangible Cultural Heritage as an Instrument to Claim Contested Religious Heritage: New Legal Profiles and Problematic Issues related to Rituals and Architectural Techniques of Construction in UNESCO's Practice

1. Intangible Cultural Heritage in the Global Legal Framework

The intangible religious reality is the powerful force that lives in religious persons. It gives meaning to their lives. It defines the relationship between them and the universal element in accordance with divine law²²⁹. The many layers of religious cultures that have developed so colourfully since time immemorial until the present age have produced exquisite artefacts²³⁰.

In light of this, religious heritage cannot be understood or preserved without understanding its people, the monuments, the artefacts and the whole culture from the viewpoint of the people who have produced it and have practiced religious rituals²³¹.

In its non-material perspective, religious values are granted by several instruments, such as the 1948 Universal Declaration of Human Rights²³². During the '50s, the public interests related to what would later

²²⁹ ICCROM, Conservation Studies, Conservation of Living Religious Heritage, Papers from the ICCROM 2003 Forum on Living Religious Heritage: Conserving the Sacred, 2005, p. 94; F. LANZERINI, Intangible Cultural Heritage: The Living Culture of Peoples, *European Journal of International Law*, Vol. 22, No. 1, 2011, pp. 101-120.

²³⁰ ICCROM, Conservation Studies, Conservation of Living Religious Heritage, Papers from the ICCROM 2003 Forum on Living Religious Heritage: Conserving the Sacred, 2005.

²³¹ ICCROM, Conservation Studies, Conservation of Living Religious Heritage, Papers from the ICCROM 2003 Forum on Living Religious Heritage: Conserving the Sacred, 2005, p. 94.

²³² Article 18, Universal Declaration of Human Rights: "Everyone has the right to freedom of thought, conscience and religion: this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance"; G.A. Res. 217A, 71 UN GAOR., 3rd Session, 1st plenary meeting., U.N. Doc. A/810 (December 12, 1948); S. TONOLO, Religious Values and Conflict of Laws: old problems and new perspectives, in Tui Memores: La Dimension culturelle du droit international privé, Publications de l'Institut suisse de droit comparé, Collection dirigée par Christina Schmid et Lukas Heckendorn Urscheler, Ilaria Pretelli/ Gian Paolo Romano/ Tuto Rossi (éds),

become Intangible Cultural Heritage touched upon extremely sensitive political issues in many countries. These topics related to inter-ethnic relations, cultural identities and religion. This debate framed the discussions about freedom of religion, *traditional culture* and *folklore*, especially with regard to legal actions to be taken: the main concerns were related to the replacement of the old conception of folk as the *subculture of poverty* intended as a negative *lower-class culture*²³³. Despite this progressive public awareness, much ambiguity characterized the public debate on those policies to be developed in the field of *traditional culture* and *folklore*. UNESCO was supporting an anthropological perspective²³⁴ and was aware of the intrinsic values to historic cultures. In reverse, the interest of Governments in developing countries in protecting folk cultures had been elusive throughout the '60 and '70s²³⁵. From these early steps in the field of intangible heritage, during the '70s and before the 2003 ICH Convention being adopted, experts were aware that cultural heritage could not be limited to the mere protection of its material and tangible attributes²³⁶. Most experts working in the field of heritage at that time were specialists in physical heritage, and only a few anthropologists were involved in this process of policy-making. It was also during the '80s that the Member States of UNESCO began to

Actes de la Journée en l'honneur de Tito Ballarino du 13 juin 2014 à Lausanne et Essais recueillis par ses amis et élèves, Schulthess, Éditions Romandes, 2017, pp. 187-212.

²³³ The author explains that this concept was proposed by Oscar Lewis in his study of rural-urban migrants in Mexico City and defined as the adaptation of the poor classes to their marginal position in a class stratified capitalist society, then distorted in the following decades into the concept of culture of poverty, L. ARZIPE, *The Intellectual History of Culture and Development Institutions*, Chapter 8 in Vijayendra Rao and Michael Walton eds., *Culture and Public Action*, Stanford University, pp. 163-185; L. ARZIPE, *The Cultural Politics of Intangible Cultural Heritage*, *Art Antiquity and Law*, Vol. 12, No. 4, 2007, p. 366.

²³⁴ The position held by UNESCO was in opposition with the idea of the liberal economic models of development, that supported the idea that cultures had to give way to modernisation, in terms of technological advancement and mobility of labour.

²³⁵ The author explains that on the one hand, the influence of economic theories of development rejected culture and ethnicity as an important issue for cultural development and generally supported policies of acculturation, as it was for the case of Latin American countries²³⁶. On the other hand, the difference of national or ethnic cultures at that time had become consistent part of national liberations movements. In Africa this led to Julius Nyerere's policies of support of African's cultures and languages, or Leopold Senghor's, Aimé Césaire and others' engagement with negritude as an international culture's movement. Yet another phenomenon of cultural politics was the use of the argument of respect of cultures by the white Afrikaans governors in South Africa as the ideological underpinning for their policies of apartheid, L. ARZIPE, *The Cultural Politics of Intangible Cultural Heritage*, *Art Antiquity and Law*, Vol. 12, No. 4, 2007.

²³⁶ UNESCO, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989; J. BLAKE, *Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch*, *International Journal of Cultural Property*, No. 21, 2014.

substitute intellectuals and scientists for Governments representatives on the governing bodies of this institution. Scientists were designated as experts, with decisions in the governing bodies taken in the context of geopolitical and diplomatic relations, addressing the political debates in the governing bodies²³⁷.

Within this difficult context, the concepts of architectural techniques of construction, rituals, mythology, religious symbolism and related iconography deserved legal recognition and protection. In 1989, the *Recommendation on the Safeguarding of Traditional Culture and Folklore* established a direct correlation between these items and the act of building of religious sites. The latter are not only spaces where religious rights concretely manifest, but also spaces where architectural techniques of construction, rituals, mythology, religious symbolism and related iconography crystallize²³⁸. This act opens the way to the global legal safeguard of (religious) intangible heritage. It certainly represents the first specific global legal instrument on intangible heritage adopted by the General Conference of UNESCO. The *Recommendation on the Safeguarding of Traditional Culture and Folklore* establishes a set of principles and guidelines for the identification, conservation, preservation, dissemination, and protection of folklore. This structure is the basis for the system posteriorly adopted by UNESCO in the field of intangible cultural heritage. However, the content of the Recommendation is still limited in scope and application. Indeed, the concept of *folklore* is more restrictive than that of Intangible Cultural Heritage, but the Recommendation emphasizes the relevance of folklore as: "The totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its *cultural and social identity*; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, *language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts*"²³⁹. On the one side, the first two sentences clearly show the idea that

²³⁷ L. ARIZPE, The Cultural Politics of Intangible Cultural Heritage, *Art Antiquity and Law*, Vol. 12, No. 4, 2007.

²³⁸ The General Conference of UNESCO, meeting in Paris from 17 October to 16 November 1989, adopted the Recommendation on the Safeguarding of Traditional Culture and Folklore, considering that folklore forms part of the universal heritage of humanity, and that it is a powerful mean to assert peoples' cultural identity, stressing on its relevance from the economic, cultural and political point of view; UNESCO, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989.

²³⁹ UNESCO, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989.

subjective values have a relevance in immaterial heritage and this aspect was already acknowledged by UNESCO's law-making bodies. On the other side, the friction with the *universal appreciation* of these values emerges in a later statement: "Part of the universal heritage of humanity and [its role as] a powerful means of bringing together different peoples and social groups and of asserting their cultural identity, as well as the danger it faces from multiple factors"²⁴⁰. Basically, the Preamble of the 1989 Recommendation outlines traditional culture and folklore as part of the *universal heritage of humanity* in a manner similar to that of the 1972 Convention²⁴¹. In parallel, in the General Comment to Article 18 of the ICCPR, the Human Rights Committee stated that freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. Indeed, the concept of worship is extended to *ritual and ceremonial acts* giving direct expression to belief, as well as various practices integral to such acts. This includes the *building of places of worship*, the use of ritual formulae and objects, and the display of symbols²⁴².

Later on, UNESCO approved the 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage* (ICH Convention), which came into force in 2006 and has been ratified by 127 states (as of July 2010)²⁴³. In this perspective, the negotiations for the ICH Convention, which took place in 2002 and 2003, aimed at filling the gap left open by the 1972 *Convention concerning the Protection of the World Cultural and Natural Heritage*. There was need to put emphasis on those aspects of

²⁴⁰ UNESCO, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (Preamble), 15 November 1989.

²⁴¹ As pointed out by Janet Blake, there is a conceptual difficulty in valuing intangible heritage as a 'universal heritage' in view of its role in the construction of identity of a specific people or group in opposition to other identities, J. BLAKE, Introduction to the Draft Preliminary Study on the Advisability of Developing a Standard-Setting Instrument for the Protection of Intangible Cultural Heritage, UNESCO, International Round Table, "Intangible Cultural Heritage", Working Definitions, Piedmont, Italy, 14 to 17 March 2001.

²⁴² Human Rights Committee General Comment 22, Art. 18, 1993, para.4.

²⁴³ Status of ratifications to the Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, available at: <http://portal.unesco.org/la/convention.asp?KO=17116&language=E>; L. LIXINSKI, Selecting Heritage: the Interplay of Art, Politics and Identity, The European Journal of International Law, 81– 100. <https://doi.org/10.1093/ejil/chr001>; J. BLAKE, On Developing a New International Convention for Safeguarding Intangible Cultural Heritage, Art Antiquity and Law, Vol. 8, No. 4, 2003, pp. 381-412; L. ARIZPE, The Cultural Politics of Intangible Heritage, Art Antiquity and Law, Vol. 12, No. 4, 2007, pp. 361-388; J. BLAKE, Introduction to the Draft Preliminary Study on the Advisability of Developing a Standard-Setting Instrument for the Protection of Intangible Cultural Heritage, UNESCO, International Round Table, "Intangible Cultural Heritage", Working Definitions, Piedmont, Italy, 14 to 17 March 2001.

cultural heritage that, although not as “tangible” as monuments, buildings or natural sites, are equally important “as a mainspring of cultural diversity and a guarantee of sustainable development”²⁴⁴. First, the term intangible cultural heritage replaces the terms oral traditions, traditional culture and folklore. Second, the legal dimension of rituals and architectural techniques of construction of religious cultural heritage can be indirectly extracted from this broader and overarching classification. Indeed, differently from the 1989 Recommendation, an expanded and revisited definition of intangible heritage can be traced. This definition primarily appears as separated from the system of the 1972 WHC, even though similar listing mechanisms are replicated.

What is intangible heritage in the current global legal framework? According to Article 2 of the 2003 ICH²⁴⁵, Intangible cultural heritage consists, *inter alia*, of: “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. This intangible cultural heritage is transmitted from generation to generation, is *constantly recreated* by communities and groups in response to their environment, their interaction with nature and their history, and *provides them with a sense of identity and continuity*, thus promoting respect for *cultural diversity and human creativity*. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development”²⁴⁶. One definitional issue of the 2003 Convention is the idea that ICH refers not to the cultural objects itself, whether religious or secular, but rather to the social and cultural processes throughout which these objects become material products. More precisely, according to Article 2 of the 2003 ICH Convention, the practice, the community of people and the spatial or territorial components where the practice is performed are the substance of intangible heritage. However, no explicit mention is made to religion or religious rituals, nor to the architectural

²⁴⁴ Preamble of the ICH Convention; P.L. PETRILLO, *The Legal Protection of the Intangible Cultural Heritage: A Comparative Perspective*, Springer, 2019; D. FAIRCHILD RUGGIES, H. SILVERMAN, *Intangible Heritage Embodied*, Springer, 2009.

²⁴⁵ UNESCO. Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (2008-2018); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2016); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2020).

²⁴⁶ Article 2.1 (Definitions), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

techniques of construction, as it was clearly stated in the 2003 ICH's predecessors. Inter alia, five are the main domains in which the practices, representations, expressions, knowledge or skills constituting the intangible cultural heritage are manifested: a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; b) performing arts; c) social practices, rituals, and festive events; d) knowledge and practices concerning the nature and the universe; e) traditional craftsmanship, referred to as the skills and procedures necessary to produce the craft product²⁴⁷.

Other legal instruments witness the process of emergence of a relatively recent legal framework for the protection of intangible cultural heritage as an independent set of rules from tangible cultural heritage. The 2001 *Declaration on Cultural Diversity*²⁴⁸, the 2002 *Istanbul Declaration*²⁴⁹, the 2005 *Convention for the Promotion and Protection of the Diversity of Cultural Expressions*²⁵⁰, and the 2005 *Convention on the Value of Cultural Heritage for Society (Faro Convention)*²⁵¹ represent these novel developments in the protection of the intangible heritage.

2. The National Dimension of UNESCO's Listing Mechanisms in the Field of ICH

²⁴⁷ Article 2.2 (Definitions), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁴⁸ The Convention enhances those aspects related to the manifestation of culture, intended as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, encompassing, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs, UNESCO, Universal Declaration on Cultural Diversity, Resolution adopted on the report of Commission IV at the 20th plenary meeting, on 2 November 2001; P.L. PETRILLO, *The Legal Protection of the Intangible Cultural Heritage: A Comparative Perspective*, Springer, 2019, p. 5.

²⁴⁹ UNESCO, 165 EX/ INF. 9, Third Round Table of Ministers of Culture: "Intangible cultural heritage – a mirror of cultural diversity", Istanbul, 16-17 September 2002, Paragraph 2 and Paragraph 4.

²⁵⁰ According to the main principles of international law, such as the principle of territorial integrity and sovereignty, "cultural diversity" is referred to the manifold ways in which cultures find expression, through diverse mode of artistic creation, production, dissemination and enjoyment, whatever the means and technologies implied. However, the concept of cultural diversity is clashing with that of identity religious values included within those characterizing elements used to support claims for nationality, Article 4 (Definitions), UNESCO, Convention for the Promotion and Protection of the Diversity of Cultural Expressions, 2005; See more in details Paragraph 4, Intangible Heritage and Tangible Heritage in UNESCO's System: the Implicit Role of Intangible Heritage as a Political Tool to Claim Contested Heritage and Problematic Issues.

²⁵¹ Much emphasis is added especially on identity values related to cultural heritage. More specifically, the Council of Europe emphasized the responsibility of State Parties to recognize the value of cultural heritage situated in the territories under their jurisdiction, regardless of its origin, with the aim of identify, study, interpret, protect and preserve these values; Article 5 (Cultural Heritage Law and Policy), Convention on the Value of Cultural Heritage for Society, Faro Convention, 2005.

What is relevant also in this regard, are the administrative mechanisms and tools of recognition and listing in the field of intangible heritage. UNESCO has indeed replicated the World Heritage List and the List of the World Heritage in Danger's nomination mechanisms²⁵². Indeed, through the establishment of the *Representative List of the Intangible Heritage of Humanity*²⁵³, and the *List of Intangible Heritage in Need for Urgent Safeguarding*²⁵⁴, the same logic as that thought for the inscription of tangible cultural and natural heritage is re-created by UNESCO²⁵⁵. These two instruments are indeed providing a sense of identity, that is based for its nature on subjective values selected by Governments. At the same time, they are classified as tools to promote cultural diversity in a universal perspective. On their definitional aspects, the first list focuses on the visibility of heritage as a vehicle to strengthen safeguarding mechanisms for present and future generations; the second list focuses on those intangible elements that are on the way to disappearance, with a stronger focus on providing resources for their safeguarding²⁵⁶. As it happens for those subjective values (Outstanding Universal Value) pertaining to tangible religious heritage and to their nomination processes, it is primarily up to the States Parties to the ICH Convention to identify, select and define the various elements of the intangible cultural heritage. This process encompasses two main elements: territoriality (where intangible heritage is rooted), and the participation of communities, groups and stakeholders. This procedure is again a choice of selection of subjective and sensitive immaterial values. It is carried out on the basis of standardized mechanisms set forth by global institutions through the adoption of the *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible*

²⁵² In this perspective, art. 3 of the 2003 ICH Convention states that nothing in the Convention should be interpreted as: "(a) altering the status or diminishing the level of protection under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage of World Heritage properties with which an item of the intangible cultural heritage is directly associated; or (b) affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties", Article 3 (Relationship to other international instruments), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁵³ Articolo 16, (Representative List of the Intangible Cultural Heritage of Humanity), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁵⁴ Articolo 17, (List of Intangible Cultural Heritage in Need of Urgent Safeguarding), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁵⁵ Article 3 (Relationship to other International Instruments), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁵⁶ L. LIXINSKI, Heritage Listing as a Tool for Advocacy: The Possibilities for Dissent, Contestation, and Emancipation in International Law through International Cultural Heritage, *Asian Journal of International Law*, Vol. 5, No. 2, 2015, p. 394

*Heritage*²⁵⁷. In this perspective, the 2003 ICH Convention reproduces the system of the 1972 World Heritage Convention, thus setting forth a national level for the identification and protection of cultural heritage, and a global level of protection, with global organs (General Assembly, Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Advisory Bodies, and Secretariat) playing a key role throughout the listing process.

Speaking of the role attributed to State Parties, it is up to National Governments to take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory. Simultaneously States should enact measures aiming at identifying and defining the various elements of the intangible cultural with the participation of communities, groups or individuals (that create, maintain and transmit such heritage, and to involve them actively in its management)²⁵⁸, and relevant non-governmental organizations²⁵⁹. The identification of intangible heritage takes place through the drawing up of regularly updated inventories of the intangible heritage. In accordance with Article 29 of the 2003 ICH Convention, State Parties should also submit periodical reports to the Committee, thus providing relevant information on the status of such inventories²⁶⁰. More specifically, the drawing up and updating, in a manner that matches with their own legal and political situation, of one or more inventories of ICH, is up to

²⁵⁷ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018); See more in details at Paragraph 4, Intangible Heritage and Tangible Heritage in UNESCO's System: the Implicit Role of Intangible Heritage as a Political Tool to Claim Contested Heritage and Problematic Issues.

²⁵⁸ Art. 15 (Participation of Communities, Groups and Individuals), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003; Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018), para. 79-99 (Chapter III, Participation in the Implementation of the Convention).

²⁵⁹ Art. 11 (Role of State Parties), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁶⁰ Art. 12, (Inventories), and art. 29, (Reports by the State Parties), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

National governments: this is again a political choice²⁶¹. Within the framework established by the Convention and within the selection process, each State Party is encouraged to involve and to ensure the widest possible participation of communities, groups and, where appropriate, individuals²⁶². Additionally, the Convention states that State Parties shall endeavour measures to allow the safeguarding, development and promotion of intangible cultural heritage present in its territory through: (a) the adoption of general policies aimed at promoting the function of the intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes; (b) the designation or establishment of one or more competent bodies for the safeguarding of the intangible cultural heritage; (c) the development of scientific, technical and artistic studies, as well as research methodologies, with a view to effective safeguarding of the intangible cultural heritage, in particular the intangible cultural heritage in danger; (d) the enactment of appropriate legal, technical, administrative and financial measures. The latter are supposed to foster the creation or reinforcement of institutions for training in the management of the intangible cultural heritage and the transmission of such heritage through spaces intended for the performance or expression thereof²⁶³. Additionally, it is also a legal responsibility of State Parties to adopt educational training, awareness-raising and informational programmes²⁶⁴.

From the technical point of view, these choices are taken on the basis of the procedure laid down in the latest version of the *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage* (2018). The guidelines illustrate how State Parties undertake the nomination process once they have selected the ICH present in their territories²⁶⁵. The selection of specific practices and

²⁶¹ UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, Section III, Safeguarding of the Intangible Cultural Heritage at the National Level, Article 11, 12, 13, 14 and 15.

²⁶² Art. 15, UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁶³ Art. 13 (Other Measures for Safeguarding), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁶⁴ Article 14 (Education, Awareness-Raising and Capacity-Building), UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

²⁶⁵ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018), para. 103-117 (Chapter IV, Raising awareness about intangible cultural heritage and use of the emblem of the Convention for the Safeguarding of the Intangible Cultural

manifestations rather than others, or the involvement of minority or aboriginal groups are the result of choices involving religious, cultural, and political issues²⁶⁶. We should wonder if these interests pertain to situations of conflict or also to ordinary situations and if this represent a physiology or a pathology related to the use of the mechanisms set forth by UNESCO.

As a way of example, in the case of Italy and since 2011, the implementation of the 2003 Convention is performed by the *Consiglio Direttivo della Commissione Nazionale Italiana per l'UNESCO*. This specific body has established a national procedure for the submission of ICH nominations in accordance with the models for inscriptions available to Governments to propose nominations. However, it is only in 2017 that a national law to safeguard and enhance the Italian intangible cultural heritage has been adopted. This is an ordinary case where no public conflicts between states exists and yet, it reveals a very late and difficult implementation of global rules devoted to intangible heritage despite the long tradition in the field of cultural heritage law²⁶⁷. Moreover, the national policy-making goals could address diverse needs, thus interacting with other objectives that makes this implementation process difficult. In Armenia, the policy was oriented to the needs of religious minorities (Yezidi, Jewish, Kurdish, Orthodox)²⁶⁸, while Cyprus and

Heritage), para. 151-169 (Chapter V, Reporting to the Committee), para. 170-197 (Chapter VI, Safeguarding intangible cultural heritage and sustainable development at the national level); J. BLAKE, *Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch*, *International Journal of Cultural Property*, Vol. 21, No. 3, 2014, pp. 291-304.

²⁶⁶ F. FRANCIONI, M. SCHEININ, *Indigenous Peoples' Cultural Rights and the Controversy over Commercial Use of Their Traditional Knowledge*, *Cultural Human Rights*, Leiden, pp. 119-149; P. KURUK, *Cultural Heritage, Traditional Knowledge and Indigenous Rights: An Analysis of the Convention for the Safeguarding of the Intangible Cultural Heritage*, *Macquaire Journal of International and Comparative Law*, No. 1, 2004, pp. 111-134.

²⁶⁷ Law n. 44, March the 8th, 2017, that amends the Law n. 77, February the 20th, 2006, *Gazzetta Ufficiale della Repubblica Italiana*; C. BORTOLOTTI, *Les inventaires du patrimoine immatériel en Italie: Etat, Regions et Associations*, p. 27, in *Atti del Colloquio Politiques Publiques du Patrimoine Immatériel en Europe du Sud: Parcours, réalisations et perspectives*, *Patrimoine Culturel*, Lisbonne, *Direção-Geral do Património Cultural*, 2001, p. 3; A. GUALDANI, *Primi Passi Verso una Disciplina di Settore dei Beni Immateriali: Il Caso del Disegno di Legge sulle Manifestazioni, Rievocazioni, e Giochi Storici*, Aedon, Il Mulino, Bologna, No. 3, 2017; M. CATALDO, *Preservare la Memoria Culturale, il Ruolo della Tecnologia*, (L'evoluzione legislativa italiana in materia di riproduzione di immagini), Aedon, Il Mulino, Bologna, No. 2, 2020.

²⁶⁸ 2019 Report on International Religious Freedom: Armenia, US Department of State, Office of International Religious Freedom, 10 June 2020; L. KHARATYAN, A. UMUDOV, G. BOBGHIASHVILI, *The Cultural Heritage of National Minorities in Armenia, Azerbaijan, and Georgia*, *Journal of Conflict Transformation*, Caucasus Edition, 2019, at <https://caucasusedition.net/policies-on-cultural-heritage-of-national-minorities-in-armenia-azerbaijan-and-georgia/>; J. BLAKE, *Seven Years of Implementing UNESCO's*

Hungary include the ICH of the Cypriot and Hungarian diasporas²⁶⁹. Latin American countries, such as Mexico, Peru and Guatemala want to put in place national policies aiming at promoting the intercultural dialogue, ethnic and cultural diversity, including the heritage of indigenous people²⁷⁰. In other countries, such as Cambodia, Cote d'Ivoire and Burkina Faso, ICH wants to be used as a tool to prevent conflict or post-conflict resolution²⁷¹. For sure, the diversity of the national policies introduced tells a lot on the way Member States perceive and select ICH and involve stakeholders in the process of enhancement and preservation of ICH.

What happens in situations of conflict between States? Are these tools used neutrally?

3. The Global Dimension of UNESCO's Listing Mechanisms in the Field of ICH

Criteria for the evaluation and inclusion of intangible heritage (*Representative List of the Intangible Heritage of Humanity - List of Intangible Heritage in Need for Urgent Safeguarding*), were first introduced in 2008²⁷². These standards have been updated in the 2018 *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage*²⁷³.

2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch, International Journal of Cultural Property, No. 21, 2014.

²⁶⁹ J. BLAKE, Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch, International Journal of Cultural Property, No. 21, 2014.

²⁷⁰ UNESCO and Indigenous People: Partnership to Promote Cultural Diversity, CLT.2004/WS/5 REV. (Eng/Spa), CLT.2007/WS/01 (Eng/Fre), 2006; UNESCO World Report: Investing in Cultural Diversity and Intercultural Dialogue, UNESCO Publishing, Paris, 2009.

²⁷¹ J. BLAKE, Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch, International Journal of Cultural Property, No. 21, 2014.

²⁷² Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008).

²⁷³ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018), para. 1-65 (Chapter I, Safeguarding of the intangible cultural heritage at the

The relevant factor is that intangible heritage underwent a process of canonization similar to the one used to identify and measure the Outstanding Universal Value in natural and cultural heritage sites. Indeed, *subjective* intangible elements selected by Governments for inscription on the Representative List, must be in conformity with *objective* and *universal* criteria set forth by UNESCO. In particular, in nomination files, submitting State Parties are requested to demonstrate that an element proposed for inscription on the *Representative List of the Intangible Cultural Heritage of Humanity* satisfies all of the following criteria:

- i) The element constitutes intangible cultural heritage as defined in Article 2 of the Convention.
- ii) Inscription of the element will contribute to ensuring visibility and awareness of the significance of the intangible cultural heritage and to encouraging dialogue, thus reflecting cultural diversity worldwide and testifying to human creativity
- iii) Safeguarding measures are elaborated that may protect and promote the element.
- iv) The element has been nominated following the widest possible participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent.
- v) The element is included in an inventory of the intangible cultural heritage present in the territory(ies) of the submitting State(s) Party(ies), as defined in Articles 11 and 12 of the Convention.

In nomination files, the submitting State(s) Party(ies) is (are) requested to demonstrate that an element proposed for inscription on the *List of Intangible Cultural Heritage in Need of Urgent Safeguarding* satisfies all of the following criteria:

- vi) The element constitutes intangible cultural heritage as defined in Article 2 of the Convention.

international level, cooperation and international assistance); UNESCO. Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (2008-2018); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2016); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2020).

vii) (a) The element is in urgent need of safeguarding because its viability is at risk despite the efforts of the community, group or, if applicable, individuals and State(s) Party(ies) concerned; or (b) The element is in extremely urgent need of safeguarding because it is facing grave threats as a result of which it cannot be expected to survive without immediate safeguarding.

viii) A safeguarding plan is elaborated that may enable the community, group or, if applicable, individuals concerned to continue the practice and transmission of the element.

ix) The element has been nominated following the widest possible participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent.

x) The element is included in an inventory of the intangible cultural heritage present in the territory(ies) of the submitting State(s) Party(ies), as defined in Articles 11 and 12 of the Convention.

xi) In cases of extreme urgency, the State(s) Party(ies) concerned has (have) been duly consulted regarding inscription of the element in conformity with Article 17.3 of the Convention²⁷⁴.

More specifically, *prerequisites for nomination of ICH, qualifying criteria and procedural requirements* for nomination of ICH can be extracted on the basis of these criteria and demanded both to national and global institutions. Experts agreed that domains, cultural landscapes, human rights, sustainable developments and misappropriation are among those prerequisites for nomination²⁷⁵. Qualifying criteria have been interpreted by experts as: recognition, identity and continuity; transmission; representativeness; authenticity and Outstanding Universal Value²⁷⁶; distinctiveness; community involvement; individuals. Lastly, procedural criteria are connected to cultural diversity; summary justification; tentative or national

²⁷⁴ These criteria are the result of the UNESCO, Report of the Expert Meeting on Criteria for Inscription on the Lists Established by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 5-6 December, 2005, p. 3

²⁷⁵ UNESCO, Report of the Expert Meeting on Criteria for Inscription on the Lists Established by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 5-6 December, 2005, p.5.

²⁷⁶ See more in details at paragraph 6, Intangible Heritage and Tangible Heritage in UNESCO's System: the Implicit Role of Intangible Heritage as a Political Tool to Claim Contested Heritage and Problematic Issues.

representative list; safeguarding plan; legal protection; sunset clause; limitation of inscription²⁷⁷.

Additionally, the set of provisions contained in the 2018 Operational Guidelines also elaborates standards of eligibility and selection criteria of international assistance requests²⁷⁸, submission of multi-national files²⁷⁹, guidelines for the use of the Intangible Cultural Heritage Fund²⁸⁰, and participations of communities, groups, individuals and experts²⁸¹.

²⁷⁷ UNESCO, Report of the Expert Meeting on Criteria for Inscription on the Lists Established by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 5-6 December, 2005, p. 4.

²⁷⁸ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018), para. 8-12 (Chapter I, Safeguarding of the intangible cultural heritage at the international level, cooperation and international assistance); UNESCO. Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (2008-2018); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2016); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2020).

²⁷⁹ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018), para. 13-15 (Chapter I, Safeguarding of the intangible cultural heritage at the international level, cooperation and international assistance); UNESCO. Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (2008-2018); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2016); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2020).

²⁸⁰ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018), para. 66-78 (Chapter II, The Intangible Cultural Heritage Fund); UNESCO. Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (2008-2018); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2016); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2020).

²⁸¹ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth

After having illustrated and described the global legal background on ICH, several issues are going to be analysed in the following paragraphs.

4. Architectural Techniques of Construction and Contested Religious Heritage: Uncharted Aspects and Issues;

According to the main treaties adopted by UNESCO, the first issue is related to the implicit connection between intangible heritage and tangible heritage in a “non-conventional way”.

Within the current definition of intangible heritage provided by Article 2 of the 2003 ICH Convention, there is no mention to the architectural techniques of construction. The latter are taken into consideration by the 1989 UN *Recommendation on the Safeguard of Traditional Culture and Folklore*²⁸²: “Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, *architecture and other arts*”²⁸³.

Currently, the conception of intangible heritage as the immaterial portion of a culture is related to its embodiment in the material products of arts and architecture. This statement, and namely, the close interaction between tangible and intangible heritage in terms

session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018), para. 79-99 (Chapter III, Participation in the Implementation of the Convention); UNESCO. Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (2008-2018); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2016); UNESCO. Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (2020).

²⁸² The General Conference of UNESCO, meeting in Paris from 17 October to 16 November 1989, adopted the Recommendation on the Safeguarding of Traditional Culture and Folklore, considering that folklore forms part of the universal heritage of humanity, and that it is a powerful mean to assert peoples’ cultural identity, stressing on its relevance from the economic, cultural and political point of view.

²⁸³ UNESCO, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989.

of “constant recreation of practices”, is so far the predominant connection existing between tangible and intangible heritage. In other words, according to the 2003 ICH Convention, intangible heritage is interpreted as instrumental for the production of a representative tangible heritage (art and architecture).

There is a major uncharted and problematic aspect. Hitherto, the instrumentality of intangible heritage as a vehicle for the attribution of ownership on tangible contested sites through distinctive architectural techniques of construction is underexplored. It should be noted that the Outstanding Universal Value of World heritage sites is in many cases connected to specific architectural techniques of construction as bearer of a specific cultural, religious and political traits. In the legal framework pre-empting the 2003 ICH Convention, these techniques of construction were qualified as folklore, then transformed with substantial modification in the current version of intangible heritage. The new definition of intangible heritage does not include the architectural techniques of construction, which seems to have been incorporated in those criteria (especially criterion (iv)) used by UNESCO to evaluate the World Heritage Sites’ OUV ²⁸⁴. More precisely, much emphasis is added on those architectural techniques of constructions of religious sites whose Outstanding Universal Value has distinctive national and cultural traits. More specifically, (religious) techniques of architectural construction are implied to enforce and support the OUV of sites. More specifically, they do qualify the sites as belonging or not to a specific political identity.

Is this approach related to ordinary situations or is it a predominant aspect especially in disputed circumstances? Is it an anomaly or a physiology related to the non-neutral use of UNESCO’s rules?

4.1 Architectural Techniques of Construction in UNESCO’s World Heritage Sites Nomination Dossiers: Ordinary and Contested Religious Heritage Sites

²⁸⁴ Criterion (iv) states that cultural properties are deemed to have an Outstanding Universal Value if they are “an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history”, UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019.

Some examples can be used to shed a light on the intrinsic connection between religious architectural technique of construction and ownership of the site.

First, the *Old Town of Timbuktu (Mali)* has been included in the World Heritage List in 1988 under criterion (ii), criterion (iv), and criterion (v), and it is currently positioned in the List of the World Heritage in Danger Sites²⁸⁵. The mosques and the holy places of Timbuktu played an essential part in the spread of Islam in Africa (criterion (ii)), thus witnessing the spiritual and intellectual relevance of the city under the Aksia dynasty (criterion (iv)). Most importantly, the mosques built of adobe (or banco) are more representative than the more extensively remodelled dwellings of traditional construction techniques that have become vulnerable under the impact of irreversible change (criterion v)). The report is truly focused not only on the architecture that has a religious essence, but also on the impact of this religious architecture on the system of religious beliefs. In particular, aside from the three mosques (the mosque of Djingareyber, the mosque of Sankore and the mosque of Sidi Yahia), the nomination enumerates 16 cemeteries and mausoleums, described as “essential elements in a religious system since, according to popular belief, they constitute a rampart that shields the city from all misfortune”.

Second, the outstanding significance of the *Ancient Town of Djenné (Mali)* was recognized in 1988 under criterion (iii) and criterion (iv). Although being reconstructed during the French occupation (1906-1907), the Great Mosque built on banco is described as a fairly successful pastiche of local religious architecture. Precisely by virtue of the local religious architecture, the title of “the most beautiful city of Africa” and that of “the typical African city”²⁸⁶ is conferred to the Ancient Town of Djenné. This recognition emphasizes the city’s iconic role through its religious architectural techniques of construction. However, the construction of earthen mosques, religious buildings, houses and villages is widespread for centuries in Western Africa (Mali, Niger, Nigeria, Togo, Benin, Ghana, and Burkina Faso), Southwest Asia and Southwest America: the difference is related to the process of identification, recognition and inclusion of these sites in national inventories and then in the World Heritage List as sites whose OUV has a specific national characterization²⁸⁷. The above-mentioned (intangible

²⁸⁵ The Old Town of Timbuktu, Mali, ICOMOS, File No. 119 Rev., 1987.

²⁸⁶ The Ancient Town of Djenné, Mali, ICOMOS, N. 116 Rev., 1987.

²⁸⁷ J-L. BOURGEOIS, B. DAVIDSON, *Spectacular Vernacular: the Adobe Tradition*, Aperture Foundation, 2nd Edition, New York, 1996; S. PRESTON BLIER, *Butabu: Adobe Architecture of West Africa*, Princeton Architectural Press, New York, 2004, (Photograph by J. MORRIS).

heritage) elements, such as the techniques implied to produce this specific religious architecture, the religious ideology, and the system of beliefs behind its realization, are used to justify the inscription of the sites in the World Heritage List as outstanding and iconic pieces of traditional Mali religious architecture.

Third, the *Monasteries of Haghpat and Sanahin* (Armenia) are relevant instances that emphasize the link between religious architecture as a tool that testifies the OUV of the site and the attribution of the site to a State. Under criteria (i), (ii), (iv) and (vi) the group of monastic buildings is described as the highest representative of Armenian religious architecture between the 10th and 13th centuries²⁹⁸. The unicity of the style developed from a blending of elements of Byzantine ecclesiastical architecture and the traditional vernacular architecture of the Caucasian region. We should notice that other monastic ensembles of this kind survive in Armenia (such as those monasteries at Goshavank and Haghartsin) and exhibit the same features in terms of religious architecture, but ICOMOS is of the opinion that: “It is generally recognized, however, that the culturally most important and most completely preserved are those of Haghpat and Sanahin. In view of their geographical proximity and the fact that they were founded as part of the same *movement of national regeneration*, as well as the high cultural significance of both, it is logical to treat them as a single unit for inscription on the World Heritage List”²⁹⁹. In this case, religious architecture becomes a political statement, thus reconnecting the site to the institutional identity and political history of the country.

The last example is outlined by the Old City of Jerusalem (Independent Site)³⁰⁰. In this case, given the context of prolonged competing sovereignty, the religious architecture is not identified as belonging to the Israeli, nor Palestinian, nor Jordanian States. Rather, religious architecture is related to three biggest monotheistic religions, thus demonstrating that UNESCO abstained from attributing a specific national identity to one of the most contested sites. This demonstrates that UNESCO’s decision as to which State Party recognize the supremacy of its religious architectural techniques of construction are a political statement, either of enforcement, denial or abstention.

²⁹⁸ Haghpat Monastery, Armenia, ICOMOS, No. 777, 1995; Haghpat/Sanahin, Armenia, ICOMOS, No. 777 bis, 1999.

²⁹⁹ Haghpat Monastery, Armenia, ICOMOS, No. 777, 1995; Haghpat/Sanahin, Armenia, ICOMOS, No. 777 bis, 1999, p. 164.

³⁰⁰ The Old City of Jerusalem, (Al-Quds), Site Proposed by the Hashemite Kingdom of Jordan, WHL, No. 148, 1981.

These examples are brought because intangible heritage (architectural techniques of construction) plays a determinant role in the case of the Old City of Hebron. Indeed, even more troublesome is the legal status and the role of architectural techniques of construction when the property is religious and contested between two sovereign powers. In this case, intangible heritage acquires an instrumental and political dimension that pushes towards the attribution of a nationality to a disputed site. In particular, is intangible heritage an instrument used to justify and attribute the Palestinian nationality to the OUV in case of contested religious sites? To what extent are the architectural techniques of construction of the Old Town of Hebron / Al Khalil a sufficient tool to demonstrate the inextricable link between intangible cultural heritage, tangible cultural heritage, and the exercise of sovereign powers over the contested religious town²⁹¹?

5. Rituals and Contested Religious Heritage: Uncharted Aspects and Issues

The link between intangible elements of religious heritage sites and their Outstanding Universal Value with specific identity, cultural and political features is evident, although uncharted. Traditions, myths, rituals, iconography and liturgy may refer to an eternal past rooted and extracted from that specific religious place, hence justifying the continuity between past and future of a political entity, either internationally recognized by the community of States or not.

Speaking of rituals, we could refer to the concept of *symbolic stability*, referred to as the physical presence of a site, to help legitimating the current geographical boundaries and political organization of countries²⁹². Additionality, symbolic stability helps to legitimate the political structures, the rulers in place and their authority by presenting them as direct inheritors of past regimes. Whether grounded on precise historical facts or not, those intangible elements might also refer to the origin of a country in a nationalistic perspective, helping support the claims for the exercise of sovereign powers. Moreover, emphasis on the religious features of the site helps to protect beliefs in national tradition and continuity. To say it differently, the traditional conception of the principle of territoriality implies political continuity when those traditional practices are maintained through religious sites tangibly

²⁹¹ See more in details in Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

²⁹² J. BLAKE, On Defining Cultural Heritage, *The International and Comparative Law Quarterly*, Vol. 49, No. 1, 2000, pp. 61-85.

associated with intangible heritage. The latter exists and it is practiced within defined political boundaries. Within the current legal framework, rituals and traditions are qualified as intangible heritage and fall under the protection of the 2003 ICH Convention. Differently from the previous version of intangible heritage introduced by the 1989 *Recommendation on the Safeguarding of Traditional Culture and Folklore*²⁹³, the mention to mythology or other forms of art, including liturgies, mythology, symbolism and iconography, are expelled from the present definition of intangible heritage as set forth by the 2003 ICH UNESCO Convention. More specifically, for what concerns religious rituals, sacred traditions, mythology, religious symbolism and iconography, the Human Rights Committee (CCPR) did recognize that the concept of worship also extends “to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship”²⁹⁴. Contrariwise, the negotiators of the 2003 ICH generally agreed that religions do not belong to the field of intangible cultural heritage, as far as their theological and moral aspects are concerned²⁹⁵. One could argue that even if the 2003 ICH and the 2005 Convention do not expressly safeguard religions as such (through the express will of excluding them from the legal provision), the Conventions are nevertheless suitable for listing some manifestations of religious faith that are culturally felt as bonds for a certain human community (for instance, a type of religious procession that has been held for centuries on certain anniversaries or forms of transmission of religious faith). More specifically, a certain degree of protection is provided to holy places by means of religions that express themselves in such places or through the ways in which religious faith and its transmission is manifested or depicted in heritage sites. Even though religious rituals, liturgies, sacred symbolism, iconography and religious mythology, intended as sacred practices, processions, religious festivals

²⁹³ Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989.

²⁹⁴ Human Rights Committee (HRC), General Comment adopted by the Human Rights Committee under Article 40, paragraph 4 of the ICCPR, General Comment No. 22/48, The Right to freedom of thought, conscience and religion, U.N. Doc. CCPR/C/21/Rev. 1/Add. 4 (July 30, 1993); S. TONOLO, Religious Values and Conflict of Laws: old problems and new perspectives, in Tui Memores: La Dimension culturelle du droit international privé, Publications de l’Institut suisse de droit comparé, Collection dirigée par Christina Schmid et Lukas Heckendorn Urscheler, Ilaria Pretelli/ Gian Paolo Romano/ Tuto Rossi (éds), Actes de la Journée en l’honneur de Tito Ballarino du 13 juin 2014 à Lausanne et Essais recueillis par ses amis et élèves, Schulthess, Éditions Romandes, 2017, pp. 187-212.

²⁹⁵ T. SCOVAZZI, L. VESTRA, The Safeguarding of the Intangible Cultural Heritage According to the 2003 UNESCO Convention: The Case of The First Nations of Canada, The McGill Journal of International Law and Legal Pluralism, InterGentes, Vol. 1, Issue 2, 2017, pp. 30-31.

or dances, do not specifically fall under the 2003 ICH Convention, they do often find a position in the *Representative List of the Intangible Cultural Heritage of Humanity*. The *Pilgrimage to the St. Thaddeus Apostle Monastery (Iran and Armenia)*²⁹⁶, the *Rituals and Practices Associated with Kit Mikayi Shrine (Kenya)*²⁹⁷, the *Holy Week Processions in Mendrisio (Switzerland)*²⁹⁸, the *Religious Festival of the Garhwal Himalayas and Ritual (India)*²⁹⁹, the

²⁹⁶ “The annual three-day pilgrimage to St. Thaddeus Apostle Monastery in north-western Iran is held each July. The pilgrimage venerates two prominent saints: St. Thaddeus, one of the first apostles preaching Christianity, and St. Santukhd, the first female Christian martyr. The bearers of the element are the Armenian population in Iran, Iranian-Armenians residing in Armenia, and followers of the Armenian Apostolic Church. Pilgrims gather in Tabriz before departing for the monastery. They cover 700 kilometers from Yerevan to the monastery annually. The commemoration ceremony includes special liturgies, processions, prayers and fasting. It culminates in a Holy Mass with Holy Communion”, 15. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *The Pilgrimage to the St. Thaddeus Apostle Monastery, Iran and Armenia*, 2020, and <https://ich.unesco.org/en/RL/pilgrimage-to-the-st-thaddeus-apostle-monastery-01571>.

²⁹⁷ “The Rituals and practices associated with Kit Mikayi shrine concern the Luos of western Kenya. Legend has it that Kit Mikayi Shrine is associated with the good fortunes of the Seme people and other Luo ethnic communities who live around the shrine enclave. People access the shrine for many different reasons, including praying, taking oaths, undertaking rituals and associated practices, and enjoying its natural beauty. During times of catastrophe like hunger and famine, Luo elders would conduct rituals at the shrine and rain and bounty harvests would follow. Elderly men and women of excellent social standing would guide the rituals; while men would partake in activities such as slaughtering the animals, women did the singing, dancing and cooking of the foods accompanying the rituals. For generations, the community has relied on the shrine as a sacred site, where they could visit and commune with the Deity”, 14. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Rituals and Practices Associated with Kit Mikayi Shrine, Kenya*, 2019, and <https://ich.unesco.org/en/USL/rituals-and-practices-associated-with-kit-mikayi-shrine-01489>.

²⁹⁸ “The Holy Week processions take place in the historic town of Mendrisio on the evenings of Maundy Thursday and Good Friday, attracting over 10,000 spectators. On these occasions, the city’s lights are turned off and the streets are lit by the glow of ‘transparencies’: translucent paintings mounted on wooden frames and illuminated from within, made using a specific painting technique developed since the late 18th century. Nowadays, the 260 transparencies depict biblical scenes and symbols. The Thursday procession is devoted to staging the Passion and the Stations of the Cross and involves around 270 extras. The sounds of trumpets and drums set the pace and fill the streets with a contemplative atmosphere. The Good Friday procession is more austere: hundreds of children and adults march along carrying over 500 ceremonial objects, including 320 lanterns representing symbols of the Passion of Christ. The choreography and scenography of the processions foster a contemplative atmosphere, and the transparencies promote local craftsmanship”, 14. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Holy Week Processions in Mendrisio, Switzerland*, 2019 and <https://ich.unesco.org/en/RL/holy-week-processions-in-mendrisio-01460>.

²⁹⁹ “Every year in late April, the twin villages of Saloor-Dungra in the state of Uttarakhand (northern India) are marked by Ramman, a religious festival in honour of the tutelary god, Bhumiya Devta, a local divinity whose temple houses most of the festivities. This event is made up of highly complex rituals: the recitation of a version of the epic of Rama and various legends, and the performance of songs and masked dances. The festival is

*Annual Pilgrimage to the Mausoleum of Sidi 'Abd el-Qader Ben Mohammad (Algeria)*³⁰⁰, the *Mongolian Traditional practices of worshipping the sacred sites (Mongolia)*³⁰¹, the *Festivity of the Virgen of Candelaria (Peru)*, and the *Commemoration Feast of Finding of the True Holy Cross of Christ (Ethiopia)*³⁰² are meaningful examples. Indeed, these rituals are all listed in the *Representative List of the Intangible Cultural Heritage of Humanity* as

organized by villagers, and each caste and occupational group has a distinct role. For example, youth and the elders perform, the Brahmans lead the prayers and perform the rituals, and the Bhandaris – representing locals of the Kshatriya caste – are alone entitled to wear one of the most sacred masks, that of the half-man, half-lion Hindu deity, Narasimha [...]", 4.COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Religious Festival of the Garhwal Himalayas and Ritual, India, 2009 and <https://ich.unesco.org/en/RL/ramman-religious-festival-and-ritual-theatre-of-the-garhwal-himalayas-india-00281>.

³⁰⁰ "Every year, nomadic and settled Sufi communities undertake a pilgrimage to the mausoleum of the Muslim mystic, Sidi 'Abd el-Qader Ben Mohammed (Sidi Cheikh), located in El Abiodh Sidi Cheikh. Beginning on the last Thursday of June, three days of religious rituals and secular festive events honour the founder of the brotherhood. The pilgrimage renews ties and secular alliances among the Sufi brotherhood and ensures peace and stability between communities. It has also contributed to the recent growth in Sufism and helped to promote community values such as hospitality and collective practices including praises to Sidi Cheikh, Koran recitations, secular chants and dances. The rituals begin with a choral recital of the Koran, followed by a dawn ceremony that renews the communities' affiliation to the Sufi brotherhood. The secular festivities include fencing, dances and equestrian competitions that involve more than 300 riders from different communities. The spiritual knowledge is learned and transmitted within families, while Sufi masters convey the key Sufi rituals and prayers to the initiated through formal teaching. Men's and women's dances and secular games are taught within associations or transmitted through practice", 8.COM 8.1, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Annual Pilgrimage to the Mausoleum of Sidi 'Abd el-Qader Ben Mohammad, Algeria, 2013, and <https://ich.unesco.org/en/decisions/8.COM/8.1>.

³⁰¹ "Mongolian practices of worshipping sacred sites have developed in the cultural space that is home to the nomadic lifestyle, which is characterized by its close harmony with nature and the environment. According to ancient shamanism, these practices are based on the belief in the existence of invisible deities of the sky, earth, mountains and natural surroundings [...]", 12. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Mongolian Traditional practices of worshipping the sacred sites, Mongolia, 2017 and <https://ich.unesco.org/en/USL/mongolian-traditional-practices-of-worshipping-the-sacred-sites-00871>.

³⁰² "The festival of Maskel is celebrated across Ethiopia on 26 September to commemorate the unearthing of the True Holy Cross of Christ. Celebrations begin with the building of the Damera bonfire in Maskel Square in Addis Ababa [...]. Hundreds of thousands of people from diverse communities flock to the square as colourfully dressed priests chant hymns and prayers and perform their unique rhythmic dance in front of the pyre. At the climax, the patriarch of the Ethiopian Orthodox Tewahedo Church lights the bonfire. Maskel is celebrated nationwide regardless of age, gender, language or ethnicity. Participants are believed to receive spiritual rewards from the celebration and blessings from the Holy Cross. Local churches play a key role in coordinating communities and safeguarding the element [...]", 8. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Commemoration Feast of Finding of the True Holy Cross of Christ, Ethiopia, 2013 and <https://ich.unesco.org/en/RL/commemoration-feast-of-the-finding-of-the-true-holy-cross-of-christ-00858>.

intangible heritage that bears distinctive cultural and identity features. Yet, they are representative manifestations of religious rituals, festive events, and practices related to the sacred dimension that involves theological and moral aspects.

To a more accurate analysis, the approach emerging from the current global legal framework in the field of ICH leaves several aspects untouched. In particular, there are several examples of (tangible) World Heritage Sites whose Outstanding Universal Value is characterized and emphasized by the presence of religious rituals, icons or religious mythology depicted by means of distinctive religious art or architecture. In this regard, those elements classified as intangible heritage —either according to the 1989 *Recommendation on the Safeguarding of Traditional Culture and Folklore* or to the 2003 ICH Convention, are used to strengthen the Outstanding Universal Value of (tangible) religious sites.

5.1 Rituals in UNESCO's World Heritage Sites Nomination Dossiers: Ordinary and Contested Religious Heritage Sites

Three nomination dossiers can be used to shed a light on this aspect.

The *Sacred City of Kandy* was listed in 1986 following the request of the Ministry of Cultural Affairs of Sri Lanka³⁰⁰. The monumental complex includes the remains of the Royal Palace with the Great Audience Hall, the Temple of the Tooth, the Palace of Sri Wickrama, the Queen's apartments and bathing house, the *Palle Wahala*, the *Ran Ayuda Maduwa*. Three other monumental groups (*Dewala*, *Malwatte Vihara* and *Asgiriya Vihara*) are the final elements of the important complex. Within the evaluation dossier, it is stated that the city does not possess the monumental wealth of the two other capital of the island (*Anuradhapura* and *Polonnaruwa*, already included in the World Heritage List in 1982), but much emphasis is added on the vehicular function of the ritual/cult of Buddha practiced in the Temple of the Tooth as a justification of the OUV of the Property under *criterion (iv)* and *criterion (vi)*. In particular, the city remains the religious capital of Buddhism and a sacred city for millions of believers. Enshrined in the *Dalada Maligawa* is the relic of the tooth of Buddha which has long been greatly venerated. The ceremonial high point celebrated each year is the splendid ritual of the great processions on the feast of *Esala Perahera*. On the one side, the monumental ensemble of Kandy, rebuilt under the reign of Keerti Sri Rajasimha, is both an outstanding example and a political statement. It witnesses a type of construction in which the Royal

³⁰⁰ The Sacred City of Kandy, Sri Lanka, (ICOMOS), World Heritage List, No. 450, 1986.

Palace, witnessing the past seat of royal powers, is juxtaposed to the Temple of the Tooth of Buddha, where the ceremonial acts are customary since the 4th century (*criterion (iv)*). On the other side, the Temple of the Tooth, the palatial complex and the sacred city of Kandy and the rituals therein performed are directly and tangibly associated with the history of the spread of Buddhism. In particular, much emphasis is added on the Temple of Kandy as a major witness to an even flourishing cult (*criterion (vi)*), whose political ownership is ascribed to the State of Sri Lanka³⁰⁴.

Another example that embodies the blend of intangible heritage as a tool used to justify the OUV is *Tiwanaku, the Spirirtual and Political Centre of the Tiwanaku Culture* (Plurinational State of Bolivia), listed in 2000 under *criterion (iii)* and *criterion (iv)*³⁰⁵. Within the report for the evaluation of the property, much importance is given to the ceremonial and public architecture and art. These features are described as outstanding traits that connect the property of the site to a specific civilization, which is distinct from any other pre-Hispanic empires of the Americas. More specifically, much emphasis is added on religious beliefs, rituals, ceremonies, and icons represented, such as the cult to *Pacha Mama*. Namely, the ritual is a constitutive element that enriches both the cultural, architectural, archaeological, and political significance of the great monumental complex³⁰⁶. What is relevant in this regard is that the Outstanding Universal Value of the Property is related to the religious practices, that have an intrinsic political character and do qualify the property as symbol of Bolivian identity and nationality³⁰⁷.

Another good example is represented by the *Shrines and Temples of Nikko* (Japan), whose Outstanding Universal Value has been scrutinized in 1998, under *criterion (i)*, *criterion (iv)*, and *criterion (vi)*. The outstanding artistic value of the nominated properties is connected to the forms of architectural style, known as *Gonzen-zukuri* and intended as the most advanced style of typical religious Japanese architecture. More specifically, the Japanese religious architecture is directly associated with the Shintoist indigenous religious belief. The OUV of the site is indeed qualified as Japanese both because of its religious architecture and because of the rituals and religious events frequently held as to be a living tradition rooted in the lives of people at their spiritual level. This aspect demonstrates the intense relationship

³⁰⁴ The Sacred City of Kandy, Sri Lanka, (ICOMOS), World Heritage List, No. 450, 1986, p. 2.

³⁰⁵ Tiwanaku, the Spirirtual and Political Centre of the Tiwanaku Culture, Plurinational State of Bolivia, WHC Nomination Documentation, No. 567 Rev., 2000.

³⁰⁶ Tiwanaku, the Spirirtual and Political Centre of the Tiwanaku Culture, Plurinational State of Bolivia, WHC Nomination Documentation, No. 567 Rev., 2000, p. 45.

³⁰⁷ Tiwanaku, the Spirirtual and Political Centre of the Tiwanaku Culture, Plurinational State of Bolivia, WHC Nomination Documentation, No. 567 Rev., 2000, pp. 27-30.

between architectural techniques of construction with specific identity features and rituals that justifies the Outstanding Universal Value of a typical Japanese (tangible) site³⁰⁸.

These instances are brought because intangible heritage (rituals, iconography, liturgy and mythology) plays a determinant role in the case of the Medieval Monuments in Kosovo and in the Case of the Temple of Preah Vihear. Indeed, even more troublesome is the legal status and the role of rituals, liturgy, symbolism, iconography, and mythology when the property is religious and contested between two sovereign powers. In this case, intangible heritage acquires an instrumental and political dimension that pushes towards the attribution of a nationality to a disputed site. The rituals associated with those specific religious heritage sites, such as the Serbian Orthodox ritual performed in the four contested Medieval Monasteries, do qualify as intangible heritage with specific political features identified by the Serbian State and then accepted as Serbian by UNESCO in the nomination dossier³⁰⁹. Is intangible heritage an instrument used to justify and attribute a nationality to the OUV in case of contested religious sites? Is intangible heritage the instrument of a process throughout which UNESCO is changing the traditional concept of territoriality, sovereignty and political boundaries? To what extent are the rituals practiced in the four Medieval Monuments a sufficient tool to demonstrate the inextricable link between intangible cultural heritage, tangible cultural heritage, and the impairment of Kosovo's political identity³¹⁰? To what extent is the mythology represented in the Temple of Preah Vihear a sufficient tool to demonstrate the inextricable link between intangible cultural heritage, tangible cultural heritage, and the definition of contested boundaries³¹¹?

³⁰⁸ Shrines and Temples of Nikko, Japan, ICOMOS, No. 913, 1998, p. 73.

³⁰⁹ D. DE COPPET, *Understanding Rituals*, London and New York, Routledge, 1992; C. MYLONAS, *The Serbian Orthodox Fundamentals: The Quest for an Eternal Identity*, Budapest and New York, Central European University Press, 2003; S. FLERE, R. KLANJŠEK, *Serbian Orthodox Religiousness: An Empirical and Comparative Portrait*, *Review of Religious Research*, Vol. 50, No. 1, 2008, pp. 35-48;

³¹⁰ See more in details in Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

³¹¹ See more in details in Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

6. Intangible Heritage and Tangible Heritage in UNESCO's System: the Implicit Role of Intangible Heritage as a Political Tool to Claim Contested Heritage and Problematic Issues

As previously introduced, religious heritage includes not only tangible items, but it also covers, in a wider and deeper sense, the intangible reality from which the artefacts and the whole religious culture originate. This implies some considerations related to the legal gaps, instrumentalization and uses of intangible heritage. Which are the problematic aspects deriving from the legal gaps in the field of ICH? Which are the issues deriving from use of intangible heritage? Is the application of the new rules of UNESCO making ICH instrumental and politically laden?

The first problematic aspect is of a conceptual nature and it is related to the emergence of intangible cultural heritage as a legally separated field from tangible heritage. So far, ICH has been defined in two different ways. On the one hand, as a concept *dependent* on tangible cultural heritage, it acts as the underlying culture to any given expression, encompassing the processes, skills, and beliefs leading to the creation of tangible works. In a way, it is the relationship of a people with its tangible cultural heritage. The qualities, rituals, symbolism and imagery attributed to such sacralised spaces and sacred centres are transferred to and reflected in the architecture, iconography and status of the man-made religious buildings (sanctuaries, shrines, temples and so on), palaces and cities associated with sacred places. On the other hand, as an *independent* type of heritage, it also involves story-telling, songs, dances, among other forms of expression which cannot be ordinarily fixated in material means³¹². This implies two considerations. For sure, the legal protection of intangible heritage is a relatively recent phenomenon. As such, this might be among the primary reasons to present ICH as a detached area from the tangible world of cultural heritage. This definitional approach is not taking into consideration the instrumental use of intangible heritage. One thing is to present intangible heritage as dependent on tangible heritage as a process or practice for its production. One different thing, not included in the current approach but implicitly detectable in UNESCO's practice, is to make intangible heritage conditional or at the service of disputed tangible heritage. In this perspective, is the role of intangible heritage finalized to the production or constant re-creation of tangible heritage? Rather, is it aiming at giving a foundation and a precise political direction to claims

³¹² L. LIXINSKI, *Selecting Heritage: the Interplay of Art, Politics and Identity*, *The European Journal of International Law*, 81– 100. <https://doi.org/10.1093/ejil/chr001>.

concerning religious tangible heritage? Additionally, intangible heritage already existed even before being included in UNESCO's system of protection offered by the 2003 ICH Convention, the *Representative List of the Intangible Heritage of Humanity*, or the *List of Intangible Heritage in Need for Urgent Safeguarding*. The mechanisms created for intangible heritage (identification, listing, and regulation as a *corpus separatum* from the tangible side of religious heritage) highlights that there is a clash with its progressively consistent and pivotal presence in World Heritage Sites' dossiers. Indeed, intangible heritage seems to be an integral part of those nomination processes related both to religious heritage sites and to contested religious heritage sites.

The second problematic aspect is related to the processes of standardization and canonization of intangible heritage and its evaluation through objective and scientific criteria. In the field of tangible heritage, when experts have recognized that artistic, architectural, historical and religious values inherent to the OUV cannot be universally appreciated, this does not imply a neutral use of powers by UNESCO. It does guarantee that they can be strictly measured in a scientific and impartial way. Indeed, the "scientific measurement" of these values in tangible heritage site is a legal responsibility primarily attributed to national states that have huge interests in having cultural heritage sites with an OUV. If the property is contested and this OUV is recognized by UNESCO, the recognition ends up having an incredible legal and political prestige. On the one side, the consequences of such a flexible use of the OUV are substantial in order to strengthen or deny the sovereignty or as a tool to define contested borders. This is very true especially when the property recognized by UNESCO is located in a strategic geographical position. On the other side, following the process of globalization, this universal evaluation methods used by national and global institutions in order to establish the value of cultural heritage ends up in the mortification of the subjective values inherent to cultural heritage³⁰. The same considerations can be made for those criteria recently elaborated to recognize ICH as *representative*. Accordingly, the values of intangible heritage are intrinsically based on subjective values, such as those pertaining to religious rituals, mythology, liturgies, iconography, and architectural techniques of construction based on religious life style. Yet, in UNESCO's system, they must abide to national and cultural archetypes and prevailing political interests selected by

³⁰ F. LANZERINI, Il valore 'soggettivo' del patrimonio culturale come elemento essenziale dell'identità dei popoli, in A. GENTILI, La Salvaguardia dei beni culturali nel Diritto Internazionale, Milano, Giuffrè, 2008; F. LANZERINI, Intangible Cultural Heritage: The Living Culture of Peoples, The European Journal of International Law, Vol. 22, No. 1, 2011.

national institutions on the basis of global standards³¹⁴. On the one side, the tendency to uniformity set through global rules clashes with the value of cultural diversity that UNESCO itself declares to promote in the 2003 Convention and in Article 1 of the Universal Declaration on Cultural Diversity³¹⁵. On the other side, these global rules allow National States to use and forge these standardized definitions to allow certain cultural and political interests to prevail at the expense of other less representative values. Once again, this is a subjective choice that raises political sensitivity. In this sense, the use of cultural heritage as a mean to promote distinctive national identity is exemplified in the case of Norway under Swedish domain in the mid to late nineteenth century. In the 19th century, Norway, then under Swedish rule, ventured into creating the concept of *True Norwegianness*, built precisely around the celebration of folk culture, including costumes and festivals. Folk culture was then re-introduced in smaller villages, an improved version of a cultural distinctiveness then disappearing or vanished. The use of costumes and dialects generated a sense of pride and fuelled the claims for authentic Norwegian identity, which ultimately led to the political independence movements in the country. Sweden also engaged in this process of identity-building through folk culture during the same period³¹⁶, but only in 2019 Norway was able to include in the *Representative List of the Intangible Heritage of Humanity* the *Practice of traditional music and dance in Setesdal, playing, dancing and singing*

³¹⁴ A similar approach and similar criticalities arise in the field of tangible heritage and in the evaluation of the Outstanding Universal Value of those religious contested sites. For more details, see Chapter I of this manuscript (UNESCO and the Values Religious Cultural Heritage); see more in details Paragraph 6 of this chapter, Intangible Heritage and Tangible Heritage in UNESCO's System: the Implicit Role of Intangible Heritage as a Political Tool to Claim Contested Heritage and Problematic Issues. The same criticisms are unearthed by eminent scholars, such as S. LABADI, UNESCO, Cultural Heritage, and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions, *Archaeology in Society*, AltaMira Press, 2012; F. LANZERINI, Il valore 'soggettivo' del patrimonio culturale come elemento essenziale dell'identità dei popoli, in A. GENTILI, *La Salvaguardia dei beni culturali nel Diritto Internazionale*, Milano, Giuffrè, 2008; F. LANZERINI, Intangible Cultural Heritage: The Living Culture of Peoples, *The European Journal of International Law*, Vol. 22, No. 1, 2011; L. LIXINSKI, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*, Cambridge University Press, Cambridge, 2021; N. AKAGAWA, *Safeguarding Intangible Heritage: Politics and Practices*, Routledge, New York, 2019; G. M. GOLINELLI, *Cultural Heritage and Value Creation: Towards New Pathways*, Rome, Springer, 2015.

³¹⁵ Article 1, UNESCO, Universal Declaration on Cultural Diversity, Resolution adopted on the report of Commission IV at the 20th plenary meeting, on 2 November 2001.

³¹⁶ L. LIXINSKI, *Selecting Heritage: the Interplay of Art, Politics and Identity*, *The European Journal of International Law*, 81– 100. <https://doi.org/10.1093/ejil/chr001>.

(*stev/stevjing*). Interestingly, in the report, the origin of the Setesdal is traced back to the 18th century³¹⁷.

The third problematic issue emerging from the above illustrated process of *scientificization* of intangible heritage is related to the use of ICH as deriving from the concrete application of UNESCO's rules: the elaboration of standards of listing does not guarantee their impartial and neutral use. Additionally, it creates a friction between the promotion of cultural diversity in a global and overarching perspective and the attempt of enclosing ICH within precise territorial boundaries. Indeed, communities striving for statehood in the past have used cultural heritage as a tool to promote a distinctive national identity. Nowadays, states where politically active minorities exist, fear that minorities will use their distinctive intangible heritage as an instrument to increase their political claims internally and internationally, with the ultimate goal of forcing the State into agreements on autonomy, or even creating the conditions for secession³¹⁸. Once again, is this non-neutral use a natural effect deriving from the processes of globalization? Rather is it mostly related to sensitive situations, where ICH is assuming a vehicular role to promote or disadvantage identity, cultural and political realities through UNESCO's listing tools? As a way of example, *Buddhist Chanting of Ladakh: recitation of sacred Buddhist texts in the trans-Himalayan Ladakh Region*, that is part of the Jammu and Kashmir regions, India³¹⁹, is an instance that illustrates the clashes of interests, contestation, and the possible uses of intangible heritage as a territorial marker. In particular, geography and history have contributed to a distinctive Ladakhi identity. Ladakhi nationalism has outlived integration into the Union of India, and there are still many pockets of it throughout Ladakh. This

³¹⁷ 14.COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Practice of traditional music and dance in Setesdal, playing, dancing and singing (*stev/stevjing*), Norway, File No. 1432, Item 10.b, 2019, at <https://ich.unesco.org/en/10b-representative-list-01098>.

³¹⁸ G.J. ASHWORTH, B. GRAHAM, and J.E. TUNBRIDGE, *Pluralising Pasts: Heritage, Identity and Place in Multicultural Societies*, 2007. The reference is on how indigenous culture has been translated as heritage and what this means in terms of the weakening of their political claims, K. ENGLE, *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy*, Durham University Press, 2010, pp. 141–161; J. BLAKE, Introduction to the Draft Preliminary Study on the Advisability of Developing a Standard-Setting Instrument for the Protection of Intangible Cultural Heritage, UNESCO, International Round Table, "Intangible Cultural Heritage", Working Definitions, Piedmont, Italy, 14 to 17 March 2001.

³¹⁹ 7.COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Buddhist Chanting of Ladakh: recitation of sacred Buddhist texts in the trans-Himalayan Ladakh region, Jammu and Kashmir, India*, File No. 839, 2012; L. LIXINSKI, *Heritage Listing as a Tool for Advocacy: The Possibilities for Dissent, Contestation, and Emancipation in International Law through International Cultural Heritage Law*, *Asian Journal of International Law*, Vol. 5, no. 2, 2015, pp.387-409.

nationalism is largely fuelled by perceptions of a historical connection to Tibet, and a sense of distinctiveness from the other ethnic groups in the State (Muslims and Hindus), thus justifying the claims of separation both from Jammu (Hindu) and Kashmir (Muslim). Alongside with nationalism, the performance of Buddhism chanting in Gonpas (monasteries) is a very important social, cultural, educational, and political element. After UNESCO's nomination, visibility to monks teaching and performing the ritual was granted and, at the same time, a certain degree of control over this minority was granted to the Indian government, that wanted to ensure a secular and tamed view of Ladakh teaching as part of India, rather than treating the group as a dissenting unit seeking for self-determination. Is this a strategic decision made by the Indian Government and by UNESCO? Hence, this heritage listing process raises issues related to Tibetan autonomy, regional autonomy and accommodation of Muslim minorities in the Indian State. More specifically, it illustrates that the process throughout which State and experts come together to choose the world's wonders is related to identity and political issue. On the one side, the process is strictly connected to the national ground and to those communities struggling for autonomy. On the other side, it demonstrates that these claims find their way up to UNESCO. More specifically, it illustrates the range of possibilities of listing as a means for the autonomy of the Ladakhi, to listing as means of domination of the same Ladakhi or the exclusion of other minorities in the region. Listing could also be seen as a means to exert broader control over the minority group and even the geographical area, given its function as a symbolic flag being planted in Ladakh. It could also work as an important tool in managing the Kashmir conflict because of the conflict's connection to cultural identity, at least to the extent that it affects Buddhists and Ladakhi region²⁰⁰.

As a result, topics that oftentimes would be too politically charged in a wider forum, can be discussed and articulated with respect to the more general problems, such as those of contestation, exercise of sovereign powers, self-determination and definition of disputed borders. How does intangible heritage become instrumental in this sense? Through the *List of Representative Intangible Heritage of Mankind*, the 2003 Convention leaves to the States, and not to local communities, the choice of determining which manifestations of heritage should be inventoried and preserved, both at a national and at a global level. Once again, this is a choice that raises political and cultural sensitivity at a

²⁰⁰ L. LIXINSKI, *Heritage Listing as a Tool for Advocacy: The Possibilities for Dissent, Contestation, and Emancipation in International Law through International Cultural Heritage Law*, *Asian Journal of International Law*, Vol. 5, no. 2, 2015, pp.387-409.

national and global level. It imposes a universal and objective evaluation of subjective choices. Is the objective development of the rules elaborated by UNESCO and their subjective application by States a physiology or a pathology? Indeed, if rituals and architectural techniques of construction are recognized as specific traits of a state and they do justify the inclusion of a site under UNESCO's remit, is it possible to assert that their Outstanding Universal Value is aseptic or detached from political discourses? This question should be analysed especially with respect to contested religious heritage sites, because from these problematic issues other criticalities arise. If ICH is included in nomination dossiers and a specific political feature is attributed following UNESCO's nomination processes, as a consequence, the traditional principle of the territorial integrity of States is challenged by these Global Institutions' decisions.

An open problem is the result of these considerations. There is an inner contradiction with the fluid character that ICH should have according to its original conception in UNESCO's formulation—its non-dependency to territorial borders. In this regard, it is ambiguous how States and UNESCO, in making decisions concerning contested religious heritage, are seeking to enclose intangible heritage within territorial boundaries, thus making it instrumental to tangible heritage. This takes place through choices that raise strong political, religious and cultural sensitivity. Are these attempts undertaken by National and Global Institutions in order to enclose intangible cultural heritage in artificial territorial and political boundaries? Is it possible to assert that ICH is used to strengthen those decisions dealing with contested religious cultural heritage, thus resulting in a revitalization of the classical theories on the sovereignty of states through UNESCO's nomination processes, rules, and mechanisms? Is this process limited to situations of conflicts for the exercise of sovereign powers or is it also related to situations of peace? These unsolved issues (application of rules created by UNESCO in the field of ICH and their ambiguity) will be analysed more into depth for each selected case study.

Special Part/Case Studies:

CHAPTER IV

- *UNESCO and the Case of the Old City of Hebron: Palestine vs. Israel*

The Dispute in a Nutshell

With a unique history and geographic location, Palestine and Israel are a land of religious heritage par excellence. This land has been linked to civilizations, empires, prophets, and saints and it has evolved into a political, legal, cultural and religious mosaic that impersonates one of the longest and harshest disputes for the exercise of sovereign powers. The main focus of this chapter is related to the pivotal role of religious heritage contested between Israel and Palestine (the main focus is on the Old City of Hebron/ Al-Khalil Old Town), and to the choices taken by UNESCO in a sensitive and anomalous political context.

1) On the one side, a relevant circumstance shall be primarily taken into consideration: since 1948, the Holy Land is the place where two peoples (Palestinians and Israeli) struggle to shape their national, cultural, geographical, religious and historical identities. The two elements of contested sovereignty and contested land constitute the ground for the enactment of global, international and national legal provisions. First, these provisions aim at the safeguard, restoration, valorisation of cultural heritage sites therein located. Second, we should wonder if these rules and decisions enacted by global institutions are meant to contrast illegal policies undertaken by the occupying power, with the purpose of enhancing identity and institutional components through contested religious heritage in context of competing sovereignty. The State of Israel on its side, through a *transformative military occupation*³²¹, has demonstrated to have Jewish rights on the land that, since 1948, became Israel³²². Palestinians, for their part, have often resisted the occupation, through consistent efforts for the recognition of the contested sites as Palestinian, with the aim of reconnecting the Muslim and Christian

³²¹ A. ROBERTS, *Transformative Military Occupation: Applying the Laws of War and Human Rights*, *The American Journal of International Law*, Vol. 100, n. 580, 2006, pp. 580-622; M.N. SCHMITT, J. PEJIC, *International Law and Armed Conflict: Exploring the Faultlines*, *International Humanitarian Law Series*, Martinus Nijhoff Publishers, 2007; E. BENVENISTI, *The International Law of Occupation*, Oxford University Press, 2nd Edition, 2012; Y. DINSTEIN, *The International Law of Belligerent Occupation*, Cambridge University Press, 2009; H. CUYCKENS, *Revisiting the Law of Occupation*, Brill Nijhoff, Leiden-Boston, 2017.

³²² Provisional Government of Israel Official Gazette: Number 1; Tel Aviv, 5 Iyar 5708, 14.5.1948 Page 1. The Declaration of the Establishment of the State of Israel.

religious heritage to the territory claimed as Palestine (Area A and C of the West Bank³²³). The long-lasting occupation though has given place to a very complex and fractured legal and political situation. In 1949, the UN General Assembly pronounced once again on the future of the city of Jerusalem and the protection of Holy Places³²⁴, calling for the execution of the 1947 *UN Partition Plan*³²⁵. The latter stated that regulations, arrangements, maintenance of the Status Quo³²⁶ and the resolution of the disputes on the status of the Holy Sites located in Jerusalem had to be under the responsibility of the Governor of Jerusalem. This plan was meant to provide for the preservation and free access to holy places. This plan though, had never been implemented and Israel and Jordan concluded an *Armistice Agreement*, dividing Jerusalem into two parts, respectively annexing them to the two countries this agreement led the UN Institutions to reject this de facto annexation, envisaging the creation of a special international regime, including the City of Bethlehem and the City of Jerusalem: the latter was indeed meant to be constituted as a *corpus separatum* under the strict administration and control of the United Nations. The result of this complex circumstance was the cultural

³²³ The Interim Agreements between Israel and the PLO, divided the West Bank into three categories: Area A, currently comprising about 18% of the land in the West Bank, which includes all the Palestinian cities and most of the Palestinian population of the West Bank; the Palestinian Authority (PA) is endowed with most governmental powers this area. Area B, comprises approximately 22% of the West Bank and encompasses large rural areas; Israel retained security control of the area and transferred control of civil matters to the PA. Area C covers 60% of the West Bank (about 330,000 hectares); Israel has retained almost complete control of this area, including security matters and all land-related civil matters, including land allocation, planning and construction, and infrastructure. The PA is responsible for providing education and medical services to the Palestinian population in Area C. However, construction and maintenance of the infrastructure necessary for these services remains in Israel's hands. Civil matters remained under Israeli control in Area C and are the responsibility of the Civil Administration; Oslo II Accord; Israeli Information Center for Human Rights in the Occupied Territories

³²⁴ UNGA Res. 303 (IV), 9 December 1949, UN Doc. A/RES/303 (IV), "Palestine: Question of an International Regime for the Jerusalem Area and the Protection of the Holy Places"; A. JAKUBOWSKI, *State Succession in Cultural Property, Cultural Heritage Law and Property*, Oxford, 2015; A. JAKUBOWSKI, *The effects of state succession on cultural property: ownership, control, protection*, PhD diss., European University Institute, 2011, <https://cadmus.eui.eu/handle/1814/18414>.

³²⁵ UN Doc A/RES/181 (II), 29 November 1947, "Future Government of Palestine"; M. C. RIOLI, *From Lake Success to Palestine: the UN Partition Plan*, in *A Liminal Church: Refugees, Conversions and the Latin Diocese of Jerusalem*, Leiden, Brill, 2020. S. ROSAENNE, *Israel: Some Legal Aspects of the Transition from Mandate to Independence: December 1947- 15 May 1948*, in A. E. KELLERMAN. K. SIEHR, T. EINHORN (eds), *Israel Among the Nations: International and Comparative Law Perspectives on Israel's 50th Anniversary*, Kluwer Law International, 1998, pp. 311-342.

³²⁶ After the Israeli Military Invasion of the Palestinian Territories, the UN Conciliation Committee had published the list of the 97 Holy Places in Israel, whose Status Quo has been altered and whose ownership and management are still highly contested among parties, A/AC.25/Com. Jer/W.14, UN Conciliation Committee for Palestine, 8 April 1949.

and religious sites on both the sides of the city were subjected to neglect and destruction, with the Jewish community being barred from accessing its sacred spaces. Furthermore, at that stage of the conflict, it seemed that the *de facto* division of Jerusalem between Israel and Jordan and the abandonment of its internationalisation were commonly accepted. Following the Six Day War³²⁷, Eastern Jerusalem came under the new Israeli institutional framework, being the Government authorized by the Knesset to extend the Israeli Law to Jerusalem³²⁸. For sure, the capture of Jerusalem met with great international criticism and the definition of the legal status of Jerusalem became one of the recurrent issues that mattered most in the exercise of UN powers³²⁹.

For what is relevant throughout this dissertation, the role of UNESCO became progressively relevant in Jerusalem since 1968 and in the West Bank, including the Town of Hebron/ Al-Khalil in 2010, 2011, 2012, 2016 and 2017³³⁰. These decisions dealing with contested religious heritage

³²⁷ J. QUIGLEY, *The Six Day War and Israeli Self-Defence*, Cambridge University Press, 2013; V. KATTAN, *From Coexistence to Conquest: International Law and the Origins of the Arab Israeli Conflict*, Pluto Press, 2009.

³²⁸ Protection of Holy Places Law 5727 (1967).

³²⁹ UN Security Council Resolution 242, November 22, 1967; as to conventional law, it shall be stressed that by implicitly joining the Armistice Agreement concluded in 1949, both Israel and Jordan agreed in conferring the UN Institutions the power to authorize or consent to any change in the legal status of Jerusalem; more recently, international law instruments have been adopted to safeguard the Holy Sites within the Holy Land. One could mention the *Projet de régime juridique pour les Lieux Saints en Terre Sainte - Patrimoine Commun de l'Humanité*, the IUCN Principles and Guidelines for the Management of Sacred Natural Sites Located in Legally Recognised Protected Areas, and the Universal Code on Holy Sites; C. FRANCESCHINI, UNESCO, Religious Freedoms and World Cultural Heritage in the Old City of Jerusalem: the line of fire between challenges, comparisons and new perspectives, *Stato, Chiese e Pluralismo Confessionale*, UNIMI, n. 37/2018, *The Role of UNESCO in Time of Political Changes: Jerusalem and the West Bank Cultural Heritage Law in a Context of Competing Sovereignty*, *Revista General de Derecho Público Comparado*, n.28/2020, RI 423187.

³³⁰ In November 2010, UNESCO's Executive Board published a decision re-affirming that the two sites are an integral part of the Occupied Palestinian Territories, and that any unilateral action by the Israeli authorities is to be considered a violation of international law and the UNESCO conventions, UNESCO Executive Board Decision 185, Item 15 and WHC-10/34.COM/20, Item 11; In 2011 UNESCO admitted Palestine as a Member State; In 2012, representatives from Palestine complained to UNESCO's Director General about a new road connecting the settlement of Kiryat Arba to the old city of Hebron, claiming the works caused destruction to a cluster of ancient houses. They also expressed concern that Israel intends to build a wall along the road. The executive board discussed the issue and it is being followed up, Decision 191/EX10; UNESCO, Executive Council, Resolution 200 EX/25, Occupied Palestine, 13 October 2016; WHC/17/41.COM/18 (Nominations to be processed on an emergency basis), Decisions adopted during the 41st session of the World Heritage Committee (Krakow, 2017); WHC 42 COM 7A.28; WHC 18/42.COM/7A.Add 2 (State of Conservation of the Properties inscribed on the List of World Heritage in Danger), Paris, 15 June 2018; Y. MIZRACHI, *Tel Rumeida: Hebron's Archaeological Park*, Emek Shaveh, 2014, p. 18-19.

have increasingly played a consistent role with respect to major topics: humanitarian emergency and safeguard of basic human rights of the occupied population, regulation of archaeological excavations, circulation of antiquities, status of Jerusalem and modification of the status quo, preservation and management of the Al Aqsa compound and Church of the Holy Sepulchre, status of several occupied Palestinian cities located in area A and C, as resulting from the Oslo II Accord. These are indeed the recurrent problems that surround the context of UNESCO's decisions and they have for long been used by both parties as tools to claim their sovereign rights over the Holy Land. More into depth, after Israel declared Jerusalem, complete and united, the capital of the State of Israel³³¹, UNESCO has started a series of massive interventions in Jerusalem, trying to counteract the occupation of Jerusalem through the protection of its holy sites and the alteration of the world heritage sites' *status quo*. Most notably, since 1967, UNESCO has increasingly played a dominant role in Jerusalem³³² and in the Occupied Palestinian Territory, trying to connect the Muslim religious heritage sites to the more general problem of self-determination of the Palestinian People. Progressively though, the presence of UNESCO shifted from Jerusalem to the West Bank, where the legal and political framework seems to be particularly affected by the ongoing context of competing sovereignty over the holy sites. The current legislative system results from the stratification of the previous colonial legacies of the Ottoman Empire³³³, the British Mandate³³⁴, the Jordanian Hashemite

³³¹ Basic Law, "Jerusalem: the Capital of Israel", 5 August 1980, available online on the website of the Israel Ministry of Foreign Affairs.

³³² UNESCO issued its first condemnation of Israeli archaeological activities in the Old City of Jerusalem, objecting to any attempt to alter its "features or its cultural and historical character, particularly with regard to Christian and Islamic religious sites", "Jerusalem and the implementation of 147 EX/Decision 3.6.1 (150 EX/ 13 and 150 EX/42)" requests the Israeli authorities to return the tunnel to its state prior to the events of 23 September 1996, in accordance with the relevant international decisions, rules and instruments.

³³³ G.A. YOUNG, *Corps de Droit Ottoman: recueil des codes, lois, règlements, ordonnances et actes les plus importants du droit intérieur, et d'études sur le droit coutumier de l'Empire Ottoman/ Livre II/ Titre XXXIX/ Règlement des Antiquités*, Clarendon Press, Oxford, 1905-1906; C. FRANCESCHINI, *Cultural Heritage Law in Israel: From The Incorporation of Pre-existing Laws on Cultural Heritage to a New Concept of Cultural Heritage in a Context of Competing Sovereignty*, *Il Diritto Ecclesiastico*, Anno CXXIX, 3-4, Luglio-Dicembre, 2018, pp.729-771.

³³⁴ *Antiquities Ordinance* (1929), *The Laws of Palestine*, Vol. I, 1934, chapter V, *Antiquities*, p. 28-39; *Antiquity Rules* (1930), *The Laws of Palestine*, Vol. III, 1934, chapter V, pp. 1650-1653; C. FRANCESCHINI, *Cultural Heritage Law in Israel: From The Incorporation of Pre-existing Laws on Cultural Heritage to a New Concept of Cultural Heritage in a Context of Competing Sovereignty*, *Il Diritto Ecclesiastico*, Anno CXXIX, 3-4, Luglio-Dicembre, 2018, pp.729-771.

Kingdom Rule³³⁵, the Egyptians³³⁶, Israeli military orders³³⁷, the 1995 Oslo Agreements³³⁸, and rules and regulations recently laid down by the newly established Palestinian Authority (PNA)³³⁹. Eventually, the Occupied Territories' cultural heritage policy has turned into a complex mosaic of areas (A, B, C), culminating in fractured systems of control over (religious) heritage sites and objects. Under the Oslo Accords the West Bank was divided into three zones of administration: this territorial parcelling granted the eight major Palestinian cities (Bethlehem, 80% of Hebron, Ramallah, Jenin, Jericho, Nablus, Qalqilya, and Tulkarem) to Area A under complete Palestinian military and civil control, including cultural heritage policies for the management of holy sites therein located; Area B, under Palestinian civil control but joint Israeli-Palestinian military, security and circulation of goods control (comprising about 22% of the West Bank); and Area C (over 60% of the territory of the West Bank, under complete Israeli security, public order, and civil control, including the extension of the Israeli law for management and protection of cultural heritage. The above-mentioned circumstances have originated three different legal regimes applicable to each territorial parcel, with the primary effect of boosting the lack of central authorities issuing national policies on cultural heritage

This extremely deficient legal framework indeed could only be said to be partial, segmented and legally inconsistent before UNESCO's attention and recognition of the Palestinian State. Indeed, the territorial fragmentation and the *de facto* control exercised by the Israeli Authorities, especially in Area A, is the starting point of a long process that saw the active involvement of UNESCO³⁴⁰.

³³⁵ Law on Antiquities, n. 51/1966, Hashemite Kingdom of Jordan.

³³⁶ E. SAMSON, *Is Gaza Occupied?: Redefining the Status of Gaza Under International Law*, American University International Law Review, Vol. 25, No. 915, 2010.

³³⁷ Military Order 462/1973; Military Order No. 1166/1986.

³³⁸ Oslo I Accord, signed in 1993, paved the way to the institution of the Palestine Liberation Organization; Oslo II Accord, signed in 1995, marked the start of the Oslo process, a peace process aimed at achieving a peace treaty based on UN Security Council Resolution 242 and UN Security Council Resolution 238 and at fulfilling the "right of the Palestinian people to self-determination". The most important issues relate to the definition of the borders of Israel and Palestine, Israeli settlements and the status of Jerusalem. The Oslo Accords, a part from the territorial partition of the West Bank and the Israeli control over the Gaza Strip, have not been fully implemented and have resulted in a failure in the institution of the Palestinian State.

³³⁹ Under the Palestinian Authority's early ruling, a new Law for the Protection and Conservation of Cultural Heritage Resources in Palestine was drafted by the Ministry of Tourism and Antiquities in 2003.

³⁴⁰ C. FRANCESCHINI, *Cultural Heritage Law in Israel: From the Incorporation of Pre-existing Laws on Cultural Heritage to a New Concept of Cultural Heritage in a Context of Competing Sovereignty*, *Il Diritto Ecclesiastico*, Anno CXXIX, 3-4, Luglio-Dicembre, 2018, pp.729-771.

2) On the other side, the cultural and religious scenarios are relevant and connected to the circumstance of political contestation of religious heritage sites. Israel and Palestine are unique instances composed of a vast amount of ethnic, cultural, administrative-legal and religious identities: Arab, immigrant, refugee, kibbutz, Ashkenazic (Yiddish), Sephardic, Mizrahi (Oriental Jewish group), Secular, Conservative, Reform, Orthodox, ultra-Orthodox communities³⁴¹, Muslims, Christians and Druze. Such cultural and ethnic diversity helped strengthening an already existing cultural prosperity, that can be seen in terms of tangible and intangible cultural heritage. This is the reason why law and religion are two competing elements within such a religiously and ethnically divided society³⁴² severely impacted by the Israeli occupation.

1. The Global Dimension of the Nomination Process: UNESCO and the OUV of Hebron

Relevant observations derive from the analysis of the values constituting the OUV of the Old City of Hebron/ Al-Khalil Old Town. This town has been selected as the main case of investigation for several reasons: it is the religious town as a whole to be nominated and not the single monument; it is contested between Israel and Palestine; it is located in a strategic geographical position and it is the last religious site recognized by UNESCO as a Palestinian World Heritage Site in danger in 2017 (processed on an emergency basis)³⁴³. The analysis shall start from

³⁴¹ "In the 1880s, Zionist leader Theodor Herzl had begun his effort to obtain a Jewish homeland in Palestine. In 1922, most of the 1.35 million Arab Palestinians living in the territories did not comprehend the potential devastation of giving ownership of more than half of their land to the 650.000 Jews who had immigrated to Palestine", J. COCHRAN, *Democracy in the Middle East; The Impact of Religion and Education*, Lexington Books, 2001, p. 173; After centuries of Ottoman Rule being established in Palestine, the British Mandate in Palestine (1922-1948) was adopted by the League of Nations. It is said to be not only a temporary measure but also an act to oversee the creation of a Jewish State. The Mandate did legally allow: Jewish immigration, construction of public identities and foundations, such as representative assemblies (with a political and administrative independent structure), Jewish school-education system and universities, social system and application of the Jewish Personal Status Law solely to the Jewish community, M. TESSLER, *A History of the Israeli-Palestinian Conflict*, Indiana University Press, 1994, pp. 29-31; L. MESKELL, *A future in Ruins*; UNESCO, *World Heritage and the dream of peace*, Oxford University Press, June 2018.

³⁴² S. NAVOT, *The Constitutional Law of Israel*, Kluwer Law International, 2007; G. HALMAI, *Constitutionalism, Law and Religion in Israel a State's Multiple Identities*, J Civil Legal Sci 5:169, 2016.

³⁴³ WHC/17/41.COM/18 (Nominations to be processed on an emergency basis), Decisions adopted during the 41st session of the World Heritage Committee (Krakow, 2017); WHC 42 COM 7A.28; WHC 18/42. COM/7A. Add 2 (State of Conservation of the Properties inscribed on the List of World Heritage in Danger), Paris, 15 June 2018; M. DUMPER, *Contested Holy Cities: The Urban Dimension of Religious Conflicts*, Routledge, NY, 2019;

the evaluation of the OUV of the town made by the Palestinian Government and approved by the World Heritage Committee in 2017.

The case of Hebron/ Al Khalil Old Town is indeed a very peculiar instance of resilience and resistance to contestation: two earthquakes in 1837 and 1927, the demolition of quarters around the Al-Ibrahimi Mosque/The Tomb of Patriarchs in 1965 to enlarge the piazza, the impact of settlers since 1967, excavations³⁴⁴ and further destruction of buildings and the development of new urban areas in the periphery of the town challenging the preservation of the city architectural and art-historical values³⁴⁵. The nomination dossier focuses mainly on the Mamluk and early Ottoman periods of Hebron/ Al-Khalil Old Town and its Islamic history. According to the nomination dossier presented by the Palestinian Government, the architectural sedimentation in Al-Ibrahimi Mosque/The Tomb of the Patriarchs, criterion (ii)³⁴⁶, the architectural typology of the town, the developments in monumental arts, town-planning or technology, criterion (iv)³⁴⁷, and the association with religious values and beliefs of outstanding universal significance, criterion (vi)³⁴⁸, are the grounding elements of the Outstanding Universal Value. The site came to be revered as a pilgrim site for the three monotheistic religions, (Judaism, Christianity and Islam, thus becoming part of a triangle of holy sites with Jerusalem and Bethlehem), but the architectural, art-historical and cultural values are strictly connected to the religious significance of the town, seen in the prevalence of the Muslim elements as founding element of the OUV with the exclusion of the (Jewish) site of Tell Rumeida³⁴⁹. The focal point of the town is Al-Ibrahimi Mosque/The

Y. REITER, *Contested Holy Places in Israel-Palestine: Sharing and Conflict Resolution*, Routledge, London and New York, 2017, pp. 247-264.

³⁴⁴ Netanyahu: Israel Will Not Evacuate Hebron, Beit El as Part of a Peace Deal, Haaretz, 6th January 2014, available at: <https://www.haaretz.com/.premium-pm-israel-won-t-give-up-hebron-1.5308530>.

³⁴⁵ ICOMOS, Advisory Body Evaluation No. 1565, Hebron/ Al-Khalil Old Town (Palestine).

³⁴⁶ Criterion (ii): exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019.

³⁴⁷ Criterion (iv): be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019.

³⁴⁸ Criterion (vi): to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria), Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019.

³⁴⁹ According to scholars and historians, the Tell Rumeida site is the place where the earliest Arab Canaanites lived. Various conditions of human life existed because of its proximity to the trade route that linked central and southwest Palestine. The trade route was an

Tomb of Patriarchs, whose buildings lie within monolithic walls built in the 1st century BCE to protect the tombs of the Patriarch Abraham/Ibrahim and his family³⁵⁰. The mosque is esteemed for the use of a high quality local limestone characterising the re-building of Hebron/Al-Khalil Old Town during the Mamluk Period as one of its fundamental cultural values³⁵¹. The (Palestinian) cultural/religious significance of the town is explained under two main perspectives:

a) urban planning: the main claim is the survival of its Mamluk planning and buildings which have not been overlaid in Ottoman times to the same extent as happened in other cities, whose architecture and urban fabric were shaped by the Mamluks³⁵². Furthermore, the town demonstrates an extension in its surrounding areas that took place during Ottoman ruling, and it brought numerous architectural additions; b) public buildings: many public buildings, religious and secular, including mosques, prayer halls (zawiyeh), baths, fountains, that were built or re-built during the Mamluk Period are described as

important resource to the site throughout history. The agricultural lands nearby helped in the development and prosperity of the city. The presence of water sources allowed the existence of a suitable environment for people's lives, available at <http://www.hebron-city.ps/page.aspx?id=soMPSna1195401768asoMPSn>; according to other scholars, such as K. V. BEKKUM, in *From Conquest to Coexistence, Ideology and Antiquarian Intent in the Historiography of Israel's Settlement in Canaan*, 2010, and Y. FARHI, D. BEN-SHLOMO, in *The Settlement of Tel Hebron in the Hellenistic to Byzantine Periods: New Numismatic Evidence*, *Journal of the Institute of Archaeology of Tel Aviv University*, Tel Aviv, Vol. 43, No. 2, 239-261, DOI: [10.1080/03344355.2016.1215556](https://doi.org/10.1080/03344355.2016.1215556), the Tell Rumeida Site has a particularly strong biblical link both with Jews and with the city of Hebron as a whole. New numismatic evidence from a recent excavation at Tel Hebron (Tell Rumeida) indicates that a Second Temple period settlement was located on the biblical mound. The excavation, which revealed a Hasmonean through Late Roman–Early Byzantine domestic and industrial quarter, sheds new light on the significance and ethnic structure of the town of Hebron, in particular during the Hasmonean and Early Roman periods.

³⁵⁰ The relevance of the Al-Ibrahimi Mosque for Muslim believers is enhanced also in the first inventory of Cultural and Natural Heritage Sites of Potential Outstanding Universal Value in Palestine, that has been drawn according to the Operational Guidelines in 2009. The work has been carried out by the Palestinian Department of Antiquities and Cultural Heritage with the support of the World Heritage Fund and the technical assistance of the UNESCO World Heritage Centre and the UNESCO Ramallah Office, Inventory of Cultural and Natural Heritage Sites of Potential Outstanding Universal Value in Palestine, Palestinian National Authority, Ministry of Tourism and Antiquities, Department of Antiquities and Cultural Heritage, Editor H. TAHA, October 2009.

³⁵¹ See more in details at Paragraph 3, *Intangible Cultural Heritage as a Tool to Claim Contested Tangible Heritage: Architectural Techniques of Construction and Religious Lifestyle as Proof of the Palestinian Identity of Hebron*.

³⁵² N. LUZ, *The Mamluk City in the Middle East: History, Culture, and the Urban Landscape*, Cambridge University Press, Cambridge, 2014; M. RISTIĆ, S. FRANK, *Urban Heritage in Divided Cities: Contested Pasts*, Routledge, NY, 2019; J. S. AUERBACH, *Hebron Jews: Memory and Conflict in the Land of Israel*, Rowman & Littlefield, Lanham, 2009, p. 36; J. M. TODD, M. B. SMITH, *The Jews in Jerusalem and Hebron During the Ottoman Era*, in *A History of Jewish-Muslim Relations: From the Origins to the Present Days*, Oxford, Princeton University Press, 2013.

grounding elements of the Palestinian OUV of the town. For sure, the main monument of the town is the Al Haram Al-Ibrahimi Mosque/The Tomb of the Patriarchs, that underwent notable changes during the Mameluk era.

More specifically, in a comparative perspective with properties drawn from the Arab region, it is demonstrated that towns and cities divided into independent quarters based on ethnic, religious or professional grouping can be identified in many historic cities and centres in the Islamic world³⁵³. Indeed, unlike other historic cities in the region with rich Mamluk heritage, such as Cairo, Jerusalem, Damascus or Aleppo that experienced considerable developments during the Ottoman period which drastically changed their urban fabric, the Old Town of Hebron/Al-Khalil is said to have had modest changes that did not affect the structure and architectural layout of the Mamluk city. More interestingly, the inscription highlights the relation between the Mamluk planning/ buildings and their religious importance³⁵⁴, thus contributing to strengthen the link between artistic/architectural and religious relevance of the contested site. On the one side, criticalities emerge in relation to the evaluation made by UNESCO: indeed, it seems necessary to argue and dismantle the presumption advanced by global Institutions that the evaluation of this disputed site's OUV has a universal, impartial and scientific character. The elements of contestation and religiosity of the site are relevant factors of this nomination. We should try to disassemble the idea that the contestation and the religiosity of Al-Khalil Old Town are compatible with a universal, neutral, impartial and scientific evaluation of its values in such a complex nomination process. On a global perspective, this case raises several perplexities and reflections deriving from the use of those instruments set forth by UNESCO. Indeed, we should also take into consideration that these instruments are applied in a sensitive context/non-ordinary circumstance of competing sovereignty: for this reason, the application of UNESCO's instruments and mechanisms has consequences on the institutional and political setup of the Palestinian State³⁵⁵. The extremely

³⁵³ The comparative study makes reference to the Ancient City of Damascus (1979, listed under criteria (i), (ii), (iii), (iv), (vi)), the Ancient City of Aleppo (1986, listed under criteria (iii), (iv)), the Historic Cairo in Egypt (1979, listed under criteria (i), (v), (vi)), the Old City of Jerusalem and its Walls (1981, listed under criteria (ii), (iii), (vi)), the Medina of Fez (1981, listed under criteria (ii), (v)), and the Historic Areas of Istanbul (1985, listed under criteria (i), (ii), (iii), (iv)), Secrétariat ICOMOS International, Addendum 2, Evaluation of Nominations of Cultural and Mixed Properties, 2017.

³⁵⁴ Secrétariat ICOMOS International, Addendum 2, Evaluation of Nominations of Cultural and Mixed Properties, 2017, pp. 8-10.

³⁵⁵ See Paragraph 4 of the Palestinian case study, Critical Comments, Relevant Issues and the impact of UNESCO's Decisions.

relevant fact that challenges the neutral application of UNESCO's rules in a context of competing sovereignty is indeed the lack of the technical evaluation that is deemed to be a pivotal part of every nomination dossier. The occupying power, Israel, did not allow access to the site. In the nomination dossier, ICOMOS clarifies that the association of the wider town of Hebron with Jewish and Christian as well as Islamic cultures has not been highlighted, even though extensive remains testify to these links. And although mention is made of Hebron as being a sacred town and pilgrimage centre in a triangle with Jerusalem and Bethlehem, it is not clear how these associations are reflected in the town³⁵⁶. Furthermore, ICOMOS is of the opinion that Tell Rumeida would need to be included and a clearer focus on sites relating to Jewish heritage would be necessary.

According to the Operational Guidelines though, the objective, rigorous and scientific evaluations presented by ICOMOS or IUCN, also in case of nominations to be processed on an emergency basis³⁵⁷, may establish whether or not a property has OUV, meet the conditions of authenticity and/or integrity and meet the requirements of protection and management³⁵⁸. If the technical evaluation issued by ICOMOS is generally part of the "modern scientific methods of evaluation"³⁵⁹ to ensure that the property has OUV, what is the content of a decision that does not contain such an evaluation? Is the decision taken by the World Heritage Committee on the basis of the report made by the Palestinian Ministry of Tourism and Antiquities, its urgent request to process the nomination on an emergency basis, and the votes of State Parties during the 41st Session of the World Heritage Committee in Krakow? This is indeed a peculiar and unique case, since the evaluation and the Statement of OUV by the Advisory Bodies were not formulated at the time of the nomination of Al-Khalil Old Town in 2017 as required by the Operational Guidelines. It was integrated only in 2019³⁶⁰ and yet, the World Heritage Committee took a decision stating that the site has a (Palestinian) Outstanding Universal Value³⁶¹. On the one side, this is one

³⁵⁶ ICOMOS, Advisory Body Evaluation No. 1565, Hebron / Al-Khalil Old Town (Palestine), p.3.

³⁵⁷ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para. 161, 162.

³⁵⁸ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para. 143-149.

³⁵⁹ Preamble, Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1972.

³⁶⁰ State of Palestine, State of Conservation Report for Hebron / Al Khalil Old Town-Palestine (Ref. 1565) prepared by the Ministry of Tourism and Antiquities in close cooperation with Hebron Municipality, and Hebron Rehabilitation Committee, Annex 1.

³⁶¹ WHC /17/41.COM/18 (Nominations to be processed on an emergency basis), Decisions adopted during the 41st session of the World Heritage Committee (Krakow, 2017), p. 178.

of the main reasons that creates a friction, since it is witnessing a non-ordinary use of those instruments and procedures set forth by UNESCO itself. On the other side, the content of this decision has little to do with what is referred to as “modern scientific methods” of evaluation: rather, is the content of this decision related to the consideration that Member States have towards the Palestinian and Israeli State in occasion of the 41st Session of the World Heritage Committee? In this case, we can affirm that this decision dealing with contested religious heritage has a considerable degree of political content. Furthermore, criticalities emerge in relation to the effects of this decision taken by UNESCO in a contested territory: it seems necessary to investigate the political impact of a decision dealing with disputed religious heritage. In the context of the analysis of the nomination dossier, it is relevant to take into consideration that it is not the single monument to be nominated under the list of the Palestinian World Heritage sites in danger, which is holy to the three biggest monotheistic religions. Interestingly, the town as a whole is nominated, as a projection of a typical Palestinian religious, monumental arts and architectural planning systems³⁶². Hence, according to UNESCO’s decisions, the values of Hebron have a specific Palestinian identity intrinsically mixed with religious elements and its religious lifestyle. In other words, in the cultural heritage law scenario, the architectural, cultural, art-historical and religious values are recognized by UNESCO as Palestinian and this decision has a global relevance³⁶³. As a consequence, this point leads us to some considerations on the interaction between the application of the traditional rules on the recognition of States, on self-determination of people, on the title to the exercise of sovereign powers and their revitalization through the new rules and decisions adopted by UNESCO³⁶⁴.

The issues illustrated above by this nomination are leading us to question if it is really possible to affirm that UNESCO’s instruments are used in a neutral, objective and impartial way in such a sensitive context of competing sovereignty. Rather, should we affirm that it becomes a matter of exercise of discretionary powers in a pathological context of legal, political, cultural and religious friction? As previously introduced, the evaluation made by the Palestinian Government and the decision

³⁶² Secrétariat ICOMOS International, Addendum 2, Evaluation of Nominations of Cultural and Mixed Properties, 2017, p. 11; State of Palestine, State of Conservation Report for Hebron/ Al-Khalil Old Town – Palestine, (Ref. 1565), prepared by the Ministry of Tourism and Antiquities in collaboration with the Hebron Rehabilitation Committee, 2017.

³⁶³ See more in details at Paragraph 3 of the Palestinian case study, *Intangible Cultural Heritage as a Tool to Claim Contested Tangible Heritage: Architectural Techniques of Construction and Religious Lifestyle as Proof of the Palestinian Identity of Hebron*.

³⁶⁴ See Paragraph 4 of the Palestinian case study, *Critical Comments, Relevant Issues and the impact of UNESCO’s Decisions*.

taken by the World Heritage Committee induce us to reflect more carefully on the role of global institutions. Are they *partial judges* that exercise their discretionary powers while determining the identity of the OUV of sites in pathological circumstances of competing sovereignty?

2. Contestation and Nomination of the Old City of Hebron: the Role of Governments and the (Political) Impact of UNESCO's Decisions

The problems existing in the global scenario in terms of impartial and scientific evaluation of the Old City of Hebron originate at the national level first. As a circular reasoning, the legal, political and cultural perspectives impact the decision-making process at a global level. In other words, these aspects are demonstrated to be non-neutral, and have a relevance in UNESCO's decision of inscribing Hebron in the List of the Palestinian endangered sites. It is tricky, although necessary, to investigate the impact of the element of contestation in such a controversial nomination process. The element of contestation and the lack of a proper national legislation are assessed to test their instrumental use as tools to enforce the OUV.

This controversial nomination has to be necessarily tackled in its points of friction:

- a) the regime of occupation and its relevance in UNESCO's decision;
- b) the lack of an appropriate Palestinian legislation covering the property at the time of the nomination³⁶⁵;

³⁶⁵ It is relevant to consider that the first Inventory of Cultural and Natural Heritage Sites of Potential Outstanding Universal Value in Palestine has been drawn in 2009 according to the Operational Guidelines. The work has been carried out by the Palestinian Department of Antiquities and Cultural Heritage with the support of the World Heritage Fund and the technical assistance of the UNESCO World Heritage Centre and the UNESCO Ramallah Office. This inventory comprises several sites, including: the Birthplace of Jesus (Church of the Nativity and Old City of Bethlehem), Ancient Jericho, Old Town of Hebron al-Khalil, Mount Gerizim, Qumran: Caves and Monasteries of the Dead Sea Scrolls, El-Bariyah: wilderness with monasteries, The Dead Sea, Palestine: the Land of Olives and Wine, Wadi Natuf and Shuqba Cave, Umayyad Palaces, Old Town of Nablus and its Environs, Qanat es-Sabeel (The Aqueducts of Jerusalem), Tell Umm Amer, Throne Villages, Sebastia, Anthedon Harbour, Trade Routes Umm-Al Rihan Forest, Wadi Gaza Coastal Wetlands, Baptism Site Eshria'a (Al Maghtas). Since 2012, the nomination process of the Palestinian sites started and some of the sites included in the list above became UNESCO World Heritage Sites. Other sites are currently on the Tentative List of Palestine, Inventory of Cultural and Natural Heritage Sites of Potential Outstanding Universal Value in Palestine, Palestinian National Authority, Ministry of Tourism and Antiquities, Department of Antiquities and Cultural Heritage, Editor H. TAHA, October 2009.

- a) The prolonged military occupation creates a fracture between the universal magnitude of the OUV, and the supposed enforcement of the OUV through the contents of a decision that challenged the neutral use of UNESCO's decisional powers. Indeed, the conflict is more than a mere dispute for the territory, and the claims are grounded on the religious significance of the site (the Cave of the Patriarchs). They do intensify the claims of Israel for the exercise of sovereign and military powers. Furthermore, the circumstance of the occupation is particularly evident in this city, since Hebron is the only Palestinian town in the West Bank that contains Jewish settlements within it. Tensions between the two factions are particularly high⁵⁶. As stated by the UN Security Council, the UN General Assembly and the International Court of Justice, the expansion and the establishment of settlements in the West Bank violates Article 49 of the Fourth Geneva Convention. What is the role of the Palestinian Government and of UNESCO in such a pathologic circumstance? After having analysed the approach of UNESCO in the evaluation of the OUV of the contested religious city of Hebron, it is now time to go more into depth with the assessment of the impact of the element of contestation. First of all, the claims of both Jews and Muslims for the exercise of sovereign rights in the place encapsulate the entire debate over the territory of Palestine. Muslims claim that they have controlled the site since the seventh century (with an interval of the

⁵⁶ "Since 1967 and Israeli occupation, a segregation wall has been constructed that borders Hebron city to the east and north. Within the property there are two Israeli settlements, Avraham Avinu, and Beit Romano Settlements, constructed in the 1980s while others surround the city: Beit Hadassah Settlement and Tell Rumeida Settlement, are located in the buffer zone and in the wider setting there are Qiryat Arbaa' and Ramat Mamre (Kharsine) to the east, and Hagai to the south. In addition, the nomination dossier notes the construction of watch towers and headquarters for the Israeli army in the old city", ICOMOS, Advisory Body Evaluation No. 1565, Hebron/ Al-Khalil Old Town (Palestine), p.4; in this regard, "the establishment and maintenance of Israeli settlements in Hebron city has resulted in the imposition of restrictions on Palestinian access and movement, including access to education, emergency health services and water supply; harassment and violence by settlers; and the closure of businesses. These access restrictions affect an estimated 6,000 Palestinians living in the vicinity of settlements in H2. As a consequence, in the Old City and areas near settlements, the majority of commercial activity has ceased and thousands of Palestinians have been displaced. According to a 2007 study, 77% of Palestinian businesses (1,829) had closed (either pursuant to Israeli military orders, or due to restricted access for customers and suppliers), and 42% of Palestinian housing units (1,014) had been vacated, with thousands of Palestinians displaced.⁵ Efforts by the Hebron Rehabilitation Committee have sought to increase the number of Palestinians taking up residence in the Old City: since 1996, more than 1,000 residential units have been rehabilitated and repopulated", Protection Concerns and Humanitarian Impact of Settlement Activity in Hebron City (H2), Protection Cluster Occupied Palestinian Territory, Available at: https://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Occupied_Palestinian/files/oPt_PC_factsheet_Hebron_City_H2_2014_EN.pdf; OCHA, Fact Sheet: The Humanitarian Impact of Israeli Settlements in Hebron City, November 2013.

Crusaders period), while Jews claim to be the originators of the site as a burial cave, as the Bible reveals. Hence, the claim is essentially of a religious nature, but it ended up encapsulating a political struggle for the exercise of sovereign powers³⁶⁷.

According to the interview made with Marina Schneider³⁶⁸, I asked the following question: *What is the role of UNESCO and Governments in the nomination process of the city of Hebron?* She replied that:

“State Parties to the WHC propose sites for nomination, either natural or cultural. Afterwards, the site is evaluated by the Advisory Bodies (ICOMOS e IUCN). And this is the important part. First of all, for Hebron, we were not able to go for surveys, since Israel has prohibited our entrance. Second, it would be interesting to see their roles in the long term, how relevant the technical evaluation was in the past and how relevant is now: I know that they have the power of issuing technical evaluations. For what I did read in newspapers and for my experience in Krakow in 2017, there was a final phone call of the Israeli Ambassador who says: “Sorry, my plumber was in the bathroom. I have to come back home because this problem is more important than what is going on in this meeting”. And he left”.

This comment is significant: it illustrates that the level of the conflict raises a considerable degree of political and cultural sensitivity. This sensitivity is given by the circumstance of the occupation and this component that surrounds the nomination of Hebron/Al-Khalil Old Town cannot be underestimated. In this perspective, there are some relevant legal factors concerning the nomination. The first of them concerns the relations between Israel and Palestine: the *Protocol Concerning the Redeployment in Hebron* (Hebron Protocol), signed by the Palestine Liberation Organisation (PLO) and the Government of Israel in 1997³⁶⁹. This agreement divided the city of Hebron into two sections, known as H1 and H2. H1, which is under Palestinian civil and security control, comprises 80% of Hebron city and houses the majority of the

³⁶⁷ Y. REITER, *Contested Holy Places in Israel-Palestine: Sharing and Conflict Resolution*, Routledge, London and New York, 2017, pp. 247-264; S. BOSE, *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka*, Harvard University Press, Cambridge, 2007, p. 204; M. DUMPER, *Contested Holy Cities: The Urban Dimension of Religious Conflicts*, Routledge, NY, 2019.

³⁶⁸ UNIDROIT, Principal Legal Officer & Treaty Depositary, Cultural Property; the interview has been made on March 4th 2021, during my visiting research at the International Institute for the Unification of Private International Law (UNIDROIT), Rome.

³⁶⁹ Palestine-Israel: Protocol Concerning the Redeployment in Hebron, January 15, 1997, *Yearbook of Islamic and Middle Eastern Law*, Vol. 3, 1996, pp. 389-398.

city's Palestinian residents³⁷⁰. H2, which is under Israeli military /security control and Palestinian civil control, comprises 20% of Hebron city: according to the Agreement, Israel retains all powers and responsibilities for internal security and public order in this area and it continues to carry the responsibility for the overall security of Israel. Interestingly, this portion of territory that comprises the whole Old City of Hebron is included in the nomination. Namely, the legal regime of occupation (non-ordinary regime) was provided by the sovereign State of Israel and it was applied to Hebron³⁷¹, that is not located in the territory of Israel, but it is recognized by UNESCO as belonging to the sovereign State of Palestine and it is claimed by Israel. This is a very relevant circumstance that shall be taken into consideration. It demonstrates that the Palestinian Government and UNESCO took a decision that, although deemed to be detached from political contents, is in contrast to the regime of occupation. In other words, it demonstrates that the instruments adopted by UNESCO cannot be considered totally neutral in their application. Indeed, their application diverges from case to case, and even more in circumstances of conflicts for the exercise of sovereign powers between States. The second relevant legal factor concerns the context of this decision, certainly related to the urgent request submitted by the Palestinian Government. The latter wrote to the World Heritage Centre to request that the evaluation be changed from normal to Emergency Procedures³⁷². The alleged reasons to change the evaluation procedure regards continuous violations in Al-Khalil/Hebron, alarming details of Israeli violations including vandalism, property damage and other attacks that impact the integrity, authenticity and distinctive character of the site. Within the request forwarded by the Palestinian Government, mention is made to the occurrence of the occupation and to the activities that the occupying power engaged in. Interestingly though, no explicit and direct mention is made to the circumstance of contestation of the holy sites located in the city³⁷³. As earlier mentioned,

³⁷⁰ Paragraphs 2 and 3 (a) of Article 32 of Appendix 1 to Annex III of the Interim Agreement will be applicable to the following Holy Sites in Area H-1: 1) The Cave of Othniel Ben Knaz/ El-Khalil; 2) Elonei Mamre/Haram Er-Rameh; 3) Eshel Avraham/Balotat Ibrahim; 4) Maayan Sarah/ Ein Sarah.

³⁷¹ Pursuant to international human rights treaties that Israel has ratified, as the Occupying Power, it has the duty to maintain public order, safeguard of the basic needs of the occupied population, including the adoption of appropriate measures to preserve the cultural religious properties located in the occupied territory, C. FRANCESCHINI, UNESCO, Religious Freedoms and World Cultural Heritage in the Old City of Jerusalem: the line of fire between challenges, comparisons and new perspectives, *Stato, Chiese e Pluralismo Confessionale*, UNIMI, n. 37/2018, p.21.

³⁷² Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para. 161 and 162.

³⁷³ WHC/17/41.COM/18 (Nominations to be processed on an emergency basis), Decisions adopted during the 41st session of the World Heritage Committee (Krakow, 2017).

even though global institutions could not access the site and could not verify the alleged violations, the Committee took a decision that results in the attribution of a nationality to Hebron³⁷⁴. In this regard, it seems that the conditions that affect the Occupied Palestinian Territory are used as a tool to protect the OUV of Hebron, intended as Mameluk and Ottoman heritage inherited by the Palestinians in the West Bank. Emphasis is added on specific cultural and religious elements, notwithstanding the Jewish heritage existing in Hebron, thus conferring credibility to the idea that this controversial political situation has a weight in UNESCO's decision. The latter enforces the OUV of the Town in favor of the Palestinian State.

On the one side, neither the 1972 World Heritage Convention, nor the Operational Guidelines do require the Committee to explicitly and directly consider any relevant political dispute, occupation or claim related to proposed sites. Actually, this obligation never existed and there is no mention to the element of contestation as an active tool that grounds UNESCO's decisions. To say it differently, the consent of Israel claiming the sovereignty of the property to be inscribed is not a necessary condition, even though the nomination shall in no way prejudice the rights of States to further dispute. On the other side, we can observe that among the reasons to inscribe a site in the World Heritage in Danger List, the circumstances of "modification of juridical status of the property", "outbreak or threat of armed conflict", that indirectly include also the event of the occupation, are considered³⁷⁵.

- b) Even though several Palestinian Institutions are involved in the management of the Town of Hebron (Municipality of Hebron, Ministry of Tourism and Antiquities, the Hebron Rehabilitation Centre, and Religious Authorities), no Palestinian legislation was available at the time of the nomination in 2017. One thing is to say that the property can be inscribed in the List of the World Heritage in Danger for the presence

³⁷⁴ WHC/17/41.COM/18 (Nominations to be processed on an emergency basis), Decisions adopted during the 41st session of the World Heritage Committee (Krakow, 2017), p. 178; "[...] a proposed Statement of Outstanding Universal Value (SOUV) was submitted by the State Party, as none was adopted at the 41st session, also notes that no ICOMOS field visit to the property was possible before inscription, and, as the current situation still does not permit any missions, proposes that a meeting be organized for representatives of the World Heritage Centre and ICOMOS to discuss with the State Party the proposed SOUV, the Desired state of conservation for the removal of the property from the List of World Heritage in Danger (DSOCR), related corrective measures and a timeframe for their implementation", WHC/18/42.COM/18, p. 45.

³⁷⁵ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para. 161-162 and para 177-179.

of potential dangers, including the lack of a Conservation Policy³⁷⁶. Another thing is to state that Hebron was provided with a plan of conservation, but the applicable law when the nomination cycle of Palestinian cities started with the Church of the Nativity in 2012 was a hybrid legislation (law of occupation, Israeli military orders, and draft legislation). Indeed, it is not possible to affirm that adequate legislative, administrative and protective measures were adopted at the time of the nomination as required by the Operational Guidelines³⁷⁷. In this perspective, the decision adopted by the World Heritage Committee in 2017 seems to be particularly cogent under two perspectives. First, the inclusion of those religious heritage sites under the Palestinian World Heritage List has an impact on the enforcement and on the creation of an institutional structure in a disputed territory. In order to realise it, support of UNESCO was instrumental³⁷⁸. The institutional and political power of the World Heritage List, that currently includes the *Birthplace of Jesus: Church of the Nativity in Bethlehem* (2012), and the power of the World Heritage in Danger List, that includes *Hebron/Al-Khalil Old Town* (2017), and *Palestine-Land of Olives and Vines-Cultural Landscape of Southern Jerusalem-Battir* (2014), is connected to the enactment of the *Palestinian Decree Law on Tangible Cultural Heritage n. 11/2018*. This law is extremely relevant, as it follows the nomination of Hebron/Al Khalil. In fact, it grounds the idea that UNESCO, while partially bypassing the *Operational Guidelines for the Implementation of the World Heritage Convention*³⁷⁹, contributed to build a whole institutional framework in the field of cultural heritage from scratch, including the enforcement of the *Palestinian Ministry of Tourism and Antiquities*³⁸⁰ and the *Ministry of Culture*³⁸¹'s law-making powers. Second, the inclusion of *Hebron/Al-Khalil*

³⁷⁶ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para. 179, let. b.

³⁷⁷ "All properties inscribed on the World Heritage List must have adequate long-term legislative, regulatory, institutional and/or traditional protection and management to ensure their safeguarding. This protection should include adequately delineated boundaries", Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para. 97.

³⁷⁸ See Paragraph 4, Critical Comments and Relevant Issues.

³⁷⁹ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019, para. 97.

³⁸⁰ The Palestinian Ministry of Tourism is responsible for the Museums and the cultural heritage sectors. It is to be noted that historical sites and antiquities are of great importance in the narrative used by both parties to the Israeli-Palestinian conflict. Israel controls a large number of historic sites in Palestine, limiting the Palestinian Authorities' ability to develop tourism and to protect antiquities and historical sites from theft and vandalism. The inability to put in place proper security arrangements for tourists render Palestinian tourist sites less appealing for tourists, hampering the implementation of government plans to develop tourism in Palestine.

³⁸¹ The Ministry of Culture is responsible for developing plans, programmes and coordinating implementation; proposing legislation and regulations; establishing local

Old Town (2017) is followed by the announcement of Prime Minister Benjamin Netanyahu not to renew the mandate of the Temporary International Presence in Hebron (TIPH)³⁸², that started operating in 1994³⁸³. It is unclear whether this political decision is directly related to UNESCO's presence in the West Bank. What is clear is that the use of UNESCO's legal instruments in such a controversial decision produced the consequence of exerting a considerable political pressure, thus attempting to regulate the claims for the exercise of sovereign powers in a contested territory³⁸⁴.

3. Intangible Cultural Heritage as a Tool to Claim Contested Tangible Heritage: Architectural Techniques of Construction as Proof of the Palestinian Identity of Hebron

Particular emphasis shall be attributed to the constant presence of intangible heritage elements in the nomination dossier of the Old City of Hebron. The case of Hebron (Palestine vs. Israel) seems to be a very significant example to assess the crucial position of intangible heritage. The latter is an instrument used to justify and attribute the Palestinian nationality to the OUV in a case of contestation. We should wonder whether the architectural techniques of construction and the traditions/religious beliefs of the Old Town of Hebron/Al Khalil are a sufficient tool to demonstrate the inextricable link between intangible cultural heritage, tangible cultural heritage, and the exercise of sovereign powers over the contested religious town.

cultural centres, cultural institutions and centres of Palestinian communities abroad; supporting cultural industries and encourage investment; preserving collecting and classifying cultural industries and traditional folk craft; facilitating the Culture Support Fund to sponsors individual and collective cultural activities.

³⁸² The mandate ended in January 31, 2019.

³⁸³ The mandate began operating in 1994 after the massacre by Baruch Goldstein at the Cave of the Patriarchs and following UN Security Council Resolution 904 of March 31, 1994, which called for measures to be taken to guarantee the safety of Palestinian civilians, including by a temporary international presence; Report of the commission of inquiry regarding the massacre in the Cave of the Patriarchs in Hebron, 1994, Jerusalem: Government Press, p. 98.

³⁸⁴ Notwithstanding the declared end of the mandate of the Temporary International Presence in Hebron (TIPH) and despite the COVID-19 crisis, the Palestinian Ambassador, Mr. Elias Sanbar reports to UNESCO (May 18- 2020) several violations occurring after the nomination of Hebron, such as: the plan of constructing an elevator in the Old City of Hebron and in the vicinity of the Al-Haram Al-Ibrahimi/Tomb of the Patriarchs, and the plan of illegally build a new Israeli settlement in the area of the Hebron/Al-Khalil fruit and vegetable market.

More precisely, much emphasis is added on two elements that justify the OUV of the Town:

- a) architectural techniques of constructions of the town of Hebron, whose Outstanding Universal Value has distinctive national and cultural traits (criterion (iv)).
- b) traditions and religious beliefs for the three monotheistic religions, that have been the cultural foundation of the Old Town of Hebron and the source of enduring values carried from one generation to the next (criterion (vi)).

“Hebron/al Khalil Old Town is an outstanding example of an urban district which has remarkably preserved historical fabric. It has also preserved the morphology and residential typologies dating back to the Mamluk period, all of which contribute to the visual and structural integrity of the cityscape [...]. Function is strongly demonstrated through the continued maintenance, conservation and veneration of the property’s attributes that are observed within its limits, most notably, the monumental site of Al- Ibrahimi Mosque/The Tomb of the Patriarchs. The sanctity of Al-Ibrahimi Mosque and the spirit of generosity and hospitality of the prophet Ibrahim/Abraham has been and continues to be deeply instilled into the traditions of Hebron/Al-Khalil”³⁸⁵.

It should be noted that the specific architectural technique of construction, characterized by the *limestone*, is actually widespread in Jerusalem, in the Middle East, in other Arab and Mediterranean countries, but it is a fundamental part of a particularly incisive decision for the attribution of a specific nationality to the disputed religious site³⁸⁶. Curiously, also the first section of the Wailing Wall and its first seven visible layers that are from the Herodian period, are built from enormous *meleke* (royal) limestone stones³⁸⁷.

³⁸⁵ State of Conservation Report (2019), for Hebron/Al-Khalil Old Town- Palestine (Ref. 1565), January 2020, p. 22.

³⁸⁶ The main reference is to the Ancient City of Damascus (1979, listed under criteria (i), (ii), (iii), (iv), (vi)), the Ancient City of Aleppo (1986, listed under criteria (iii), (iv)), the Historic Cairo in Egypt (1979, listed under criteria (i), (v), (vi)), the Old City of Jerusalem and its Walls (1981, listed under criteria (ii), (iii), (vi)), the Medina of Fez (1981, listed under criteria (ii), (v)), and the Historic Areas of Istanbul (1985, listed under criteria (i), (ii), (iii), (iv)), Secrétariat ICOMOS International, Addendum 2, Evaluation of Nominations of Cultural and Mixed Properties, 2017.

³⁸⁷ A. ROSS, *Stone Men: The Palestinians Who Built Israel*, Verso Books, London-NY, 2021; T. CANAAN, *The Palestinian Arab House, Its Architecture and Folklore*, Syrian Orphanage Press, Jerusalem, 1933; M. BENVENISTI, *City of Stone: The Hidden History of Jerusalem*, University of California Press, Berkeley, 1996.

This aspect seems to be relevant especially if the architectural techniques of construction implied in the Old Town of Hebron / Al-Khalil and their link with the element of contestation are considered. Interestingly, architectural techniques of construction are intended as the rational element of a culture or the applied art of a culture. In this regard, the art historian and cultural theorist Aby Warburg faces the fundamental element of religious symbolism, that acquires a prominent role if the context of Hebron/Al Khalil and UNESCO is examined. Indeed, he supported the idea that what proves to be a purely decorative ornament must be interpreted symbolically³⁸⁸. In this regard, the Palestinian architectural style of buildings, mainly found in the Old City of Hebron and in the old quarters, such as *Haret Al Sawakneh*, *Haret Al Aqqabeh*, and *Haret Al Ja'abreh*,³⁸⁹ presents the peculiarity of being mainly grouped around a focal point, namely the community mosque. This traditional Palestinian architecture is the same as that of most Islamic world cities and takes the form of houses with internal backyards, enriched by additional pleasing architectural vistas and associated aesthetics instrumental to Muslim religious functions³⁹⁰. This is the result of the conditions particular to Islamic society in which residential areas have narrow streets, covered markets, stone-paved courtyards and, above all, mosques surrounded by a safe zone. In this perspective, this type of popular Palestinian architecture, which is almost a kind of spontaneous architecture reflecting the social and religious status of the Mameluk and Ottoman era, might be referred to as Palestinian intangible heritage, especially because it is presented as an instrumental connection to the cultural, social and religious identity of the Palestinian people. Interestingly, this case exemplifies how the architectural techniques of construction of the entire city, characterizing the religious architecture of the town as a whole, are recognized by UNESCO as Palestinian³⁹¹. In other

³⁸⁸ A. WARBURG, W. F. MAINLAND, A Lecture on Serpent Ritual, *Journal of the Warburg Institute*, Vol. 2, No. 4, 1939, pp. 277-292.

³⁸⁹ G. J. DWEIK, W. SHAHEEN, Classification of Residential Buildings in the Old City of Hebron, Conference Paper in WIT Transactions on the Built Environment, 2017.

³⁹⁰ R. FUCHS, The Palestinian Arab House and the Islamic "Primitive Hut", *Muqarnas*, Vol. 15, 1998, pp. 157-177; S. MAKDISI, The Architecture of Erasure, *Critical Inquiry*, Vol. 36, No. 3, 2010, pp. 519-559; C.A. BREBBIA, V. ECHARRI, Structural Studies, Repairs and Maintenance of Heritage Architecture XV, WIT Press, 2017, pp. 111-122 (Classification of Residential Buildings in the Old City of Hebron); Hebron Rehabilitation Committee, RAWIQ, Swedish International Development Cooperation Agency (SIDA), Survey of the Traditional Town neighbourhoods and buildings, HRC, Hebron, Palestine, 2001; Hebron Rehabilitation Committee, Old Hebron, The Charm of a Historical City and Architecture, HRC, Hebron, Palestine, 2009.

³⁹¹ D. KHASAWNEH, M. GRÖNDAHL, F. RAHHAL, *Memoirs Engraved in Stones: Palestinian urban mansions*, Riwaq-Centre for Architectural Conservation, Ramallah, 2000; E. PALAZZO, *Recupero Urbano nelle Città Storiche del Territorio Palestinese Occupato*, EdA, *Esempi di Architettura*, Il Prato Casa Editrice, anno III, n.7/2009, Padova; K. QAWASMEH, Hebron Rehabilitation Committee, in *The Second Riwaq Biennale*,

words, although not being exclusively implied for the environment of Hebron, the technique of construction and the use of the *limestone* are used to attribute a specific nationality and a title to sovereignty in the Old City of Hebron. Moreover, if this architectural technique of construction is qualified as Palestinian in a context of competing sovereignty, without mentioning its relevance as intangible heritage, then the link between intangible heritage and the decision of UNESCO of inscribing the Old Town of Al-Khalil/Hebron in the Palestinian World Heritage in Danger List is particularly strong, although not explicit. Hence, this architectural technique of construction becomes symbolic of the Palestinian political sovereignty over a contested site³⁰². More specifically, the instrumentality of intangible heritage with a religious function seems to be implicit through the inscription of religious (tangible) properties in the Palestinian World Heritage in Danger List. The architectural techniques of construction though, are mentioned in the nomination dossier of the Old Town of Al Khalil/Hebron as a constitutive element of the Outstanding Universal Value of such a disputed city, but they are not recognized as intangible heritage³⁰³. Indeed, the Old Town of Hebron Al-Khalil presents the architectural sedimentation in Al-Ibrahimi Mosque/The Tomb of Patriarchs under criterion (iv), and, this architectural typology is associated, under criterion (vi), with spiritual and religious values and beliefs of Outstanding Universal significance since most of the Muslims and Jews practice a religious lifestyle: this is the Palestinian cultural foundation of the Town³⁰⁴. The implicit linkage between intangible heritage and contested tangible heritage demonstrates a very strong connection, especially if it is a consistent component for the evaluation and justification of the OUV. So far, the instrumentality of intangible heritage as vehicle for the attribution of ownership of tangible contested sites through distinctive architectural techniques of construction is

Ramallah, Riwaq, 2007, p. 86; A. LAÏDI-HANIEH, Arts, Identity, and Survival: Building Cultural Practices in Palestine, *Journal of Palestine Studies* 35, no. 4, 2006, pp. 28-43; P. SELICK, The Old City of Hebron: Can It Be Saved?, *Journal of Palestine Studies* 23, no. 4, 1994; The author examines these Palestinian heritage projects, notably the Hebron Rehabilitation Committee, Riwaq, and the Palestinian Museum, C. De CESARI, Hebron or Heritage as Technology of Life, in *Heritage and the Cultural Struggle for Palestine*, Stanford University Press, Stanford, 2019 ; J. AWAD, Conserving the Palestinian Architectural Heritage, *International Journal of Heritage Architecture Studies Repairs and Maintenance*, Vol. 1(3), 2017.

³⁰² Arches, porches with columns, iron protection and metal doors, woodwork, motifs of traditional patterns are clear features of the architectural identity of Palestine, M. ABUARKUB, Architectural and Decorative Elements in Traditional Palestinian Houses, *New Design Ideas*, Vol. 2, No. 2, 2018.

³⁰³ UNESCO, WHC/Decision 42 COM 7A.28 and WHC/18/42.COM/7A.Add.2; Paris, 15 June 2018, Hebron/Al-Khalil Old Town, Palestine, (C 1565), pp. 5 (Justification for Inscription).

³⁰⁴ Y. MIZRACHI, Tell Rumeida: Hebron's Archaeological Park, Emek Sheveh, 2014.

underexplored. In this case, it should be noted that the Outstanding Universal Value of World heritage sites is connected to specific architectural techniques of construction as bearer of a specific cultural, religious and political traits³⁹⁵. Conversely, these religious or political traits are emphasized and strengthened through architectural techniques of construction that encapsulate a religious lifestyle typical of a city attributed to Palestine and claimed by Israel. In the legal framework pre-empting the 2003 ICH Convention, these techniques of construction were qualified as folklore, then transformed with substantial modification in the current version of intangible heritage. The new definition of intangible heritage does not include the architectural techniques of construction, that seems to have been incorporated in those criteria used by UNESCO to evaluate the World Heritage Sites' OUV.

It is meaningful to observe that in a decision implying a wide range of discretionary powers, intangible heritage is a consistent part of the Old Town of Hebron's OUV under criterion (iv)³⁹⁶, and criterion (vi)³⁹⁷. Moreover, it is meaningful to notice that the incorporation of intangible heritage (architectural techniques of construction and religious lifestyle) pertains to a context of competing sovereignty and it is clearly instrumental to the attribution of the Palestinian nationality to a contested site: is this a physiologic or a pathologic approach related to UNESCO's nomination processes?

4. Critical Comments, Relevant Issues and the Impact of UNESCO's Decision

According to the interview made with Mr. Mounir Bouchenaki³⁹⁸, I asked the following question: *What is the role of UNESCO and National*

³⁹⁵ S. S. GHADBAN, M. ASHHAB, Stone Restauration Practice in Palestinian Territories: A Case Study From Jerusalem, *Journal of Architectural Conservation*, Vol 17, No. 3, pp. 75-96.

³⁹⁶ Criterion (iv): be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history; UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019.

³⁹⁷ Criterion (vi): to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria); UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019.

³⁹⁸ The interview with Mr. Mounir Bouchenaki has been made on June the 9th, 2021. For this interview I want to express my gratitude to Doctor Architect Maria Teresa Iaquina, that supported my research with her extremely beneficial efforts. Mr. Mounir Bouchenaki is an Algerian historian and archaeologist. He holds a Ph.D. in Archeology and Ancient History

Governments in the case of the contested religious sites of Palestine? Mr. Bouchenaki replied that:

“I think this is one of the latest situations of tension resulting from the war of 1948 and then from the War of 1967. UNESCO is not involved in political decisions, but we were involved in the recognition of sites both in Israel and in Palestine. I am still having tasks to go to speak to both parties and to make sure, first of all, on the status of Jerusalem to gain a compromise for the presence of UNESCO regarding the heritage of Jerusalem, whether of Jewish, Christian or Muslim character, that is important for the humanity as a whole. Except for the last few years with the government of Netanyahu taking a very strong position against UNESCO [...]. UNESCO was in this mood, and so the Member States to recognize Palestine. It is not really that the DG Madame Irina Bokova who decided one day: “Now UNESCO will recognize Palestine”. It was by the Member States: this is the main aspect when I say that this is a politicization made by the Member States, not by UNESCO. It is unfair, but this is politics, that UNESCO is in a certain sense considered as responsible for the agreement that Palestine becomes a Member State of UNESCO. Since it was done by the Member States, it was our duty in 2011 to start working with the Department of Heritage of Palestine and we started missions to prepare the Tentative List and to start discussing the inscription. When the first site of Palestine was inscribed, and it was

from the University of Aix-en-Provence and worked for the Algerian government from 1969 to 1981. Appointed Director of Cultural Heritage at the Ministry of Information and Culture in 1976, he was responsible for the preparation of six Algerian nominations for World Heritage. In 1982, he joined the Division of Cultural Heritage of UNESCO responsible for international safeguarding campaigns. After becoming its director in 1992, he regularly attended statutory meetings for World Heritage while overseeing sensitive issues, such as the one in Jerusalem. He was Director of the World Heritage Centre between 1999 and 2000, before becoming Assistant Director General for Culture. In 2006, Mr. Mounir Bouchenaki left UNESCO to become Director General of ICCROM, a position he held until 2011. Since 2012, he has served as an advisor to the Director General of ICCROM and to the Director General of UNESCO, in addition to directing the operations of the Arab Regional Center for World Heritage in Bahrain. His distinctions include the 2000 ICCROM Award and the rank of Officier de l'ordre des Arts et des Lettres français. He is the author of *Tipasa, site du patrimoine mondial* (ENAG, 1988) and several articles, including *The Extraordinary Development of Museums in the Gulf States*, published in *MUSEUM International* in 2011. Doctor Architect Maria Teresa Iaquina has more than 30 years of successful experience managing regional programs in support of cultural heritage conservation. Her activity included the organization and coordination of training and education initiatives and international cooperation projects, mainly related to the development of operational capabilities for preserving cultural heritage. Through her institutional career in an intergovernmental environment, she consolidated her experience in external relations, particularly related to governance issues and institutional cooperation with host country institutions. Among her tasks, she led special projects for the restitution of heritage artefacts (Axum Stelae) and organized international corporate events on cultural topics.

the Nativity Church of Bethlehem [...]. I explained what was the physical situation of the Nativity Church, not the political situation of the Nativity Church, because I'm an archaeologist and a conservator. What I have seen in February 2012, four months before the committee inscribed the site, is the rain pouring on the Byzantine mosaics in the church [...]. Because it was a political issue, the committee did not decide casually: they voted. And it was only after the vote that the Nativity Church was nominated. I was saying: "This is a country presenting a site in country where the majority of the population is Muslim but the first site that they are presenting to UNESCO is a Christian site and this is in line with the principles of UNESCO of peaceful coexistence and acceptance of the other, recognition of the value of the other religions [...]."

And then I went to visit Bethlehem two years ago, and I have seen that the work has been done in a very good manner and the site which was inscribed on the World Heritage in Danger List has been removed. This is how we see the distance between politics and technique [...]. I have worked on the value of the site and it's important. I did the same for Battir, because I was the President of the jury of Melina Mercouri Prize for cultural landscapes³⁹⁹: this was before Palestine being admitted to UNESCO [...] and the millionaire Mercury Prize has nothing to do with politics. But the site is the object of political issues that are there up to now. And of course, the latest inscription created a big issue in Krakow during the 41st Session of the World Heritage Committee in 2017. This was really the biggest tension we have seen during a World Heritage Committee meeting: it was the inscription of Hebron/ Al-Khalil. We have to be always very prudent because of the complexity of the situation without saying, as it was said when Hebron was inscribed, that UNESCO is an anti-Semite. You cannot be an anti-Semite or anti-Christian, because we are working with all religions. It would be unfair because the DG of UNESCO (Madame Audrey Azoulay) is a Jewish. How can the DG of UNESCO be an anti-Semite if she is a Jewish? These are very complex situations".

Another version on the circumstances surrounding the nomination of Hebron/Al-Khalil Old Town follows the discussion undertaken with Ms. Marina Schneider, who was interviewed on the same topic. She was asked: *The nomination dossier mainly refers the subjective values of the City of Hebron that the Committee tries to evaluate in an impartial way through criteria, standards and rules of UNESCO: to what*

³⁹⁹ In 2011, the Cultural Landscape of Battir (Occupied Palestinian Territory) and the Garni Reserve Cultural and Historical Museum (Armenia), as well as the Wadi Hanifa site (Saudi Arabia) awarded the UNESCO-Greece Melina Mercouri International Prize for the Safeguarding and Management of Cultural Landscapes.

extent is it possible to evaluate in an impartial way a contested site, such as Hebron? She replied that:

“If the only criterion is the OUV, the OG and the best practices, the problem of the contested sites is probably reaching a major impasse in terms of nomination processes. These problems are recent and we should wonder what is the role of UNESCO in terms of global peace, intended as part of its mandate. Are these nominations considered as exercises of peace? I am also wondering what is the power of UNESCO as organization: I am raising this issue also in relation to other Committees where I participate. Another question is: is the Secretariat stronger for what concerns cultural heritage? What is the weight of Member States if compared to the power of the Secretariat? [...]. The Secretariat is not taking decisions but what is the margin for the exercise of its powers? Its role surely depends on the role of Member States and the Committee is composed by people. This is related to the vote of accepting Palestine as a Member State and to the decision of refusing Kosovo as a Member State. In this case the role of UNESCO is clearer because these are the States deciding, but I do not think that UNESCO has no say in these matters. In the case of Palestine this was a heavy hazard that UNESCO payed dearly: it lost two Member States and a lot of money for funds, while Kosovo did not pass as a Member States for a few votes. These are political powers: probably the Serbian State has done a more consistent work and for sure, as everywhere, is a matter of relations also with the lobbies. Let us take into consideration the complex of monasteries of the Nagorno-Karabakh region contested between Azerbaijan and Armenia: if one of these sites would have been proposed for inscription from the occupying power, is UNESCO obliged to take into consideration this request? It is interesting to see the dynamics on the accepted requests, the rejected ones and those floating in the tentative list [...]⁴⁰⁰. There is necessarily a subjective component because it is not the international community proposing the site and to a certain extent it becomes a matter of receiving funds and tourists. This is the same thing as for the votes on the recognition of Palestine: there was a lack of unanimity, some abstentions, some negative votes, and Palestine became a Member only for a few votes. It is also related to the

⁴⁰⁰ The Nagorno-Karabakh conflict is an ethnic and territorial conflict between Armenia and Azerbaijan over the disputed region of Nagorno-Karabakh, inhabited mostly by ethnic Armenians, and seven surrounding districts, inhabited mostly by Azerbaijanis until their expulsion during the First Nagorno-Karabakh War occurred. In this context, UNESCO has been accused by the Armenian Political Scientist Simon Maghakyan of turning a blind eye to destruction of heritage sites, as bitter skirmish between Azerbaijan and Armenia in the disputed territory drags on, <https://www.theartnewspaper.com/news/monuments-in-line-of-fire-in-nagorno-karabakh-conflict>; N. RONZITTI, *Il Conflitto del Nagorno-Karabakh e il Diritto Internazionale*, G. Giappichelli Editore, Torino, 2014.

discretionary way of evaluation of the political relevance of countries and alliances, because I remember that for Hebron the Ambassador of Germany and Venezuela touched very sensitive issues, such as the deaths of the IIWW, the Holocaust, the deaths in Palestine. The issues tackled were not directly connected to Hebron. Probably, scientific evaluation and politics are separated and among the several evaluations, technical evaluations find a place. The text of the Convention provides for a margin for the exercise of discretionary powers. In our Convention⁴⁰¹ we speak of “*valore significativo del bene culturale*”: what is the meaning of this statement? All these statements mean a lot of things: this is a striking example of an international convention, that is a compromise, also on the use of words. These general expressions are created because we want to be inclusive and when we draft a convention we know the meaning of the words used. Throughout time though, some people may use these general words to attribute a meaning and nothing prohibits it: everyone can find the arguments to justify what we want. This is the same thing for UNESCO: is UNESCO taking a decision according to the political relevance of a country or rather, should its mission for peace prevail as it is stated on the mandate? Shall we use cultural heritage to pursue this aim? Then we should wonder if UNESCO has positively reached this goal after 50 years of Convention. These three decisions are fomenting the conflict and so we should wonder: did UNESCO miss the target of worldwide peace? It is a matter of considering a country in a better position for safeguarding a site, but when religion is part of the scenario it really becomes a way of creating factions”.

Several criticalities and issues derive from the interviews made with the two experts: their opinions, somehow clashing with each-others, raise several reflections on the approach adopted by Global and National Institutions throughout the nomination process of Hebron/ Al Khalil Old Town and of the other Palestinian sites.

- a) On a broader perspective, this nomination raises major reflections in relation to those problems that international law has not been able to solve so far in contexts of competing sovereignty. Since no territory can be acquired through military conquest⁴⁰², the nomination of Hebron revitalizes and strengthens the sovereignty of the Palestinian State⁴⁰³, its

⁴⁰¹ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, signed on June 24, 1995.

⁴⁰² UNSC 242 of 22 November 1967; M. LYNK, The Legal Foundations of Resolution 242, *Journal of Palestine Studies*, Vol. XXXVII No. 1, 2007, pp. 7-23.

⁴⁰³ P. WEHLING, *Nile Water Rights: An International Law Perspective*, Springer, Berlin, 2020, pp. 17-31; A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, Wolters Kluwer, CEDAM, 2018; C. FOCARELLI, *Trattato di Diritto Internazionale*, UTET, Milan, 2015; Q.C.M. N. SHAW, *International Law*, Cambridge University Press, New York, Eighth

recognition in the international scenario States⁴⁰⁴ and its self-determination claims⁴⁰⁵. Indeed, the decision on Hebron implies a wide

Edition, 2017; J. CRAWFORD, *The Creation of States in International Law*, Oxford University Press, Oxford/New York, Second Edition, 2006; J. DUGARD, *Recognition and the United Nations*, Cambridge, 1987; H. LAUTERPACHT, *Recognition in International Law*, Cambridge University Press, Cambridge, 1947; S. TALMON, *Recognition of Governments in International Law*, Clarendon Press, Oxford, 1998.

⁴⁰⁴ In the context of international boundaries, recognition connotes express acceptance by the recognising State(s) of the purported acts or measures being in conformity with international law. This classical theory is the principal device of traditional international law, intertwined with the doctrine of the subjectivity of states. In this regard, much debate is related to the acquisition of the subjectivity of the State through the act of recognition. Can the recognition of a State by other States of the international community play a determinant role for the acquisition of subjectivity to the new State?

⁴⁰⁵ Article 1 of the UN Charter States that: "The Purposes of the United Nations are: 1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; 2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; 3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and 4) To be a centre for harmonizing the actions of nations in the attainment of these common ends". In another occasion (The United Nation General Assembly Resolution 2625 (XXV): Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, 24 October 1970), the right to self-determination was unanimously reconfirmed and considered as authoritative indication of customary international law. Additionally, Article 1, common to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), reaffirms the right of all peoples to self-determination, and lays upon state parties the obligation to promote and to respect it. The right to self-determination was first recognised in the context of decolonisation. However, numerous human rights instruments, including conventional law, as well as several GA Resolutions and state practice, have extended its application beyond the colonial context, for example to South Africans under the apartheid regime. Some scholars also affirmed its application to analogous cases, such as peoples under belligerent occupation, including the Palestinian People. The obligations stemming from the principle of self-determination have been recognised as *erga omnes*, namely existing towards the international community as a whole. The ICJ has reiterated the *erga omnes* status of the general principle of self-determination in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, issued on 9 July, 2004; ICJ, Advisory Opinion on Kosovo's Declaration of Independence (Accordance with International Law on the Unilateral Declaration of Independence in Respect of Kosovo), 22 July 2010; P. WRANGE, *Self-Determination, Occupation and the Authority to Exploit Natural Resources: Trajectories from Four European Judgements on Western Sahara*, *Israel Law Review* (A Journal of Human Rights, Public and International Law), Cambridge University Press, Vol. 52, No.1, 2019; A. BALTAG, V. BERBECA, C. J. BORGES, D. CENUSA, M. HATAY, O. NANTOI, I. ROUBANIS, I. SEVERIN, S. TIRYAKI, O. TRINGIDES, R. VRABIE, *Managing Intractable Conflicts: Lessons from Moldova and Cyprus*, ed. Mensur Akgün, IKU, Turkey, 2013, pp. 25-31, 88-10; A. CASSESE, *Self-*

use of discretionary powers by Global and National Institutions, these classical theories become a slippery slope in the Palestinian and Kosovo cases. In a different way, they are also challenged in the case of the Temple of Preah Vihear. UNESCO recognizes the (contested and religious) heritage sites as Palestinian: is this an act amounting to the recognition of the Palestinian State, thus conferring to it full sovereign powers over its cultural heritage? Furthermore, the classical theories on the recognition and on the sovereignty of States are challenged also in the case of Kosovo, involved in a state-building process and seeking recognition as an independent State: the cultural heritage located in its boundaries though, is recognized by UNESCO as Serbian. Is UNESCO recognizing the Serbian sovereignty in a territory that is no longer Serbian?⁴⁰⁶ This controversial issues are connected to the nomination of other Palestinian sites located in area A of the West Bank, where Israel is enduring the military occupation since 1967: the role of UNESCO in shaping the new Palestinian institutional framework dealing with the preservation, protection and regulation of the Palestinian cultural heritage framework in a context of competing sovereignty is emblematic. In this perspective, since 2012 UNESCO started playing a determinant role in the process that amounts to the recognition of the Palestinian State. The relevant factor is related to the recognition of the independence of the Palestinian people with a declaration of Statehood (2011)⁴⁰⁷: it followed that the UN agency started to draft the list of the holy sites located in Area A of the West Bank, thus providing the idea of deliberately focusing its powers on the contested religious heritage sites in the West Bank. Among them, the Land of Olives and Vines (Cultural Landscape of Southern Jerusalem)⁴⁰⁸ and the *Birthplace of Jesus: Church of*

Determination of People: a Legal Reappraisal, Hersch Lauterpacht Memorial Lectures, Cambridge University Press, Cambridge, 1995.

⁴⁰⁶ For more details, see Chapter IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

⁴⁰⁷ The international rules applicable for the safeguard of the sacred sites in the West Bank are deemed to be subject to the applicability of the 1954 Hague Convention for the Protection of Cultural Heritage in the Event of an Armed Conflict, the Convention concerning the Protection of the World Cultural and Natural Heritage, the Convention for the Safeguarding of the Intangible Cultural Heritage, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

⁴⁰⁸ The landscape is characterized by agricultural terraces, water springs, ancient irrigation systems, and agrarian watch towers, as well as olive presses, among other elements. The lands of the area have been cultivated for about 4000 years. It was historically considered as the “agricultural basin” of Jerusalem, due to its water springs. The system of irrigated terraces represents, as highlighted by the submitted document to UNESCO, “an outstanding example of technological expertise, which constitutes an integral part of the cultural landscape”, UNESCO, WHC/Decision 42 COM 7A.29, Palestine: Land of Olives

*the Nativity and the Pilgrimage Route*⁹⁹ are worthy of being mentioned: their nominations were a momentous event for the Palestinian institutions struggling to find their independent dimension. On the one side, the nomination is an overdue recognition of the “exceptional international value” of Bethlehem as the first Palestinian world heritage site whose historical, artistic and religious relevance have reached an independent dimension, after severe restrictions due to the political circumstances of the occupation.

- b) UNESCO recognizes the failure of Israel, the occupying Power, to cease the persistent excavations and works in East Jerusalem particularly in and around the Old City, and reiterates its request to Israel, the occupying Power, to prohibit all such works in conformity with its obligations under the provisions of the relevant UNESCO conventions, resolutions and decisions. Moreover, for what concerns the two contested sites of the Tomb of the Patriarchs in Hebron and the Rachel’s Tomb in Bethlehem, UNESCO requests the Israeli authorities to remove the two Palestinian sites from its national heritage list¹⁰⁰.
- c) The revitalization of the principles on the sovereignty of States, on the recognition of States and on self-determination arise if the nomination of Hebron is compared with the nomination of the Old City of Jerusalem

and Vines – Cultural Landscape of Southern Jerusalem, Battir, and Decision 38 COM 8B.4, Nominations to be processed on an emergency basis: Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir; The State of Conservation Report (SOC) for the World Heritage Property (WHP) Palestine: Land of Olives and Vines: Cultural Landscape of Southern Jerusalem, Battir, (C 1492) was prepared by the Ministry of Tourism and Antiquities in close cooperation with other related stakeholders.

⁹⁹ UNESCO, WHC/Decision 42 COM 7A.27 and WHC/18/42.COM/7A.Add; Paris, 15 June 2018, State of conservation of the properties, inscribed on the List of World Heritage in Danger, Birthplace of Jesus, Church of the Nativity and the Pilgrimage Route, Bethlehem, (C 1433); State of Palestine, Negotiations Affairs Departement, Palestine’s Heritage under Occupation, In Focus: Bethlehem’s Denied Potential, December 2018; H. TAHA, City of Bethlehem nominated as UNESCO World Heritage Site, Palestinian Assistant deputy for antiquities and cultural matters, Interview released to the Catholic News service on February 8, 2012.

¹⁰⁰ In the beginning of 2010 the government of Israel published a plan for “National Heritage Sites,” which in its original format included Rachel’s Tomb (Bilal Bin Rabah Mosque) and the Tomb of the Patriarchs (El Haram el-Ibrahimi). Later on, these sites were removed from the list but Israel’s initial declaration triggered a reaction by Arab countries, who turned to UNESCO with the demand to discuss “Israel’s appropriation of Palestinian heritage sites in occupied Palestinian land”, Y. MIZRACHI, Tell Rumeida: Hebron’s Archaeological Park, Emek Sheveh, 2014, p. 18; UNESCO, Executive Board, Programme and External Relations Commission, Occupied Palestine, 200 EX/PX/DR.25.2 Rev. Paris, 12 October 2016, para. 4 and 40.

(1981). Even though the Old City of Jerusalem is the core of the contestation in the territory internationally recognized as Israel, profound differences arise. It is evident that criterion (ii) is taken into consideration with regard to the major religious monuments of the city⁴¹¹, such as the Church of the Holy Sepulchre (Christian), the Dome of the Rock (Muslim), and the Wailing Wall (Jewish)⁴¹². Since 1981, Jerusalem and its Walls had been officially added to the UNESCO World Heritage in Danger List as an independent site, thus enhancing the protection of the complex of monuments rather than the single monument as a particular. The World Heritage Committee, was in full agreement in appreciating Jerusalem's unique importance in view of the universal values from the religious, historical, cultural, artistic and architectural point of view. Notwithstanding the mention of this architectural and art-historical value qualifying the religious sites of Jerusalem, there is no further explanation of specific artistic and architectural elements that are justifying the inscription of the site in the World Heritage in Danger List as an independent site. Indeed, differently from the case of Hebron, it seems that the element of contestation is leading to considerations of the "artistic value" which are far from being political, and there has been no choice with regards to the attribution of a purely Palestinian or Israeli identity of the artistic qualities of the site. Emphasis is added on the spiritual and religious relevance of Jerusalem rather than on specific artistic or architectonic qualities of the religious sites, and yet, there is Outstanding Universal Value. Moreover, the nomination dossier speaks of a lifestyle with an Outstanding Universal Value, where the artistic and architectonic values can be extracted, thus resulting in a fusion with its religious relevance⁴¹³. In this case though, the values constituting the OUV of the (religious and contested) site have no national identity: the site has been proposed by Jordan, but even if it is located in the territory recognized as Israel, it is not included within the Israeli List of World Heritage Sites, nor in the Palestinian list. It is an independent endangered site. The decision on the Town of Hebron, differently from the limited impact of UNESCO's intervention in Jerusalem, demonstrates that the Agency is able to exert a considerable pressure on policies in flagrant violation of international rules. Especially for the city of Hebron, its cultural, religious and artistic values seem to be also

⁴¹¹ Criterion (ii): exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019.

⁴¹² ICOMOS, Advisory Body Evaluation, No. 148, Jerusalem; State of Conservation Report, CLT-82/ CH/ CONF. 014/3, Paris, 13 May 1982; State of Conservation Report, CLT-82/CONF. 014/6, Paris, 20 August 1982.

⁴¹³ ICOMOS, World Heritage List, The Old City of Jerusalem (Al-Quds) and its Walls, No. 148, 1981.

political tools enhanced by UNESCO within the nomination process: they strengthen the political and institutional set up of the Palestinian State. Cultural, religious and artistic values unavoidably become politically related vehicles. Israel may indeed reject the applicability of UNESCO's legislation in its territory, including the decisions of the Agency in the Haram al-Sharif compound⁴⁴, but it would not be able to compress the exercise of UNESCO's powers in area A, being under the full civil and military sovereignty of the Palestinian Authority. In this regard, what makes the West Bank a unique instance within the global scenario is that these decisions represent a concrete mean throughout which UNESCO is using religious cultural heritage to forge the Palestinian national identity and its cultural heritage regime. UNESCO declares that religious aspects do not constitute the ground of its decision but Israel claims that the Palestinian Authority has undertaken this initiative motivated by both political and religious motifs⁴⁵. What is sure is that UNESCO's role is with no doubt solid for what concerns the Palestinian case, as an example of conflict with strong cultural and religious components.

- d) The struggle for the recognition of Hebron as a World Heritage Site in Danger becomes a problem of definition of sovereign powers entitled to control the disputed holy places through UNESCO's rules. As earlier discussed, the problem is related to the way the Palestinian Government and UNESCO have elaborated and evaluated the OUV of the Town. The religious and historical relevance of the Tomb of the Patriarchs in the Al-Ibrahimi Mosque is evident. Moreover, the Old City of Hebron as a whole bears unique features of a city thousands of years old, with many

⁴⁴ UNESCO, Executive Council, Resolution 200 EX/25, Occupied Palestine, 13 October 2016; C. FRANCESCHINI, UNESCO, Religious Freedoms and World Cultural Heritage in the Old City of Jerusalem: the line of fire between challenges, comparisons and new perspectives, *Stato, Chiese e Pluralismo Confessionale*, UNIMI, n. 37/2018, The Role of UNESCO in Time of Political Changes: Jerusalem and the West Bank Cultural Heritage Law in a Context of Competing Sovereignty, *Revista General de Derecho Público Comparado*, n.28/2020, RI 423187.

⁴⁵ The problem of the politicization of UNESCO has been already raised in 1974, when the decision taken by UNESCO with regard to the non-inclusion of Israel in the European Region has led to passionate reactions, UNESCO, Statement to UNESCO Clubs and Associations, UNESCO and Israel- The Sudden "Politization" of UNESCO?, *Public Liason Division*, COM.74/WS.25; C. FRANCESCHINI, UNESCO, Religious Freedoms and World Cultural Heritage in the Old City of Jerusalem: the line of fire between challenges, comparisons and new perspectives, *Stato, Chiese e Pluralismo Confessionale*, UNIMI, n. 37/2018, The Role of UNESCO in Time of Political Changes: Jerusalem and the West Bank Cultural Heritage Law in a Context of Competing Sovereignty, *Revista General de Derecho Público Comparado*, n.28/2020, RI 423187.

of its quarters, most of them built during the Mamluk period, still intact. This is a peculiar and pathological case and UNESCO may be criticized for an impartial use of its discretionary powers. The Palestinian Government focused on the Mamluk and early Ottoman periods while giving insufficient narration to the deep history of the city including Roman, Byzantine, Early Islamic and Jewish periods in Hebron. They did not provide enough detail about the sites and buildings that have been preserved intact in the Old City, and, most importantly, the proposed area leaves out Tel Rumeida, located less than two kilometers away from the Tomb of the Patriarchs, which contains remains spanning from the earliest periods of the city of Hebron (the Canaanite period, the Judean kingdom, and the Hellenistic period¹¹⁶).

- e) Several other sites, whose political position seems to be less controversial than Hebron, are still in the Tentative list of the Palestinian State¹¹⁷. In truth, to a more accurate analysis, we should also give relevance to the fact that the three Palestinian sites have been nominated despite the lack of a strong Palestinian legal apparatus in the field of cultural heritage. The first law enacted by the Palestinian Ministry of Tourism and Antiquities in the field of tangible cultural heritage dates back to 2018, one year after the completion of the “nomination cycle” undertaken by UNESCO and the Palestinian State¹¹⁸. This indicates that Palestine and UNESCO have exerted tremendous efforts to confer an identity to this contested heritage and to counter the systematic denial of the country’s potential as an independent sovereign State.

¹¹⁶ O. AVISHAR, *Hebron: City of the Patriarchs and its Settlement Through the Ages*, Keter Publishing, Jerusalem, 1970; K. V. BEKKUM, in *From Conquest to Coexistence, Ideology and Antiquarian Intent in the Historiography of Israel’s Settlement in Canaan*, 2010; E. EISENBERG, *Hebron’s Fortifications during the Bronze Period, The Land of Israel, Studies in the Land and its Antiquities, The Book of Amnon Ben-Tor, The Israel Exploration Society*, Jerusalem, 2011 (Hebrew); A. KASHER, *Jews, Idumaeans, and ancient Arabs: relations of the Jews in Eretz-Israel with the nations of the frontier and the desert during the Hellenistic and Roman era (332 BCE- 70 CE)*, J.C.B. Mohr, Tübingen, 1988.

¹¹⁷ The following sites are considered for nomination by the Palestinian State: Ancient Jericho (Tell es-Sultan) (2012), Mount Gerezim and the Samaritans (2012), Qumran: Caves and Monasteries of the Dead Sea Scrolls (2012), El-Bariyah: wilderness with monasteries (2012), Wadi Natuf and Shuqba Cave (2013), Old Town of Nablus and its Environs (2012), Tell Umm Amer (2012), Throne Villages (2013), Sebastia (2012), Anthedon Harbour (2012), Umm-Al Rihan Forest (2012), Wadi Gaza Coastal Wetlands (2012), Baptism Site Eshria’a (Al Maghtas) (2015).

¹¹⁸ Palestinian Decree Law on Tangible Cultural Heritage, Ministry of Tourism and Antiquities, Palestine, 2018.

- *The Case of the Medieval Monasteries in Kosovo: Serbia vs. Kosovo*

The Dispute in a Nutshell

The issues involved in the case of Kosovo and its contested cultural heritage are extremely complex and controversial both on the national and global perspectives. They do involve several intertwined and trivial elements.

The problem is connected to Kosovo's identity, self-determination and independence. That is due to the fact that Kosovo is the newest country in Europe, bitterly arising from the dissolution of what was once Yugoslavia. After a long period of Ottoman domination, it became an autonomous province of Former Yugoslavia⁴⁹. Some political events tragically depicted the legal scenario of one of the harshest conflicts: among them, the most notable are the military conflict of 1998-9²⁰, a period of interim administration led by the United Nations²¹, and the

⁴⁹ R. ELSIE, B. DESTANI, Kosovo: A Documentary History; From the Balkan Wars to World War the II, I. B Tauris, 2018; G. CIMBALO, Confessioni e Comunità Religiose nell'Europa dell'Est, *Pluralismo Religioso e Politiche Legislative degli Stati*, Rivista Telematica (www.statoechniese.it), n. 8/2019; C. W INGRAO, *Confronting the Yugoslav Controversies*, United States Institute of Peace Press, Whashington D.C., Purdue University Press, West Lafayette, Indiana, 2010; D. BINDER, Kosovo and Metohija, in *Fare Well, Illyria*, Central European University Press, 2013; D.B. MACDONALD, *Balkan Holocausts? Serbian and the Croatian Victim-Centred Propaganda and the War in Yugoslavia*, Manchester University Press, Manchester and New York, 2002; N. MALCOM, *Kosovo: A Short History*, Harper Perennial, New York, 1999.

²⁰ Prior to NATO's bombing campaign against Yugoslavia, the UNSC adopted three resolutions dealing comprehensively with the Kosovo situation: 1160/1998, by which the Council re-imposed an arms embargo on Yugoslavia, including Kosovo, encouraging Yugoslavia to take further steps to achieve a political solution to the Kosovo crisis; 1199/1998, by which the council called for a cessation of hostilities in Kosovo, the maintenance of a cease-fire and the initiation of a meaningful dialogue on political status; 1203/1998, by which the Council welcomed the agreement concluded in October between Yugoslavia and the Organization for Security and Cooperation in Europe to establish an OSCE verification Mission in Kosovo, as well as the simultaneous agreement between Yugoslavia and NATO for the establishment of an air verification mission over Kosovo. In each of the three resolutions, adopted under Chapter VII of the UN Charter, the Council affirmed the commitment of member states to the sovereignty and territorial integrity of Yugoslavia; R. LAVALLE, *Legal Aspects of the Kosovo Crisis and its Outcome: An Overview*, *Révue Hellenique de Droit International*, No. 2, 2000.

²¹ The UNIMIK and KFOR were established as the two main pillars, one led by UN and the other one led by NATO (UNSC Resolution 1244/1999). They further developed by the Ahtisaari Plan, that opened the way to the Kosovo Parliament for the Unilateral Declaration of Independence from Yugoslavia. The plan has been incorporated in the Constitution of Kosovo. Most notably though, in the aftermath of the Declaration of independence of Kosovo, the two pillars started operating in a circumstance of chaos,

declaration of independence from Serbia made on February the 17th 2008⁴²². On the one hand, all these political and legal circumstances see the claims advanced by the Serbian State. The ultima goal of these claims is to re-establish its national identity and territorial integrity in the newly established territory of Kosovo through Serbian Orthodox places. On the other hand, the question of Kosovo and Metohija/ Rrafshi i Dukagjinit⁴²³ goes to the heart of the question of the territorial integrity and the title to sovereignty supported by the Serbian State. These are critical issues, inasmuch they involve religious cultural heritage recognized by UNESCO as Serbian, but located in Kosovo.

As for the first phase of the conflict, it can be summarized as follows⁴²⁴: Kosovo has been an autonomous province in Former Yugoslavia. Several religious orthodox monuments are located in Kosovo. This element grounds the claims of Serbia, essentially based on history, religion, spirituality and on the centennial past presence of Serbian medieval rulers in what would become the sovereign State of Kosovo. This region is the place of defeat of Medieval Serbia, which perished under the hands of the Turks⁴²⁵, who ruled for the next five centuries. As a consequence of the departure of the Serbian population from the region and the consequent conversion to Islam of the majority of the population, the claims of Kosovar Albanians are based on the demographic element: they constituted the majority of the population from the late 19th century onwards and they are currently at least the 90% of the population⁴²⁶. They boycotted Serbian institutions under Slobodan

where the functions of the new Kosovo institutions overlapped with the structures of international missions, UN Security Council S/RES/1244 (1999); L. VON CARLOWITZ, *Crossing the Boundary from the International to the Domestic Legal Realm: UNMIK Lawmaking and Property Rights in Kosovo*, *Global Governance*, Vol. 10, No. 3 2004, pp. 307-331.

⁴²² ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (Request for an Advisory Opinion), 22 July 2010; V. MORINA, F. KORENICA, D. DOLI, *The relationship between international law and national law in the case of Kosovo: A constitutional perspective*, *International Journal of Constitutional Law*, Volume 9, Issue 1, January 2011, Pages 274-296, I-CONS JOURNAL; G. VIZOKA, *Shaping Peace in Kosovo: the Politics of Peacebuilding and Statehood*, *Rethinking Peace and Conflict Studies*, Oliver P. Richmond Series Editor, Springer Nature, Switzerland, 2017.

⁴²³ R. ELSIE, *Historical Dictionary of Kosova*, Scarecrow Press Inc., Lanham Maryland, Toronto, Oxford, 2004, p. 119.

⁴²⁴ J. CÉRIMAN, A. PAVLOVIĆ, *Beyond Territory Principle: Non-Territorial Approach to the Kosovo Question(s)*, *Philosophy and Society*, Vol. 31, No. 3, 2020, pp. 277-448.

⁴²⁵ The Ottoman domination in Serbia lasted from the 14th century (Battle of Kosovo, 1389) until the 19th century (attainment of formal autonomy within the Ottoman Empire, 1830, and attainment independence, 1878).

⁴²⁶ Republika e Kosovës Republika Kosova - Republic of Kosovo Qeveria - Vlada - Government, Zyra e Kryeministrit - Ured Premijera - Office of the Prime Minister, Agjencia e Statistikave të Kosovës - Agencija za Statistiku Kosova - Kosovo Agency of Statistics: the estimation of Kosovo population and housing in 2021 registers a percentage of over 93% of Kosovar Albanians on the total population; significant minorities include

Milošević's regime during the '90s⁴²⁷: an armed conflict between the insurgents and the Serbian police broke out and ended up with NATO bombing campaign in 1999⁴²⁸. This event signed the end of the Serbian sovereignty over Kosovo, thus paving the way to the State-Building of the State of Kosovo⁴²⁹. Among other relevant issues, an unprecedented level of illicit trade of cultural heritage⁴³⁰ and of cultural destruction took

Bosniaks (1,6%), Serbs (1,5%) and others (<https://ask.rks-gov.net/en/kosovo-agency-of-statistics>); Demographic Changes of the Kosovo Population 1948-2006, Institucionet e Përkohshme Vetëqeverisëse / Privremena Institucija Samouprave / Provisional Institutions of Self Government Qeveria e Kosovës / Vlada Kosova / Government of Kosovo, Ministria e Shërbimeve Publike / Ministarstvo javnih službi / Ministry of Public Services, 2008, (<https://ask.rks-gov.net/media/1835/demographic-changes-of-the-kosovo-population-1948-2006.pdf>); M. MUSAJ, Kosovo 2011 Census: Contested Census within a Contested State, Contemporary Southeastern Europe, Vol. 2, 2015, pp. 84-98.

⁴²⁷ R. ELSIE, *Historical Dictionary of Kosovo*, Scarecrow Press Inc., Lanham Maryland, Toronto, Oxford, 2004, pp. 119-120.

⁴²⁸ Much debate and criticism on the legality of NATO's intervention in Kosovo. For a documentation of the crimes following NATO's intervention, see NATO Crimes in Yugoslavia: a Documentary Evidence 24 March- 24 April 1999, Federal Ministry of Foreign Affairs, Federal Republic of Yugoslavia, Belgrade, 1999, pp. 226-228. In two circumstances, NATO is accused of having destroyed Albanians monuments, but the damages recorded by these monuments was deemed to be not comparable with the damage produce by aerial bombing; A. HERSCHER, A. RIEDLMAYER, *Monument and Crime: The Destruction of Historic Architecture in Kosovo*, Grey Room, No. 1, Autumn 2000, p. 113; L. HENKIN, *Kosovo and the Law of Humanitarian Intervention*, American Journal of International Law, Cambridge University Press, Vol. 93, No. 4, 1999, pp. 824-828.

⁴²⁹ State-building is the process that depicts strategies to restore or build from scratch the institutions and apparatus of the state (i.e., Parliament, Government, and Bureaucracy). In contrast, the notion of nation-building also refers to the creation of a cultural identity that relates to the particular territory of the state. Most scholars agree that a well-functioning state is a requirement of the development of a nation, and therefore most would also agree that state-building is a necessary component of nation-building, N. BROVINA, A. RAMADANI, *Process of State Building in Kosovo*, UBT International Conference, 2017; A. ZIMMERMANN, STAHN. C, *Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the Current and Future Legal Status of Kosovo*, Nordic Journal of International Law, Issue 4, Vol. 70, 2001, pp. 423-460; S. BIANCHINI, *State Building in the Balkans*, Longo Editore, Ravenna, 1998; A. BALTAG, V. BERBECA, C. J. BORGES, D. CENUSA, M. HATAY., O. NANTOI, I. ROUBANIS, I. SEVERIN, S. TIRYAKI, O. TRINGIDES, R. VRABIE, *Managing Intractable Conflicts: Lessons from Moldova and Cyprus*, ed. Mensur Akgün, IKU, Turkey, 2013, pp. 88-108; A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, Wolters Kluwer, CEDAM, 2018; C. FOCARELLI, *Trattato di Diritto Internazionale*, UTET, Milan, 2015; S. CHESTERMAN, *You, the People: The United Nations, Transitional Administration and State-Building*, Oxford University Press, NY, 2004, pp. 126-204.

⁴³⁰ "My own research in Kosovo revealed how KLA extremists and Kosovo Albanians seized icons and liturgical ornaments as they ransacked and tore apart Serbian-Orthodox churches. [...] In that circumstance I informed the Comando Tutela Patrimonio Culturale Carabinieri of suspected trade of a large quantity of icons from East-Europe on the Internet, this occurred in a very peculiar historical-political period as Croatia and Bosnia-Herzegovina were being rebuilt, the Albanian crisis was drawing to a close in 1997-1998 and war in the Federal Republic of Yugoslavia was just beginning", F. MANISCALCO, *Relazione sullo Stato del Patrimonio Culturale Mobile nei Balcani*, Verbal Report to the Comando Tutela Patrimonio Culturale Carabinieri, 2000.

place in Kosovo: countless churches, mosques, monasteries and cemeteries have been erased⁴³¹. In this context, the UN started playing a decisive role. Security Council's Resolution 1244/1999 is worthy of consideration. On the one side, it established a regime of administration of Kosovo, under UNMIK's administration and KFOR's security, that involved also Serbian orthodox sites. On the other side, it stated that after withdrawal, a number of Yugoslav and Serbian personnel would be allowed to return to perform a number of functions, including the maintenance of a presence at Serbian patrimonial sites⁴³².

As for the second phase of the conflict, it is relevant to consider that since 2004, particularly violent events took place. From these events onwards, UNESCO has started playing a pivotal role taking decisions dealing with contested Serbian sites (such as the Dečani Monastery, the Gračanica Monastery, the Patriarchate of Peć, and the Cathedral dedicated to the Holy Virgin of Ljeviša). The issues are immersed in the peculiar circumstance of the struggle for independence undertaken by Kosovo while building an institutional, administrative and judicial apparatus from the scratch: Kosovo was transformed from a province, which was *de jure* considered a constituent part of Serbia, to an independent and sovereign State. In this perspective, UNESCO's decisions are fundamental: they deal with the recognition of the Outstanding Universal Value of disputed orthodox sites, and they are instrumental to proclaim which political and institutional identity shall prevail. In this regard, it is relevant to consider that the political impact and the content of these decisions taken by UNESCO is striking. We should wonder if the recognition of these values is impartial and if the neutral or non-neutral use of UNESCO's mechanisms has the ultimate result of enforcing (Serbia) or impairing (Kosovo) States. Additionally, we should once again question the neutrality of these decisions: are they related to ordinary or pathologic circumstances of conflict?

As for the third phase of the conflict, after Kosovo's declaration of independence made on February the 17th 2008⁴³³, when Kosovo was

⁴³¹ UNESCO, Mission Report, Cultural Heritage in Kosovo: Protection and Conservation of a Multi-Ethnic Heritage in Danger, 2003; E. SERBENCO, The Protection of Cultural Property and Post-Conflict Kosovo, *Révue Québécoise de Droit International*, Vol. 18, No. 2, 2005, p.92; F. MANISCALCO, Kosovo e Metohia 1991-2000: Rapporto Preliminare sulla Situazione del Patrimonio Culturale, Napoli, Edizioni Massa, 2000; F. MANISCALCO, The Loss of Kosovo Cultural Heritage, <http://www.webjournal.unior.it> – Vol. 2, 2006, ISSN 1827-8868; A. HERSCHER, A. RIEDLMAYER, Monument and Crime: The Destruction of Historic Architecture in Kosovo, *Grey Room*, No. 1, Autumn 2000, pp. 108-122.

⁴³² UN Security Council S/RES/1244 (1999).

⁴³³ ICJ, Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for an Advisory Opinion), 22 July 2010; G. VIZOKA, Shaping Peace in Kosovo: the Politics of Peacebuilding and Statehood, *Rethinking Peace and*

under the guidance of EULEX (European Union Rule of Law Mission in Kosovo) and ICO (International Civilian Office)⁶⁴, the problem of the enforcement of the title to sovereignty in a territory that is no longer Serbian occurs. After the declaration of independence of Kosovo, three aspects became relevant with respect to the involvement of UNESCO in the region of Kosovo: a) the status of Northern Kosovo, which is ethnically Serbian and still maintains strong ties with the Serbian State; b) the status of Serbian religious heritage, chiefly UNESCO World Heritage Sites; c) the fact that the Serbian population in central Kosovo, where most of the above-mentioned UNESCO's religious sites are located (the Monastery of Dečani, the Patriarchate of Peć, the Cathedral dedicated to the Holy Virgin of Ljeviša), constitutes the minority of the population living in enclaves of Serbs surrounded by Kosovar Albanian population.

Is the Serbian sovereignty reckoned by UNESCO in reason of the presence of the Medieval Monuments therein located? Is this territorial portion deemed to have a Serbian identity and Serbian values (OUV, art-historical, religious)? In this regard, critical issues are related to the inability of the traditional rules of international law to solve territorial conflicts between States: are these rules manipulated and bypassed through the application of UNESCO's listing mechanisms? The current chapter wants to analyse the role of UNESCO through a critical glimpse. In this perspective, these considerations directly involve contested religious heritage listed as UNESCO World Heritage Sites, the process, the instruments and the interests related to their nomination.

1. The Global Dimension of the Nomination Process: UNESCO and the OUV of the Four Medieval Monasteries in Kosovo

Conflict Studies, Oliver P. Richmond Series Editor, Springer Nature, Switzerland, 2017; S. CHOUDHRY, Secession and post-sovereign constitution-making after 1989: Catalonia, Kosovo, and Quebec, *International Journal of Constitutional Law*, Volume 17, Issue 2, April 2019, Pages 461–469, *I-CONS JOURNAL*; H. BIRKENKÖTTER, Review of Vijayashri Sripathi, *Constitution-Making Under UN Auspices: Fostering Dependency in Sovereign Lands*, *International Journal of Constitutional Law*, Volume 19, Issue 1, January 2021, Pages 358–363, *I-CONS JOURNAL*.

⁶⁴ These two institutions were in charge of progressively substituting the functions carried on by UNMIK. The ICO was in charge of overseeing the implementation of the executive functions in line with the Ahtisaari Plan. The EULEX was started its mandate in 2008, and it was a technical body in charge of implementing the security/police, justice and customs sectors, with monitoring, consultancy, and training functions. The mandate was extended until June 2018; C. S. CHIVVIS, *EULEX Kosovo* (Chapter IV), in *EU Civilian Crisis Management: The Record so Far*, Rand Corporation, Santa Monica-Arlington-Pittsburgh, 2010.

An interesting analysis of the values constituting the OUV emerges from the nomination dossiers of the Medieval Monuments in Kosovo and Metohija. The examination involves four contested religious sites located in Kosovo but listed as Serbian Sites through the system of protection provided for by the 1972 Convention (List of the World Heritage in Danger)⁴³⁵: the *Dečani Monastery*⁴³⁶, the *Gračanica Monastery*, the *Patriarchate of Peć*, and the *Cathedral dedicated to the Holy Virgin of Ljeviša* in Prizren (2004-2006)⁴³⁷.

On a global perspective, this case raises several issues, perplexities and reflections deriving from the use of those instruments set forth by UNESCO. Second, we should also take into consideration that these instruments are applied in a sensitive context or non-ordinary circumstance of competing sovereignty, with consequences on the cultural, spiritual and political setup of the newly established territory of Kosovo. On the one side, criticalities emerge in relation to the evaluation made by UNESCO: indeed, it seems necessary to argue and dismantle the presumption advanced by global institutions that the evaluation of the disputed sites' OUV has a universal, impartial and scientific magnitude. On the other side, criticalities emerge in relation to the effects of this decision taken by UNESCO in a disputed territory: it seems necessary to investigate the political impact of a decision dealing with disputed religious heritage in the newly established territory of Kosovo. This part of the analysis will lead to some considerations on the interaction between the application of the traditional rules on the territorial integrity and title to exercise of sovereign powers and their revitalization through the new rules and decisions adopted by UNESCO.

The *Dečani Monastery*, located in the Autonomous Province of Kosovo and Metohija (Dečane Municipality) at the foot of the slopes of

⁴³⁵ For further details, see Chapter II, Paragraph 2.1, (The World Heritage List and the List of World Heritage in Danger in Ordinary and Disputed Circumstances: the Cases of the Prosecco Hills of Conegliano, the Temple of Preah Vihear, the Old City of Hebron and the Medieval Monuments in Kosovo).

⁴³⁶ WHC Decision 28 COM 14B.47 (Nominations of Cultural Properties to the World Heritage List, Dečani Monastery); WHC Decision-04/28.COM/14B REV, p. 28; WHC Decision 30 COM 8B.53 (Approval of the extension of the Dečani Monastery, to include the Patriarchate of Peć Monastery, Gračanica Monastery and the Church of the Virgin of Ljeviša); WHC Decision 30 COM 8B.54 (Inscription of the Medieval Monuments in Kosovo on the List of the World Heritage in Danger); WHC Decision 30 COM 8C.1 (Update of the World Heritage List in Danger); D. MASSON, South-Slavonic Churches— The Serbian, MacMillan's Magazine, Vol. X, 1864.

⁴³⁷ Medieval Monuments in Kosovo (Serbia) (C 724 bis); S. NOVAKOVIČ, Remaining of the Patriarchate of Peć in One Folk Custom of The Region, Glasnik SRPSKOG UCENOG DRUSTVA odel. XII. 1931.

the Prokletije mountains, was included in the World Heritage in Danger List in 2004 under criterion (ii) and criterion (iv). At that time, the political status of Kosovo was controversial and uncertainty in the region was the prevailing political and legal circumstance. In the report proposed by the Serbian Government in 2002⁴³⁸ (criterion (ii), (iii), (iv), (vi)), a nationalistic and politically oriented description of the elements that are brought as proof the Serbian Outstanding Value of the monument is provided⁴³⁹. Indeed, the Monastery was built in the mid 14th century by King Stefan Decanski⁴⁴⁰ and it is described as holding an exceptional place in the Serbian national consciousness as one of the most magnificent monuments of Serbian culture, ecclesiastical art, and history. The connection built with the past dynasties of Serbia and the Serbian Orthodox Church is a fundamental tool of supremacy and territorial revenge towards what would become the Republic of Kosovo⁴⁴¹. According to the World Heritage Committee's decision, a much more nuanced justification of the Serbian Outstanding Value is provided. The Dečani Monastery represents an exceptional synthesis of Byzantine and Western medieval traditions. The monastery and particularly its paintings also exercised an important influence on the development of art and architecture during the Ottoman period (criterion ii). Additionally, the Monastery is said to represent an outstanding example of the last phase of the development of the Serbian-Slav architecture. The construction has integrated Eastern Byzantine and Western medieval traditions (criterion iv)⁴⁴².

⁴³⁸ A first proposal of nomination in the UNESCO World Heritage List was advanced by the Federal Republic of Yugoslavia in 1994.

⁴³⁹ Dečani Monastery, Yugoslavia, Nomination of the Cultural Monument for Inclusion on the World Heritage List, Nomination Dossier Compiled by the Republic Institute for the Protection of the Cultural Monuments, Belgrade, 2002.

⁴⁴⁰ Dečani Monastery, Nomination of the Cultural Monument for Inclusion on the World Heritage List; Nomination Dossier Compiled by the Republic Institute for the Protection of the Cultural Monuments, Belgrade, 2002.

⁴⁴¹ D. PÉTRONIEVITCH, *Les Cathédrales de Serbie*, Paris, Société Française d'Imprimerie et de Librairie, 1917, p. 21, p. 65; G. MILLET, *L'Ancien Art Serbe: Les Églises*, Paris, 1919; V.R PETKOVIĆ, D. BOŠKOVIĆ, *Monastir Dečani I-II*, Beograd, 1941; J. LAFONTAINE-DOSOGNE, *Iconographie de l'Enfance de la Vierge Dans l'Empire Byzantine et en Occident I*, Bruxelles, 1964, 48 et passim; T. MARK-WEINER, *Narrative Cycle of the Life of St. George in Byzantine Art*, Ann Arbor 1990, 50/51 et passim; V. J. ĐURIĆ (urednik), *Zidno Slikarstvo Manastira Dečana*, Beograd, SANU, 1995; S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V. VASIĆ, A. FULGOSI, B. JOKIĆ, *The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia*, Faculty of Law, University of Belgrade, Belgrade, 2010; D. VOJVODIĆ, D. POPOVIĆ, *Byzantine Heritage and Serbian Art II: Sacral Art of the Serbian Lands in the Middle Ages*, published on the occasion of the 23rd International Congress of Byzantine Studies, Belgrade, 2016.

⁴⁴² WHC Decision 28 COM 14B.47; ICOMOS, Advisory Body Evaluation, No. 724 and 724 bis, Dečani (Serbia-Montenegro), 2004-2006.

Notwithstanding the claims for the exercise of sovereign powers and the location of the Monastery within the political boundaries of the new State of Kosovo, the artistic value is recognized as a tool to build and enforce the Serbian identity in a contested territory. Indeed, the monument is recognized by the Serbian State as the spiritual centre of the Serb people. It is a place that plays a key role in the preservation of the cultural and national identity of Serbs from Kosovo and Metohija. On the one hand, the façade decoration methods and the sculptural adornments were performed in the spirit of what is defined by the Serbian Government as Romanic-Gothic West style. On the other hand, the programme and import of the Dečani sculptures are strictly dependant in theme to Orthodox liturgical texts and works of the old Serb literature: this element enhances both the link between art, religion, intangible heritage, and the link between religious art and political contestation⁴⁴³. Furthermore, it is noted that the buildings of the Dečani Monastery were not damaged as a result of the war and post-conflict circumstance taking place in Kosovo from 1998 to 2001. However, systematic archaeological excavations and research have never been performed in the Dečani Monastery, so it can be said that this is one of those cases where archaeological activities could contribute to a better knowledge of the construction history, which could possibly include also other traditions⁴⁴⁴.

Later on, in 2006, the nomination was extended to other religious monuments: the *Gračanica Monastery*, the *Patriarchate of Peć*, and the *Cathedral dedicated to the Holy Virgin of Ljeviša* in Prizren. They are all included in the List of the World Heritage in Danger under criterion (ii), criterion (iii) and criterion (iv)⁴⁴⁵. These monuments are described as

⁴⁴³ Dečani Monastery, Nomination of the Cultural Monument for Inclusion on the World Heritage List; Nomination Dossier Compiled by the Republic Institute for the Protection of the Cultural Monuments, Belgrade, 2002.

⁴⁴⁴ Protective archaeological investigations have taken place in view of the reconstruction of the dormitory-lodge in the Monastery yard, in compliance with the project approved by the Institute for the Protection of Cultural Monuments of Serbia and the Culture Commission for Cultural Goods of Outstanding Value. In 2011, the reconstruction works on the dormitory-lodge continued, and the first phase of rough construction was completed by December 2011. After a report submitted by the Serbian Permanent Delegation to UNESCO, the World Heritage Centre requested UNMIK to undertake the necessary investigations about red and black graffiti appearing on the Monastery's wall; Institute for the Protection of Cultural Monuments, Republic of Serbia, Permanent Delegation to UNESCO, Report on the State of Conservation of Medieval Monuments in Kosovo (Serbia), Inscribed in the World Heritage List in Danger, Belgrade, January 2019.

⁴⁴⁵ WHC Decision 30 COM 8B.53 (Approval of the extension of the Dečani Monastery, to include the Patriarchate of Peć Monastery, Gračanica Monastery and the Church of the Virgin of Ljeviša); WHC Decision 30 COM 8B.54 (Inscription of the Medieval Monuments in Kosovo on the List of the World Heritage in Danger); WHC Decision 30 COM 8C.1 (Update of the World Heritage List in Danger).

components that played a decisive role in the development of ecclesiastical building and mural painting in the Balkans between the 14th to the 16th centuries, in the Balkan Palaiologian Renaissance architectural style. The *Gračanica Monastery* is emphasized as one of the last monumental endowments of Serbian King Milutin (1282-1321)⁴⁴⁶. The main church of Theotokos with the plan, spatial arrangement, decorative wall treatment and wall paintings together have made it an emblematic structure for Balkan architecture of the 14th century. It reflects the spirit of the Byzantine tradition but it has been slightly modified by western influence⁴⁴⁷. The *Patriarchate of Peć Monastery* is a group of four domed churches featuring series of wall paintings. All the churches display an extensive series of wall paintings and the 13th-century frescoes of the Church of Holy Apostles are painted in a unique, monumental style⁴⁴⁸. Early 14th-century frescoes in the *Church of the Holy Virgin of Ljeviška* represent the appearance of the new so-called Palaiologian Renaissance style, combining the influences of the eastern Orthodox Byzantine and the Western Romanesque traditions. The style played a decisive role in subsequent Balkan art⁴⁴⁹.

Emphasis should be added on the decision taken by the World Heritage Committee in occasion of the extension of the property: the nationalistic approach adopted by the WHC stands out. Its position enhances the manifestations of the fusion of two different forces (Church and State), whose aim is to create a strong identity for Serbia, in line with its political orientation⁴⁵⁰. This aspect that links the political and spiritual relevance played by the monuments throughout the history is particularly relevant in the nomination dossier (criterion (iv)). On account of this, some legal considerations and reflections derive from such a controversial and anomalous nomination. The Medieval Monuments in Kosovo, located in Kosovo and claimed by Kosovo, have been listed as endangered Serbian heritage sites, notwithstanding the attribution of monitoring tasks to Kosovo's transitional institutions

⁴⁴⁶ D. PÉTRONIEVITCH, *Les Cathédrales de Serbie*, Paris, Société Française d'Imprimerie et de Librairie, 1917, p. 58.

⁴⁴⁷ Institute for the Protection of Cultural Monuments, Republic of Serbia, Permanent Delegation to UNESCO, Report on the State of Conservation of Medieval Monuments in Kosovo (Serbia), Inscribed in the World Heritage List in Danger, Belgrade, January 2019.

⁴⁴⁸ Institute for the Protection of Cultural Monuments, Republic of Serbia, Permanent Delegation to UNESCO, Report on the State of Conservation of Medieval Monuments in Kosovo (Serbia), Inscribed in the World Heritage List in Danger, Belgrade, January 2019.

⁴⁴⁹ Institute for the Protection of Cultural Monuments, Republic of Serbia, Permanent Delegation to UNESCO, Report on the State of Conservation of Medieval Monuments in Kosovo (Serbia), Inscribed in the World Heritage List in Danger, Belgrade, January 2019.

⁴⁵⁰ Medieval Monuments in Kosovo (Serbia) (C 724 bis), p. 148.

established for overseeing the settlement of democratic and autonomous self-government institutions in Kosovo⁴⁵¹.

2. Contestation and Nomination of the Four Medieval Monasteries: the Role of National Governments and UNESCO

The existence of Medieval Monuments, and namely, their physical presence in a circumscribed territory, is the object of claims for the exercise of sovereign powers in a contested territory. This is what essentially makes the Kosovo's conflict a territorial dispute without precedent parallels. The conflict rounds about the above-mentioned Serbian Orthodox Monuments, that are scattered in a strategic geographical position in the territory of Kosovo and Metohija⁴⁵².

The political and territorial characterization of the conflict points out some ambiguities. This is particularly true when it comes to the analysis of the element of contestation as an active or marginal element to shape the Serbian values attached to the Medieval Monasteries, their cultural and legal dimension, and the relationship between Serbia and UNESCO. Is the existence of public interests and sensitive issues related to the existence of a conflict between sovereign powers? Rather, is it a circumstance seen also in ordinary nomination processes? Is the existence of political, nationalistic, cultural and economic interests a physiology or a pathology within the nomination process? For what is relevant in this peculiar circumstance, it is good to consider that competing versions of Kosovo's cultural identity are staged as the basis of competing claims for sovereignty over the province, and cultural artefacts are presented as precise evidence of those claims. More specifically, the recruitment of cultural heritage in support of a political project is not a consequence of the Kosovo conflict, but rather, a constitutive element⁴⁵³. Hence, we should wonder to what extent the element of contestation is assuming a political connotation in Serbia and in UNESCO's nomination process. In this perspective, are the rules elaborated by UNESCO impacting the traditional theories on the sovereignty of States, thus causing its erosion? Is the erosion of classical theories related to the existence of a conflict, thus representing an anomaly related to this specific and controversial case?

⁴⁵¹ UN Security Council S/RES/1244 (1999).

⁴⁵² Col. Sir. T. H. HOLDICH, *Boundaries in Europe and the Near East*, MacMillan and Co., London, 1918.

⁴⁵³ A. HERSCHER, A. RIEDLMAYER, *Monument and Crime: The Destruction of Historic Architecture in Kosovo*, Grey Room, No. 1, Autumn 2000, pp. 108-122; M. KALDOR, *New and Old Wars: Organized Violence in a Global Era*, Stanford University Press, Stanford, 1999.

Several aspects of this case study become relevant, because the legal framework underpinning from UNESCO's nomination and from the Declaration of Independence of Kosovo is tangled and complicated. Some critical arguments can be raised with regard to this complex legal framework, where UNESCO's nomination certainly had an impact on the national level.

Indeed, on the national perspective, we should take into consideration that much of the Serbian religious cultural heritage is situated in the portion of the territory inhabited by the majority Kosovar-Albanian population and outside municipalities with a majority of Serbian population. Apart from the Monastery of Gračanica, which lies in the central majority enclave in central Kosovo, the three other relevant monuments are located in the municipality of Peć, Prizren and Dečani, which are almost exclusively Albanian municipality: from this point we can easily assume that UNESCO's nomination has the potential of being not only a dangerous and divisive element in such an anomalous context, but presumably, it also has the potential of re-grounding Serbian national sovereignty's advocacies, thus fomenting the fear of attacks to the statehood of Kosovo⁴⁵⁴. On the one side, all the sites considered within this chapter are regulated by the laws that at the time of the nomination (2004-2006) were enacted by the Republic of Serbia. They do recognize the cultural sites as monuments of the highest category and, for this reason, limitations of ownership in public interest (limitations on structural and architectural changes, limitations on utilization purpose, ban on disposal) are allowed. Furthermore, the Dečani Monastery and the three other churches are owned by the Serbian Orthodox Church⁴⁵⁵.

⁴⁵⁴ A. PAVLOVIĆ, To UNESCO or Not to UNESCO, Serbian Cultural Heritage in Kosovo between Sovereignty and Protection, BiEPAG (joint initiative of the European Fund for the Balkans and the Centre for Southeast European Studies of the University of Graz BiEPAG), Prepared within the framework of the Regional Research Promotion Programme in the Western Balkans (RRPP), implemented by the University of Fribourg upon a mandate of the Swiss Agency for Development and Cooperation, SDC, Federal Department of Foreign Affairs, 2015, available at: <https://biepag.eu/to-unesco-or-not-to-unesco-serbian-cultural-heritage-in-kosovo-between-sovereignty-and-protection/>.

⁴⁵⁵ The properties are legally protected on the basis of the Protection and Cultural Monuments and Natural Rarities Law (FPRY Official Acts N. 81/46), the decision on determining immobile cultural properties of exceptional significance (SR Official Acts N. 25/90), and the Cultural Properties Law (Official Acts of the Republic of Serbia N. 71/94 amended in 2011). More specifically, The Monastery of Gračanica and the Church of the Virgin of Ljeviša are managed at the level of Ras-Prizren Eparchy. The Patriarchate of Peć Monastery is under the jurisdiction of Serbia Patriarch. For further details on the laws enacted by the FPRY and by the Republic of Serbia, see: Law on the Serbian Orthodox Church, 1929; General Law on the restitution of confiscated properties and on the compensation for the territories that currently belong to Kosovo and Macedonia, 2005; Law on the restitution of properties confiscated from churches and religious groups, 2006; Serbian Law on the restitution of confiscated properties and compensation, 2014; http://licodu.cois.it/?page_id=1460&lang=en.

More recently, the *Law on Restitution of Religious Property* (*Zakon o vraćanju imovine crkvama i verskim zajednicama*) has been interestingly enacted by Serbia in 2006⁴⁵⁶, thus following the end of the nomination process. This law deals with the application of this statute on the territory of Kosovo and Metohija, requiring the urgent implementation of a provisional ban on the disposal of nationalized religious property in Kosovo and Metohija during communism⁴⁵⁷. Even so, the application of the provisions of the law remains subject to the solution of the status of the territory, as well as to the coordination with the representatives of the international community. As a consequence, there is a *de facto* disposal of these religious properties in Kosovo and Metohija and a presumption of Serbian supremacy following the recognition of their Outstanding (Serbian) cultural, spiritual and religious value. This presumption is strengthened both by the inscription of the sites in the List of the World Heritage in Danger and by the attempt of exerting political pressure to reach a solution of the status of the territory. This law seems to enable the Serbian State to enforce its sovereign powers in the territory of Kosovo more through decisions that label the contested sites as World Heritage, rather than through international law mechanisms. Several reasons are in support of this statement. First, this law is of difficult application in the territory of Kosovo. Second, a solution on the status of the territory that international law should attempt to reach is missing. Third, an extra-territorial status to be applied to the Medieval Monuments⁴⁵⁸ is absent.

We could indeed advance the hypothesis that this law has been enacted following UNESCO's approval of the extension of religious properties (2006), thus impersonating a legal and a political manoeuvre

⁴⁵⁶ S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ed. Silvio Ferrari and Andrea Benzo, *Cultural Diversity and Law*, Ashgate Publishing Company, Burlington, 2014.

⁴⁵⁷ "In contrast to the restitutions all over Eastern and Central Europe that ensued after the fall of the Berlin Wall, in Kosovo and Metohija restitution on a systemic level has not taken place to the present day, which represents the most significant limitation of ownership of religious institutions and the greatest impediment for the sustainability of their survival and continuation of service. Paradoxically, Western democracies, the United States in particular, who had the greatest influence on the international administration of Kosovo and Metohia from 1999 until 2008, have not enabled restitution of property appropriated during communism, although they had fully supported the same process after the fall of the Berlin Wall throughout Central and Eastern Europe",

⁴⁵⁸ The terms extraterritoriality and extraterritorial jurisdiction refer to the competence of a State to make, apply and enforce rules of conduct in respect of persons, property or events beyond its territory. Such competence may be exercised by way of prescription, adjudication or enforcement, M. T. KAMMINGA, *Extraterritoriality*, MPIL, 2020; K. M. MEESSEN, *Extraterritorial Jurisdiction in Theory and Practice*, Kluwer Law International, London, The Hague, Boston, 1996.

to re-establish a controlled distribution of powers in the newly established territory of Kosovo.

Additionally, the protection of cultural and religious sites in Kosovo has been guaranteed by the *Cultural Heritage Law*⁴⁰⁰, the *Constitution of Kosovo*⁴⁰¹, the *Law on Special Protective Zones*⁴⁰², the *Law on Historic Centre of Prizren*⁴⁰³, and the *Law on the Village of Velika Hoča/ Hoçë e Madhe*⁴⁰⁴. These laws provide for the establishment of Kosovo's cultural institutions, while tackling the issue of the preservation and protection of cultural and religious heritage, with particular attention to Serbian Orthodox Monasteries, Churches, other religious sites, as well as historical and cultural sites of special significance for the Kosovo Serb community, and other communities in the Republic of Kosovo⁴⁰⁵. In short, under the existing legal framework in Kosovo, Serbian monasteries and

⁴⁰⁰ Law No. 02/L-88 on Cultural Heritage, 6 November 2006 (Law on Cultural Heritage), <http://licodu.cois.it/?p=10079&lang=en>, and its corresponding sublegal provisions.

⁴⁰¹ Constitution of the Republic of Kosovo, 2008, <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>.

⁴⁰² Law No. 03/L-039 on Special Protective Zones, 15 June 2008, and its corresponding sublegal provisions, <http://old.kuvendikosoves.org/?cid=2,191,248>. This law, which is largely the product of the international intervention, is particularly relevant, as it classifies a number of Special Protective Zones, where several activities are prohibited (industrial construction, exploration and exploitation of mineral resources, transit roads in rural areas) or restricted (commercial constructions, construction of edifices taller than the monastery/church, warehouses, bars, cafes, restaurants, hotels, public gatherings, urbanization and agricultural lands, unless the SOC approves the activity). The Special Protective Zones (Article 7, including the Visoki Dečani Monastery, Dečan/ Dečani, the Peć Patriarchate, Pejë/ Peć; Gračnica Monastery, Prishtinë/ Priština, Church of the Holy Virgin of Ljeviša), shall be monitored by the Implementation Monitoring Council, established for each area.

⁴⁰³ Law No. 04/L-066 on Historic Centre of Prizren, 9 July 2012, <http://old.kuvendikosoves.org/?cid=2,191,940>. On 2 July 2013, the Council for Cultural Heritage of Prizren was established in conformity with the Law on the Historic Centre of Prizren, comprising seven members representing leaders from the three main religious communities namely the Serbian Orthodox, Islamic and Catholic communities, as well as civil society representatives and a local government member. The council provides a forum for relevant stakeholders to share information pertaining to cultural and religious heritage protection in the historic centre of Prizren.

⁴⁰⁴ Law No. 04/L-062 on the Village of Hoçë e Madhe/Velika Hoča, 9 July 2012. "The adoption of the Law was highly politicized by the Mayor and civil society representatives regarding the role of the Serbian Orthodox Church as member of the village council in policy-making on Velika Hoča/Hoçë e Madhe's spatial planning and protection of its cultural heritage. Velika Hoča/Hoçë e Madhe is a settlement, predominantly inhabited by Kosovo Serbs, in Rahovec/Orahovac municipality (majority Kosovo Albanian community). The adoption of a specific law to give the village the status of a Special Protected Zone is envisaged by the Law on Special Protective Zones". However, the Council for Cultural Heritage of Velika Hoča/Hoçë e Madhe has yet to be established, Challenges in the Protection of Immovable Tangible Heritage in Kosovo, Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE), 2014, p. 31.

⁴⁰⁵ Art. 1 of the Law on Special Protective Zones; For further details on the provisions enacted by the Republic of Kosovo, see http://licodu.cois.it/?page_id=1172.

churches belong to the Serbian Orthodox Church⁴⁶⁵, and they are under the legal protection of laws enacted both by the Republic of Serbia (notwithstanding the lack of a de facto Serbian control and of an extra-territorial status guaranteed to the monuments) and by the Republic of Kosovo⁴⁶⁶.

Two are the real problems of the matter. First, the legal framework itself, and its forced adoption imposed within the UN framework during an ongoing territorial dispute. Second, the opposition in the implementation of the laws and the conflict of interests deriving from their application followed UNESCO's decisions. As previously introduced, these laws are created in a conflictual environment, where several opposite public and private interests and stakeholders are involved in the nomination of the Medieval Monuments. The Republic Institute for the Protection of Cultural Monuments (Belgrade)⁴⁶⁷, the Ministry of Culture and Public Information of the Republic of Serbia⁴⁶⁸, are among those major institutions involved in the preservation and management of the sites. Furthermore, the Kosovo Force (KFOR), the United Nations Interim Mission in Kosovo (UNMIK), the European Union Rule of Law Mission (EULEX), the Institutions dealing with the Protection of Cultural Heritage under the Ministry of Culture, Youth and Sports of Kosovo⁴⁶⁹, the Kosovo Police and local authorities are among the

⁴⁶⁵ No activities related to these religious properties are possible without the concession of the SOC.

⁴⁶⁶ Other relevant laws enacted by the Republic of Kosovo in the field of Cultural Heritage are: the Law on Local Self Government, the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, the Law on Spatial Planning, and the Law on Construction.

⁴⁶⁷ In 1947 the Government of Serbia established the Institute for the Protection and Scientific Research of Cultural Monuments of the People's Republic of Serbia, that became the Republic Institute for the Protection of Cultural Monuments of Serbia in 1960: the body is tasked with recording, examining, protecting and preserving cultural heritage (oldest prehistoric and antique monuments, works of medieval sacral and fortification architecture, traditional architecture and monuments created in the recent history and contemporary works), http://www.heritage.gov.rs/english/istorija_zastite_u_srbiji.php.

⁴⁶⁸ <http://kultura.gov.rs/en/ministarstvo>.

⁴⁶⁹ The Department of Cultural Heritage within the MCYS is responsible for the management of cultural heritage in Kosovo. It manages the Kosovo Institute for the Protection of Monuments (KIPM) and six regional centres for cultural heritage (RCCHs) in Prishtinë/Priština, Prizren, Pejë/Peć, Gjakovë/ Đakovica, Mitrovicë/Mitrovica and Gjilan/Gnjilane, which carry out the responsibility for protection and preservation of tangible cultural heritage. They have overall responsibility for the protection and restoration of historic buildings and for permitted development within historic areas, although this responsibility has not always been appropriately discharged in the past – with many historic buildings falling into disrepair and many unauthorized developments occurring within historic areas in Kosovo. The Archaeological Institute and the Museum of Kosovo are also managed by the MCYS Department of Cultural Heritage. These institutions deal with the archaeological heritage and are responsible for the restoration, conservation, protection and presentation of the cultural heritage values. Additionally, in

public bodies in charge of protecting the monumental complexes located in Kosovo. They are in charge of monitoring all the developments which may potentially compromise the integrity, the conservation and the security of the properties. In terms of private stakeholders, the Serbian Orthodox Church and private Kosovar citizens are among the main conflicting actors. Within this environment, the implementation of Serbian laws is difficult and clashes with the application of Kosovar laws seem unavoidable.

The *Law on Special Protective Zones* is an example of conflicts of interests and violations arising throughout the implementation process. It should be understood from this law that Kosovo institutions are entitled to exercise their powers within these zones, with municipal authorities responsible for the implementation of the provisions on the Special Protective Zones, and the Serbian Orthodox Church is expected to cooperate with the municipalities⁶⁹. Most holy places are surrounded by an Albanian majority, such as the Dečani Monastery, and the result of these political tensions is particularly striking at a local level, that lacks of collaboration between administrative, municipal and religious authorities⁷⁰. As a way of example, several lawsuits have been filed for contravening the *Executive Decision No. 2005/5 on Special Zone Area Dečani* (UNMIK/IO/2005/5). A restaurant was built without any building permit in the immediate vicinity of monastery in 2005, and it was additionally expanded in late November 2006. The owner of the illegal building Naim Kuçi started developing a new tourist area (more than 30 m long) as well as wooden cabins that would spoil the landscape around the monastery. The Municipality of Dečani proclaimed the area around the monastery to be a zone of urban development, which amounted to an approval of the illegal building and breached the provision. legal battle to remove the illegally built sites in vicinity of monastery Visoki

each municipality a director for culture (including cultural heritage), reports to the regional institutes for the protection of monuments, as well as at the central level to the MCYS. The Kosovo Council for Cultural Heritage (KCCH), an advisory body to the Assembly of Kosovo, is mandated to approve the List of Cultural Heritage, to identify priority measures for financial support for cultural heritage protection and to evaluate submitted cultural heritage-related project proposals. The Department on Spatial Planning and the Institute on Spatial Planning of the Ministry of Environment and Spatial Planning (MESP) are engaged in protecting Special Protective Zones (SPZs) and ensuring that spatial plans for areas within the SPZs are in conformity with laws regulating SPZs, Challenges in the Protection of Immovable Tangible Heritage in Kosovo, Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE), 2014, p. 11.

⁶⁹ International Civilian Office (ICO), Implementation of Special Protective Zones for Religious and Cultural Heritage in Kosovo – Progress Report (September 2011).

⁷⁰ Other places, such as the Gračanica Monastery are situated within enclaves of Serbian population, S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ed. Silvio Ferrari and Andrea Benzo, Cultural Diversity and Law, Ashgate Publishing Company, Burlington, 2014, p. 216.

Dečani lasted for more than a month, due to the obstruction of the local government – the municipal government of Dečani. The decision was finally reached under a strong international pressure. In January 2007, Kosovo Protection Corps removed the illegally built constructions⁷². The same political battle surrounds the adoption of the *Laws on Prizren and Velika Hoča*⁷³: they were both proposed by the Government of Kosovo and prepared in consultation with the International Civilian Office, but highly politicized and criticized. Most notably, the forced adoption of pieces of legislation dealing with contested Orthodox Monasteries is posterior to their nomination as UNESCO's site: this aspect really induces us to think that the adoption of these laws dealing with the protection of Serbian heritage by Kosovo is a *conditio sine qua non*, or rather, a good political compromise upon which the Independence of Kosovo was dependant.

Markedly, it becomes really clear that UNESCO and the Serbian State were: a) considering the existence of the conflict at the time of the nomination as a factor to ground UNESCO's decision; or, b) UNESCO did not foresee and predict the impact of this nomination at the time of the inscription of the sites, given the political, cultural and religious sensitivity related to the concerned sites.

⁷² S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V. VASIĆ, A. FULGOSI, B. JOKIĆ, The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia, Faculty of Law, University of Belgrade, Belgrade, 2010, p. 98.

⁷³ "The debate on the two laws was shaped around e two main arguments. A number of members of the Kosovo Assembly representing governing and opposition parties, Prizren and Orahovac Municipal Assemblies and the Prizren and Orahovac CSOs, saw this proposal as a "threat" to Kosovo. In their view, the main problem with these legislative proposals was inclusion of the Orthodox Church representatives in the municipal councils for protection of cultural heritage. Other issues raised in the debate involved discrimination against the non-Serb citizens, non-compliance with the Constitution, ownership over cultural heritage and inter-ethnic conflict. The threat frame was further developed through the portrayal of Serbs and the Orthodox Church as an enemy and collaborator in genocide. As such, granting protection to the Orthodox Church sites along with providing the Orthodox Church with special management rights over these sites was framed as an attack on the statehood of Kosovo. Rejection of the laws was thus seen as an obstacle for Kosovo's full independence and respect by the international community", A. PAVLOVIĆ, To UNESCO or Not to UNESCO, Serbian Cultural Heritage in Kosovo between Sovereignty and Protection, BiEPAG (joint initiative of the European Fund for the Balkans and the Centre for Southeast European Studies of the University of Graz BiEPAG), Prepared within the framework of the Regional Research Promotion Programme in the Western Balkans (RRPP), implemented by the University of Fribourg upon a mandate of the Swiss Agency for Development and Cooperation, SDC, Federal Department of Foreign Affairs, 2015, available at: <https://biepag.eu/to-unesco-or-not-to-unesco-serbian-cultural-heritage-in-kosovo-between-sovereignty-and-protection/>; Challenges in the Protection of Immovable Tangible Heritage in Kosovo, Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE), 2014, p. 31.

In the first hypothesis (a), the nomination would have certainly ensured a reinforced protection to the sites, both in practical and in political terms: following this logic, the nomination would amount to a political move, with religious contested heritage and the List of the World Heritage in Danger becoming mere administrative instruments, flexible and easily manipulated, in the hand of the Serbian Government. Indeed, the nomination of the Decani Monastery follows particularly violent events, such as the riots occurring in 2004: the provisional administration did not effectively protect Serbian cultural heritage against repeated attacks in 2004. Therefore, the 2004 Kosovo Standard Implementation Plan (KSIP), followed by the enactment of the Cultural Heritage Law (2006), provided for priority actions, including the inscription of the Visoki Dečani and Gračanica Monasteries under the List of the Serbian World Heritage Sites in Danger. The protection of cultural heritage “was given added emphasis and separate treatment as an “extra” standard”⁴⁷⁴. Indeed, the nomination dossier emphasizes the conflict, and the events taking place in 2004 as “other factors affecting the property”⁴⁷⁵.

In this regard, according to the interview made with Professor Arsim Canolli⁴⁷⁶, I asked the following question: *Is it possible to detect a political aim when the Serbian State has proposed the Monasteries in UNESCO's Tentative List (Dečani Monastery, Nomination of the Cultural Monument for Inclusion on the World Heritage List; Nomination Dossier Compiled by the Republic Institute for the Protection of the Cultural Monuments, Belgrade, 2002)?*

He replied that:

“Yes, it is a political move. This is to undermine Kosovo as an entity. Serbia uses cultural heritage for its propaganda reasons against Kosovo

⁴⁷⁴ A JAKUBOWSKI, *State Succession in Cultural Property*, Oxford University Press, Oxford, p. 274; A. JAKUBOWSKI, *The effects of state succession on cultural property: ownership, control, protection*, PhD diss., European University Institute, 2011, <https://cadmus.eui.eu/handle/1814/18414>.

⁴⁷⁵ WHC Decision 28 COM 14B.47 (Nominations of Cultural Properties to the World Heritage List, Dečani Monastery); WHC Decision-04/28.COM/14B REV, p. 28; WHC Decision 30 COM 8B.53 (Approval of the extension of the Dečani Monastery, to include the Patriarchate of Peć Monastery, Gračanica Monastery and the Church of the Virgin of Ljeviša); WHC Decision 30 COM 8B.54 (Inscription of the Medieval Monuments in Kosovo on the List of the World Heritage in Danger); WHC Decision 30 COM 8C.1 (Update of the World Heritage List in Danger); Medieval Monuments in Kosovo (Serbia) (C 724 bis).

⁴⁷⁶ Prof. Ass. Dr. Arsim Canolli, Anthropologist, University of Prishtina, Departement of Anthropology.

statehood. This can be witnessed continually in the Serbian political discourse, academic literature and media".

In the second hypothesis (b), some arguments related to its plausibility can be raised. Indeed, how can we explain and confer credibility to this hypothesis if in other dangerous instances of ongoing political conflicts for the exercise of sovereign powers UNESCO took very different positions? There is a similarity with the case of the Old City of Hebron, when the enactment of a law dealing with the protection of tangible heritage followed UNESCO's inclusion of the site in the List of the World Heritage in Danger. There is also a profound divergence from the decision taken by UNESCO: there is a different consideration of the element of contestation, a different outcome of this evaluation process, and a different use of the List of the World Heritage in Danger. Let us think about the position of UNESCO in the case of the Old City of Jerusalem or in the case of the David Gareji Monastery⁴⁷⁷: the background of the contestation is strikingly similar, religious and political considerations are involved, but the outcome and the impact of UNESCO's decision is patchy.

This different use of the instruments created by UNESCO, the relevance of the element of contestation and the evaluation of the OUV in contested religious heritage, suggest that it is not possible to apply the nomination rules in a purely scientific perspective. On the one side, the object of these decisions is highly sensitive from a political, cultural, and religious point of view: in other words, there is a consistent subjective component. On the other side, since international law does not seem to provide adequate solutions, emphasis should be added on the component of the exercise of discretionary powers by UNESCO, either in an administrative or in a technical conception. This impossibility of evaluating contested religious heritage in a scientific and impartial way becomes relevant in this non-physiologic circumstance: indeed, as referred to by Julian Huxley, there is an "impossibility of UNESCO producing the rabbit of political peace out of a cultural and scientific hat"⁴⁷⁸.

⁴⁷⁷ For more details, see Chapter II, Paragraphs 1.2 (The Tentative List in Ordinary and Disputed Circumstances: The Cases of the Historic Centre of Lucca, the Old City of Jerusalem and the Complex of the David Gareji Orthodox Monasteries and Hermitages).

⁴⁷⁸ L. MESKELL, *A Future In Ruins: UNESCO, World Heritage, and the Dream of Peace*, Oxford University Press, 2018, p. 117.

3. Intangible Heritage as a Tool to Claim Contested Tangible Heritage: Rituals, Iconography, Liturgies and Miraculous Events as Proof of the OUV of the Medieval Monasteries

The value attributed to religious cultural heritage of Outstanding Universal Value is emphasized by the presence of intangible elements. Although tangible and intangible heritage has been so far regulated as legally separated fields in UNESCO's practice, there are many examples of how intangible heritage has progressively become a substantial part of UNESCO's nomination processes⁴⁷⁹.

Religious rituals, iconography, miraculous events and liturgies are particularly vigorous elements in the case of the Medieval Monuments of Kosovo and Metohia. In this regard, especially in circumstances of conflict between States, it becomes very interesting to understand how ICH has grounded and strengthened UNESCO's decisions dealing with disputed religious heritage. Several issues are to be tackled in the case of the Medieval Monuments of Kosovo and Metohija.

Most of the sacred/holy places in Kosovo and Metohia are traditional places of gathering of local, regional or even national significance, in which Serbian Orthodox Christians experience *sabornost* (conciliarism, catholicity, a unity of persons in a loving fellowship in which each member retains freedom and integrity without excessive individualism), is an important dimension of social, political and religious significance for them. Each of the old and well-known churches represents such a holy gathering place, so that it is irreplaceable for Serbian orthodox believers who reside both in neighbouring areas as well as further away. Such holy places are called *svetinje* (sanctities)⁴⁸⁰. It is remarkable that the strong impulse for pilgrimage is felt even by persons who do not consider themselves deeply religious, and even by those who are not

⁴⁷⁹ For more details on a general perspective, see Chapter III, Intangible Cultural Heritage as an Instrument to Claim Contested Religious Heritage: New Legal Profiles and Problematic Issues related to Rituals and Architectural Techniques of Construction in UNESCO's Practice.

⁴⁸⁰ If one of the *svetinje* is destroyed, there are great chances that the local community would depart the region. For that reason, such holy places are particularly attractive targets for inflicting damage and destruction, Benzo Ferrari, p. 210; S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V. VASIĆ, A. FULGOSI, B. JOKIĆ, The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia, Faculty of Law, University of Belgrade, Belgrade, 2010;

orthodox or Christians at all, most often in association with a hope of being cured from an illness⁴⁸¹.

The religious and political majesty of the Monastery of Dečani derives from the fact that this is a place of gathering, pilgrimage⁴⁸², miracles and healing: UNESCO's nomination dossier implicitly takes in consideration these aspects. More specifically, the iconography, the depiction of liturgical scenes, the portraits of bishops, prophets and archangels⁴⁸³, and the historical account that King Stefan Dečanski was buried there are of great relevance in the nomination dossier⁴⁸⁴. The relic of the king is believed to cause unnatural events and phenomena⁴⁸⁵, and this has generated the belief that the cult of relics among Serbs has sorts of miraculous or magical effects. This is an integral part of the holy persons' cults, and moreover, the *announced* bodies could belong only to State Rulers and heads of the Church, thus creating an inextricable link between religion (that includes the rituals practiced by the SOC), politics/dynasties, and the tangible/territorial dimension of a holy site.

This is an important step of UNESCO's decision. Both Serbs and Kosovars practice this ritual of the crawling under the shrine of the Holy

⁴⁸¹ S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ed. Silvio Ferrari and Andrea Benzo, Cultural Diversity and Law, Ashgate Publishing Company, Burlington, 2014, p.210.

⁴⁸² For Serbs, the Dečani Monastery is the third most important destination of pilgrimage, just after Jerusalem and the Hilandar Monastery at Mount Athos. Mass visits began after the canonization of Holy King Stefan Dečanski, just before the mid- 14th century, and have not decreased during the last six centuries. Pilgrimage to the Dečani Monastery is most often made in spring and in late summer through to early autumn. Pilgrims usually remain at the monastery for 5 to 15 days.

⁴⁸³ M. MARKOVIĆ, D. VOJVODIĆ, *Artistic Heritage of the Serbian People in Kosovo and Metohija: History, Identity, Vulnerability, Protection*, Serbian Academy of Arts and Sciences, 2017; B. TODIĆ, *Serbian Medieval Painting: The Age of King Milutin*, Draganić, University of Virginia, 1999; D. T. BATAKOVIĆ, M. VASILJEVIĆ, *The Christian Heritage of Kosovo and Metohija: the Historical and Spiritual Heartland of the Serbian People*, Sebastian Press, 2015.

⁴⁸⁴ *Medieval Monuments in Kosovo (Serbia)* (C 724 bis).

⁴⁸⁵ The relics of Serbian holy persons could be in form of bones or entire bodies. Examples of such embalmed bodies were those of King Stefan Prvovenčani, Archbishop Sava Nemanjić, Queen Jelena, King Milutin, King Stefan Uroš III Dečanski, Prince Lazar, archbishops Arsenije and Jevstatije I. After the announcements, bodies of Serbian holy persons were placed in a shrine called *kivot* (casket-like object with the specific purpose of storing a holy person's relics; the only Middle Ages specimen preserved to this day is the *kivot* of King Stefan Uroš III Dečanski, which is a representative specimen of artistic woodwork from the 14th century), which was placed in front of the altar in the church of the Visoki Dečani Monastery.

King Stefan Uroš III (as it is raised above ground)⁴⁸⁶ at the Visoki Dečani Monastery, and they do believe that this is a remedy to cure many illnesses, to keep good health and particularly to secure an easy delivery of newborns⁴⁸⁷. Surprisingly though, it is remarkable that the ritual and the belief are recognized as Serbian by UNESCO, and this aspect grounds the claim on the tangible heritage and on the territory where this heritage is located. More specifically, the interpretation of the cult of the holy king Stefan Dečanski as an identity *topos* of Serbian public collective memory is a tool and a main motivation to accommodate a political and theological notion of the past in the religio-political circumstance of present times⁴⁸⁸. Intangible Heritage stands out again when the three other monuments were considered for nomination in the Serbian List of the World Heritage in Danger in 2006.

The Monastery of Gračanica is another place of gathering that hosts religious celebrations, and some of them are jointly celebrated with Kosovar Albanians as well⁴⁸⁹: these religious rituals find their foundations

⁴⁸⁶ G. DUIJZINGS, *Religion and the Politics of Identity in Kosovo*, Hurst & London, 2000, pp. 66, footnote 1 (The Muslim Gypsy Pilgrimage to Gračanica).

⁴⁸⁷ S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ed. Silvio Ferrari and Andrea Benzo, Cultural Diversity and Law, Ashgate Publishing Company, Burlington, 2014, p. 214; T. VUKANOVIĆ, *Srbi na Kosovu [Serbs in Kosovo]*, Nova Jugoslavija, 1986.

⁴⁸⁸ S. MARJANOVIĆ-DUŠANIĆ, *The Holy King: The Cult of St. Stefan of Dečani*, Belgrade, SANU, Balkanološki Institut, 2007; D. T. BATAKOVIĆ, *The Foreign Policy of Serbia (1844-1867): Ilija Garašanin's Načertanije*, Institute for Balkan Studies, Serbian Academy of Sciences and Arts, 2014; D. POPOVIĆ, *Pod okriljem svetosti: kult svetih vladara i relikvija u srednjovekovnoj Srbiji (Under the wing of holiness: cult of holy rulers and relics in Medieval Serbia)*, Balkanološki Institut, SANU: Posebna izdanja 2006. D. VOJVODIĆ, *Prilog poznavanju ikonografije i kulta sv. Stefana u Vizantiji i Srbiji (Contribution to knowledge of iconography and cult of St. Stefan in Byzantine and Serbia)*, *Zidno slikarstvo manastira Dečani: građa i studije*, SANU: odeljenje istorijskih nauka, Posebna izdanja 1995, pp. 537–565.

⁴⁸⁹ G. DUIJZINGS, *Religion and the Politics of Identity in Kosovo*, Hurst & London, 2000, pp. 66–69 (The Muslim Gypsy Pilgrimage to Gračanica); A. KOSTER, M. BAX, *Power and Prayers: Religious and Political Processes in Past and Present*, VU University Press, 1993; D. MILOŠEVIĆ, *Gračanica Monastery*, Institute for the Protection of Cultural Monuments of the Socialist Republic of Serbia, 1989; S. ČURČIĆ, *Gračanica and the Cult of the Saintly Prince Lazar*, *Recueil des travaux de l'Institut d'études byzantines*, XLIV, 2007; S. ČURČIĆ, *Gračanica. Istorija i arhitektura*, Beograd i Priština 1988 (Gračanica. King Milutin's Church and its Place in Late Byzantine Architecture), University Park and London, 1979; Every year on June 28 (according to the Gregorian calendar) several thousands (previously several tens of thousands) of Serbs gather to attend the Vidovdan [St Vitus' Day] Divine Service. Vidovdan is one of most important Serbian feasts. Its importance stems primarily from the Battle of Kosovo of 1389, when, according to tradition, Prince Lazarus died on the battlefield and thus favoured the Kingdom in Heaven over the Kingdom on Earth. Since the beginning of the 20th century, St Vitus' Day also became a Church feast in honour of the Holy Martyr Prince Lazarus; S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the*

on historical events, that became symbolic in the Serbian nationalistic consciousness (Battle of Kosovo, 1389). When the Serbian medieval empire was defeated and colonised by the Turks, the SOC was the only Institution that survived the Ottoman domination for the existence of the Monastery. From this Serbian political and historical symbolism, the cult of Saint Prince Lazar and the Patron King Milutin rapidly spread, and especially from the '80s onwards, under conditions of rising ethno-religious tensions, the monastery became the political centre of gatherings for Serbian Nationalists and Kosovo Serbs. Nonetheless, several historical inaccuracies are discovered by scholars around the cult and the myth of Saint Prince Lazar⁹⁰⁰, and yet, it has a relevance both in the Serbian consciousness and in UNESCO's nomination dossier.

The Monastery of the Patriarchate of Peć includes all the traits of a holy place: it is a centre of a Saint's cult (St. Arsenije I, Archbishop of Serbia from 1233 to 1263), as well as a place of gathering and pilgrimage, and it is believed to possess miraculous and healing powers⁹⁰¹.

Mediterranean, Ed. Silvio Ferrari and Andrea Benzo, Cultural Diversity and Law, Ashgate Publishing Company, Burlington, 2014, p. 210.

⁹⁰⁰ The relics of Saint Prince Lazar have only temporarily rested in Priština (Church of the Ascension), and not in Gračanica. Additionally, the folk tradition of the inscription (arcosolium decoration) mentioning that Lazar's body was temporarily deposited at Gračanica, seems to have been made long after 1389, and Lazar died during the Battle of Kosovo in 1389, S. ČURČIĆ, Gračanica and the Cult of the Saintly Prince Lazar, *Recueil des travaux de l'Institut d'études byzantines*, XLIV, 2007.

⁹⁰¹ Several years after his death, miraculous phenomena started happening on his grave. Arsenije I "appeared" at the Patriarchate of Peć in the form of a strong earthquake that was heard and felt in the church one night. When the monks entered the church, they saw Arsenije's tomb broken apart. Together with archbishop Sava II, the monks opened the tomb, removed the relics and placed them in a casket in the Church of St. Peter and Paul within the Monastery. The first legendary miracle in connection with the relics of St. Arsenije I happened when a monk with a throat ailment visited his grave and was cured after touching the relics. Since then, many stories and legends on miraculous healings of ill persons (deaf-and-mute, mentally ill, with ailments of the digestive system) who have touched the relics of this holy person appeared. The cult of St. Arsenije I kept growing and thus many people began to use his holy name when making oaths and vows. Some miraculous events also happened on the grave of this saint from at the time of the attack by the Bulgarian tsar Šišman and his entry into Metohia. Half a century after the death of Arsenije I, a folk cult developed on top of the cult recognized by the Church. Ill and frail people would lie near the shrine for several hours, or would leave parts of their clothing on or around the shrine, sometimes overnight, hoping for cure when they put the clothing on. The monks read prayers in support of the healing; S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ed. Silvio Ferrari and Andrea Benzo, Cultural Diversity and Law, Ashgate Publishing Company, Burlington, 2014, p. 215; S. PETKOVIĆ, *Manastir Pecka patrijaršija i njegove spahije* (Monastery Patriarchy of Peć and its landowners), *Balkanica* 1982–83, No. 13–14, pp. 353–9; T. VUKANOVIĆ, *Srbi na Kosovu* [Serbs in Kosovo], Nova Jugoslavija, 1986; S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V.

Great symbolic and intangible value is attached to the Holy Virgin of Ljeviša as well, transformed into a mosque and then restored several times⁹⁰².

A major detail of UNESCO's decision is related to *criterion (iv)*, whereby the Monuments are deemed to reflect the development of a discrete Palaiologian Renaissance style of architecture and mural decoration in the Balkans in the 14th century, when the combined forces of Church and State were harnessed to create a strong identity for Serbia, in line with its political orientations⁹⁰³. Indeed, religious architecture, intended as intangible heritage, is used to strengthen the link between Church, State, and re-creation of the Serbian identity: despite the location of the monuments in a territory that is no longer under the effective sovereignty of Serbia, and despite the widespread of the Palaiologian Renaissance style of architecture and mural decoration throughout the Balkans, and yet, the site has been listed as Serbian because this architectural technique of construction has a Serbian authentic and original feature. From these considerations, it is indeed necessary to explore some peculiar aspects of this tricky case.

First, the political circumstances and the decisions occurring in this case study are not and should not be detached from the strong link existing between Eastern Orthodoxy, religious affiliation and Serbian national identity⁹⁰⁴. Indeed, the rituals, the iconography, the liturgies and the miraculous events are a substantial part of the nomination dossier of the four contested monuments in Kosovo. These elements are strikingly intense in the nomination dossier of the Monastery of Dečani and even

VASIĆ, A. FULGOSI, B. JOKIĆ, *The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia*, Faculty of Law, University of Belgrade, Belgrade, 2010, p. 27; Serbian Orthodox Diocese of Raška and Prizren, <http://www.kosovo.net/default1.html>.

⁹⁰² A. DAVIDOV TEMERINSKI, *Church of the Holy Virgin of Ljeviša in Prizren*, Institute for the Protection of Cultural Monuments of Serbia, Belgrade, 2017.

⁹⁰³ WHC Decision 28 COM 14B.47 (Nominations of Cultural Properties to the World Heritage List, Dečani Monastery); WHC Decision-04/28.COM/14B REV, p. 28; WHC Decision 30 COM 8B.53 (Approval of the extension of the Dečani Monastery, to include the Patriarchate of Peć Monastery, Gračanica Monastery and the Church of the Virgin of Ljeviša); WHC Decision 30 COM 8B.54 (Inscription of the Medieval Monuments in Kosovo on the List of the World Heritage in Danger); WHC Decision 30 COM 8C.1 (Update of the World Heritage List in Danger); *Medieval Monuments in Kosovo (Serbia) (C 724 bis)*, criterion (iv).

⁹⁰⁴ J. B. TAYLOR, *Religious Ideology and National Identity in the Balkans*, *Islamic Studies*, Vol. 36, No. 2/3, Special Issue: ISLAM IN THE BALKANS (Summer/Autumn 1997), pp. 429-438; P. TROCH, *The Intertwining of Religion and Nationhood in Interwar Yugoslavia: The School Celebrations of St Sava's Day*, *The Slavonic and East European Review*, Vol. 91, No. 2 (April 2013), pp. 235-261.

more in the nomination dossier of the Monastery of Gračanica, the Monastery of the Patriarchate of Peć, and the Church of the Holy Ljeviša. Even though the link is not made explicit, Intangible Cultural Heritage becomes instrumental to strengthen the link between Serbian identity, religious practices and tangible heritage (Medieval Monuments) located in a territory that is no longer Serbian. UNESCO, through the application of its instruments, is conferring credibility to the hypothesis that intangible heritage is instrumental to political discourses and national agendas even though many rituals are practiced by Kosovar Muslim as well⁴⁹⁵.

In this regard, according to the interview made with Professor Arsim Canolli⁴⁹⁶, I asked the following question: *The rituals celebrated in the Monasteries and the liturgic representations are consistently emphasized in the nomination dossier (Nomination File No. 724, Dečani Monastery, 2004; Nomination File No. 724bis, Patriarchate of Peć Monastery, Gračanica Monastery and the Church of the Virgin of Ljeviška). They are linked to the political and historical supremacy of Serbia in the region and they are recognized as Serbian by UNESCO. Is intangible cultural heritage used as an instrument to claim tangible contested religious heritage?*

He replied that:

Yes – Albanians converted to Islam and therefore, Serbs continued to claim that the monuments are theirs only. The rituals and all liturgy are argued to be a “living heritage”.

Second, intangible heritage intended as living heritage seems to be used by UNESCO in order to strengthen the Serbian Outstanding Universal Value of the complex of Medieval Monuments inscribed in the World Heritage List. In this perspective, the instrumental role of intangible heritage is progressively becoming a component of heritage sites' nomination dossiers. On the one side, this statement is true because the territory and the religious cultural heritage are contested between two distinct political entities (Serbia and Kosovo). On the other side, this suggests the impossibility of evaluating both ICH and the OUV in a neutral and impartial way: indeed, there is a systematic and fundamental clash between the universal value of cultural heritage and the attribution of a nationality to cultural heritage, especially in cases of pathologic political contestation. In this perspective, the discretionary powers that global institutions can use, either in an administrative or in

⁴⁹⁵ G. DUIJZINGS, *Religion and the Politics of Identity in Kosovo*, Hurst & London, 2000.

⁴⁹⁶ Prof. Ass. Dr. Arsim Canolli, Anthropologist, University of Prishtina, Departement of Anthropology.

a technical sense, play a fundamental role, and they are useful to explain that these decisions dealing with the OUV of contested religious cultural heritage, rituals, and beliefs are subjective in their core contents and extremely sensitive: in other words, the application of canons and standards can be heavily criticized.

Third, if ICH follows UNESCO's listing mechanisms, including the apparent attempt of evaluating in an objective way something that is intrinsically subjective, additional issues are related to the use of intangible heritage as a tool and instrument to attribute a national identity to those manifestations of the intangible heritage. Nevertheless, this approach clashes with the nature of intangible heritage, and namely, the fact that it should not be enclosed or forced within political and territorial borders. This aspect, especially when UNESCO takes decisions based also on intangible cultural heritage, induces us to re-think more carefully to the erosion of the traditional principle of sovereignty, that is weakened through the rules set forth by UNESCO: it is not clear whether this is the object of a general practice emerging in parallel with the mutation of the values constituting the OUV of sites, or rather, if this mutation is limited to cases of conflict between States. In the last hypothesis, the political impact is of great import.

4. Critical Comments, Relevant Issues and the Impact of UNESCO's Decision

First, we should wonder if Serbian Orthodox sacred places, along with all the related structures, objects and sites, are used as tangible medium throughout which people could advance political and nationalistic claims. The decision is taken by UNESCO in a peculiar context. On the one side, after the instalment of the UN administration in Kosovo, the main international treaties, the law of occupation (applicable in Kosovo at that time and to nomination dossier), and the Serbian law were applicable to the Serbian Orthodox Monuments. On the other side, the public authority in Kosovo was exercised by UNMIK and KFOR, thus preventing the former territorial sovereign from performing any act of power and effective control in the territory. Afterwards, following the declaration of independence of Kosovo in 2008, the protection of the Medieval Monuments was conferred to the EULEX (European Union Rule of Law Mission in Kosovo). In this anomalous and sensitive context, both in a political, legal and cultural perspective, are cultural values efficiently assessed in a scientific and impartial way? Do legal tools, canons, and procedures set forth by UNESCO guarantee a neutral and impartial evaluation of subjective values that are contested between Serbia and Kosovo? Is the

identification of the Outstanding Universal Value manipulated according to the prevailing interests in a circumstance of struggle for the exercise of sovereign powers through cultural heritage? Is this use representing a physiology or a pathology related to a peculiar use of the List of the World Heritage in Danger?

In this regard, according to the interview made with Professor Arsim Canolli⁴⁹⁷, I asked the following question: *If the evaluation made by UNESCO's Institutions is neutral, impartial and based on scientific and standardized criteria, how can the Medieval Monuments located in Kosovo have a Serbian identity and Serbian values?*

He replied that:

"UNESCO is doing something unprecedented with Kosovo. It recognizes Kosovo Medieval Monasteries and churches (4 of them included in 2004) partially and unjustly as Serbian. It provides Serbia and Serbian politicians with the reason to foster their nationalistic agenda, based on the fact that UNESCO recognized those monasteries and churches as Serbian. This does not help peace and reconciliation between Serbs and Albanians. All cultural heritage in Kosovo belongs to all people of Kosovo and humanity. Instead of building "peace in the minds of men" as stated in its constitution, UNESCO is fuelling hatred in the minds of men, especially in the minds of Serbian politicians and Serbian Orthodox Church priests".

Second, in a logic and consequential way, if the Outstanding Universal Value lacks of impartiality in the evaluation made by Global Institutions, is the Outstanding Universal Value really universal? In the context of the disputed Medieval Monuments of Kosovo and Metohia, the postulation of the universal value of cultural heritage, referred to as the values gained by this cultural heritage which is acknowledged in a "general and worldwide" perspective, becomes extremely arguable and even contradictory. Cultural heritage is said to belong to the mankind as a whole and it is deemed to have a universal appreciation. What happens to the OUV of those contested religious sites that are used to strengthen or weaken specific national identities? Accordingly, with regard to the inclusion of heritage sites in the World Heritage Sites List, and, more specifically to the Four Medieval Monasteries, there is a general view that emphasizes the *universal civilizational* value of these sacred places.

⁴⁹⁷ Prof. Ass. Dr. Arsim Canolli, Anthropologist, University of Prishtina, Departement of Anthropology.

This heritage is said to belong to the whole humanity and needs to be protected and saved regardless of the culture and confession it belongs to, according to the principle of “universal heritage of mankind”, that states its universal appreciation and evaluation⁴⁹⁸. Interestingly though, the universal view clashes with the approach adopted by UNESCO in the process for the nomination of the Medieval Monuments. Indeed, Kosovo is claimed as a Holy Land to Serbs, both in its historical-national, cultural-artistic dimension and even more in the spiritual-religious context. The Serbian Orthodox Church is regarding Kosovo and Metohija as crucial for the national, spiritual, cultural and theo-anthropoc identity of the Serbs⁴⁹⁹.

Third, what is the political impact of this decision? What is the use of the instruments (List of the World Heritage in Danger) and procedures established by UNESCO? This particular case represents an anomaly in the international cultural heritage law scenario, and it implies a more careful reflection on the use of those global instruments. These instruments are set forth by UNESCO and are applied by the Serbian State with the aim of enhancing specific political identities in a pathologic context of competing sovereignty. This decision is contradictory under two perspectives.

a) There is a clash with the rules of procedure and with the operational guidelines elaborated by UNESCO and forged by States. The main reference is to the rules on the clarity of borders/ adequately delineated boundaries⁵⁰⁰ and on the existence of adequate long-term legislative, regulatory protection and management rules⁵⁰¹ already applicable to the property selected for nomination. It is true that at the time of the nomination Kosovo was not a member of UNESCO and did not have a strong legal background that allowed for the inclusion of its sites in the World Heritage List. It is also true that the List of the World Heritage in Danger has been used throughout a State-Building Process, in a legally uncertain and transitory situation. This situation of legal uncertainty and lack of clarity of borders was common also to the Case of the Old City of Hebron: the enactment of the first Decree Law on Tangible Heritage occurred only in 2018⁵⁰², and yet, notwithstanding the claim by the Israeli

⁴⁹⁸ S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V. VASIĆ, A. FULGOSI, B. JOKIĆ, *The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia*, Faculty of Law, University of Belgrade, Belgrade, 2010, p.8.

⁴⁹⁹ Holy Assembly of the Bishops of the SOC, 2003.

⁵⁰⁰ Operational Guidelines, 2002, para. 16-17; Operational Guidelines, 2005, para. 97;

⁵⁰¹ Operational Guidelines, 2002, para. 24, lett. b, ii.

⁵⁰² The Law entered into force, after it was signed by President Mahmoud Abbas and published on the Official Gazette in April 2018, Decree Law on Tangible Cultural Heritage n. 11/2018, available at UNESCO Digital Resources.

State, the site was included in the Palestinian List of the World Heritage Sites in Danger in 2017. Once that Kosovo declared its independence and started exercising autonomous institutional functions, also in the field of cultural heritage legislation, both the legal instability and the title to sovereignty of the Serbian State became more consistent. The instrument that made this possible was the List of the World Heritage in Danger, intended as a mechanism to justify and enforce a situation of anomalous conflict between sovereign powers.

b) Connected to the problem illustrated earlier, there is another consistent friction with one of the pillars set forth in the 1972 WHC: that of the respect of the sovereignty, and the territorial integrity of States where the natural and cultural heritage sites are located⁵⁰³. These decisions have indeed a political impact on major issues, such as those dealing with the struggle for the exercise of sovereign powers, statehood and self-determination claims advanced by Kosovo. The status of Kosovo was still extremely controversial at the time of the nomination of the Medieval Monuments, and the regime on the dismemberment of the SFRY, based on the principle of *uti possidetis*, did not grant the automatic right to secede from the Serbian province⁵⁰⁴. Accordingly, the

⁵⁰³ Art. 6 states that: “Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate”, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; N. WALKER, The Sovereignty Surplus, *International Journal of Constitutional Law*, Volume 18, Issue 2, July 2020, Pages 370–428, I-CONS JOURNAL; J. H. H. WEILER, The political and legal culture of European integration: An exploratory essay, *International Journal of Constitutional Law*, Volume 9, Issue 3-4, October 2011, Pages 678–694, I-CONS JOURNAL; A. BAR, A nation of nations? A reply to Joseph H.H. Weiler, *International Journal of Constitutional Law*, Volume 17, Issue 4, October 2019, Pages 1307–1314, I-CONS JOURNAL.

⁵⁰⁴ This principle of international law originated in Roman Law and it literally means those who possess or those who may possess. It implies that territory and other property remains with its possessor at the end of a conflict, unless otherwise provided for by treaty. If such a treaty does not include conditions regarding the possession of property and territory taken during the war, then the principle of *uti possidetis* will prevail. This principle became relevant in post-colonial contexts (Africa, Asia, Latin America), occupation contexts (Israel) and it has been applied in a revisited version to the case of Yugoslavia after its dismemberment, G. BALLADORE PALLIERI, *Diritto internazionale pubblico*, 7th rev. ed., Milano, 1956; J. L. BRIERLY, *The Law of Nations*, 6th edition, edited by Waldock, Oxford, 1963; H. KELSEN, *Principles of International Law*, New York, 1952; H. GROTIUS, *De Jure Belli ac Pacis (libri tres)*, the Classics of International Law, edited by J. B. Scott, translated by F. W. Kelsey, Oxford, London, 1925; H. GROTIUS, *De Jure Praedae Commentarius*, the Classics of International Law, edited by J. B. Scott, translated by G. L. Williams, Oxford, London, 1950, vol. 1; H. GROTIUS, *Mare Liberum*, the Classics of International Law, edited by J. B. Scott, translated by Magoffin, New York, 1916; H. GHEBREWEBET, *Identifying Units of Statehood and Determining International*

initial international framework for Kosovo was perceived only as humanitarian assistance, with the aim of securing peaceful coexistence between the conflicting communities of Serbs and Albanians inhabiting the region. Meanwhile, the institutional, political and legal structure of Kosovo, became progressively more consistent, thus including also cultural heritage provisions. More specifically, in the process for Kosovo's independence, the adoption of human rights and cultural heritage obligations constituted the fundamental basis for the constitutional framework of the new state⁸⁸.

Boundaries: A Revised Look at the Doctrine of *Uti Possidetis* and the Principle of Self-Determination", Verlag Peter Lang, 2006; P. R. HENSEL, M. E. D. ALLISON, A. KHANANI, Territorial Integrity Treaties, *Uti Possidetis*, and Armed Conflict Over Territory, Conflict Management and Peace Science, Special Issue: Building Synergies: Institutions and Cooperation in World Politics, Vol. 26, No. 2, 2009, pp. 120-143; J. GILBERT, Constitutionalism, ethnicity and minority rights in Africa: A legal appraisal from the Great Lakes region, *International Journal of Constitutional Law*, Volume 11, Issue 2, April 2013, Pages 414-437, *I-CONS JOURNAL*. M. KUMM, Constituent power, boundaries and identity: On the justificatory depth of constitutionalism - A rejoinder to Neil Walker, *International Journal of Constitutional Law*, Volume 14, Issue 4, 1 October 2016, Pages 914-924, *I-CONS JOURNAL*; V. C. JACKSON, Comparative constitutional federalism and transnational judicial discourse, *International Journal of Constitutional Law*, Volume 2, Issue 1, January 2004, Pages 91-138, *I-CONS JOURNAL*.

⁸⁸ After NATO military intervention and UN Security Council Resolution 1244⁸⁹, the civil administration was passed over to the United Nations Interim Administration Mission in Kosovo (UNMIK), which was also responsible for drafting the Kosovo constitutional system. Among other issues, the provisional institutions of Kosovo had to settle questions concerning the protection of cultural heritage, which even under international administration was still subject to brutal attacks and destruction. This primarily concerned the medieval monasteries of the Serbian Orthodox Church. The Rambouillet Agreement introduced certain provisions in respect of the status of cultural heritage. Despite the rejection of the agreement by Serbia, its principles in respect of cultural heritage were developed in subsequent international plans for Kosovo, first, in 2001 by the Constitutional Framework for Provisional Self-Government and later by the 2003 "Standards for Kosovo", which contained a set of provisions on the protection of cultural heritage. However, the provisional administration did not effectively protect Serbian cultural heritage against repeated attacks in 2004. Therefore, the 2004 Kosovo Standard Implementation Plan (KSIP), provided for priority actions, including the inscription of the Dečani and Gračanica Monasteries under the List of the Serbian World Heritage Sites in Danger. The protection of cultural heritage "was given added emphasis and separate treatment as an "extra" standard". In implementing the Standards, the Assembly of Kosovo adopted the Cultural Heritage Law (CHL), which regulated the internal organization of legal infrastructure covering "the protection, preservation and promotion of the cultural heritage of Kosovo". This introduced a very broad definition of cultural heritage under protection, including tangible as well as intangible manifestations (Article 2). In 2007, the UN Comprehensive Proposal for the Kosovo Status Settlement⁹⁰ indicated the issue of cultural heritage as one of the criteria for full self-governance of the territory. Accordingly, it postulated a special framework for the protection of Serbian patrimony in the case of a definite separation from Serbia (Annex V, Religious and Cultural Heritage). In this way, the process of gaining independence was strictly conditioned by the acceptance of cultural heritage obligations in respect of sites of major importance for both the Serbian minority living in Kosovo and the Republic of Serbia, the predecessor state. However, these efforts had an effect more at a constitutional level, rather than at an international level, including the relationship

In this regard, according to the interview made with Professor Arsim Canolli⁵⁰⁶, I asked the following question: *With reference made to the nomination (Nomination File No. 724, Dečani Monastery, 2004) and later extension of the complex of monuments (Nomination File No. 724bis, extending the nomination to the Patriarchate of Peć Monastery, Gračanica Monastery and the Church of the Virgin of Ljeviša, 2006), what is the political relationship established between UNESCO and the State whose property is included in the World Heritage List? According to the nominations of the Medieval Complex of Monuments in Kosovo, is the principle of territorial integrity of States stretched or violated?*

He replied that:

“Kosovo is not a member of UNESCO. UNESCO is a UN organization. Kosovo is not a member of UN. As such, UNESCO is falling into Serbia’s trap by recognizing Kosovo monuments as Serbian and including them in their list. How can UNESCO include Kosovo monuments as Serbian? Serbia has no jurisdiction over Kosovo. Who is UNESCO going to talk to in the case of the monuments? Whom they call? This is total arbitrariness and unrealistic”.

Indeed, differently from the Palestinian case, the nomination of the Medieval Monuments of Kosovo and Metohia has the impact of weakening the entity of Kosovo through the re-establishment and confirmation of the Serbian presence in a territory that is no longer Serbian. More specifically, UNESCO recognizes that the Monastery is a good propaganda for Kosovo’s heritage, but it also recognizes that the contested site is the cradle of the Serbian cultural identity and, for this

between UNESCO and Kosovo. The adopted text of the Constitution of independent Kosovo sets out extensive obligations with regard to the multi-ethnic cultural heritage of that state. Accordingly, “the Republic of Kosovo ensures the preservation and protection of its cultural and religious heritage” (Article 9) and promotes “the preservation of the cultural and religious heritage of all communities as an integral part of the heritage of Kosovo”. Furthermore, it “shall have a special duty to ensure an effective protection of the entirety of sites and monuments of cultural and religious significance to the communities” (Article 58.5); Assembly of Kosovo, Cultural Heritage Law, No. 02/L-88, 9 October 2006; The Kosovo Standards Process 2003-2007, UNMIK; UN Doc. S/2007/168/Add.1, Comprehensive Proposal for the Kosovo Status Settlement, 26 March 2007 (The Ahtisaari Plan); ICJ, Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for an Advisory Opinion), 22 July 2010; M. WELLER, *The Kosovo Constitution and Provisions for the Protection of Minorities in Europe*, European Yearbook of Minority Issues, No. 6, 2007, pp. 485–527.

⁵⁰⁶ Prof. Ass. Dr. Arsim Canolli, Anthropologist, University of Prishtina, Departement of Anthropology.

reason, it belongs to the Serbian State⁵⁰⁷. In particular, as it happens for the case of the Old City of Hebron, an interaction between the classical rules of international law and the new rules of UNESCO takes place through decisions dealing with contested religious heritage. In this peculiar nomination, the interaction between the two body of law reveals that the first group of norms is inadequate for the resolution of the conflict between Kosovo and Serbia, while the new global rules applied by UNESCO have demonstrated a concrete ability to bypass the traditional application of the rules on the territorial integrity and sovereignty of states. This is a conflict of sovereignty between a new-born State (Kosovo) and an already existing State with a strong cultural, political, nationalistic and legal background (Serbia). In this regard, UNESCO's rules have for long been perceived as disconnected from international law. Moreover, the relationship between politics, global institutions, disputing States and contested heritage cannot be interpreted merely from a political perspective. It cannot either be interpreted from a distortive perspective that leads us to consider contested heritage as a pure instrument of prevalence in conflicts of sovereignty between states. To a more accurate analysis though, the decision of including the Medieval Monasteries in the Serbian List of the World Heritage Sites in Danger is in practice a political choice that demonstrates a strong continuity and complementarity, and at times even a friction, with international law. Additionally, the actual framework for the protection of Serbian cultural heritage in Kosovo, mainly sees the interaction between UNESCO and Serbia. This is confirmed also by the decision taken by Europa Nostra and EIB Institute, that include the Dečani Monastery in the List of the Europe's 7 Most Endangered Heritage Sites in 2021. This decision met the criticism of Kosovo Institutions and CSOs: "The data presented in the nomination file are mainly extracted from Serbian Institutions' reports, which for political purposes have been already proven to falsely present the reality of Kosovo"⁵⁰⁸. Indeed, it is remarkable that all UNESCO World Heritage Sites in Kosovo's territory are emphasized as Serbian legacy and are of great religious and cultural importance for ethnic Serbs (Dečani

⁵⁰⁷ UNESCO, Cultural Heritage in South-East Europe: Kosovo; Protection and Conservation of a Multi-Ethnic Heritage in Danger; Mission Report, 26-30 April, 2004; ICOMOS, Advisory Body Evaluation, No. 724 and 724-bis, Dečani (Serbia-Montenegro), 2004.

⁵⁰⁸ The Achensee Steam Cog Railway (Tyrol, Austria), the Historic Cemetery Complex of Mirogoj (Zagreb, Croatia), the Five Southern Aegean Islands (Greece), The Giusti Garden (Italy), the Central Post Office in Skopje (North Macedonia), the San Juan de Socueva Chapel and Hermitage (Cantabria, Spain), and the Dečani Monastery (Kosovo), are among the other most endangered cultural heritage sites included, Europa Nostra and EIB Institute Announce Europe's 7 Most Endangered Heritage Sites 2021, Europa Nostra, 08/04/2021; Monastery's Inclusion on Endangered Sites List Irks Kosovo Leaders, Balkan Insights, 09/04/2021; Kosovo Civil Society Criticise Monastery's Inclusion on Endangered List, Prishtina Insight, 16/04/2021.

Monastery, Patriarchate of Peć, Gračanica Monastery as an extension of Dečani and the Church of the Lady of Ljeviša). Conversely, since Kosovo is not a UNESCO member, there is not even a single site in the process of being listed under the list of Kosovo⁹⁹. It is true that Kosovo is not a Member of UNESCO, but it is also true that heritage of Muslim and Ottoman legacy in Kosovo has not been so far considered by UNESCO as to enforce the new-born State of Kosovo. To say it differently, the instruments, the political, cultural and religious values prevailing in the case of the Serbian Medieval Monuments are not equally transposed for Kosovo's heritage. Differently from the Israeli-Palestinian and Cambodian-Thai cases, it is not possible to say that a balanced World Heritage List was drawn up by conflicting States and UNESCO. This is a pathological and complex context that certainly raises a considerable degree of political, cultural and religious sensitivity.

As previously mentioned, the principle of territoriality seems to be undermined through political decisions that recognize the Serbian sovereignty over contested religious heritage located in a territory that is no longer Serbian. More specifically, not only the principle of territorial integrity is undermined and the classical rules of international law are drained, but they are bypassed and revitalized through UNESCO's set of norms, procedures and flexible understandings of the OUV. If in the Palestinian and Cambodia cases UNESCO's rules and decisions tried to re-establish a balance between two conflicting sovereign States through contested religious heritage, in the case of Kosovo, this set of global rules acted to the detriment of this new country. What is more, after Kosovo has declared its independence from Serbia in 2008, an ambiguous situation without precedent parallel occurred: UNESCO's decision certainly contributed to foment the ambiguity and the political tensions. Serbia does not currently have effective control over the areas in which these sites are located. They were first under UNMIK's administration and KFOR's security and are now in the territory recognized as Kosovo. The latter is sharing its sovereignty with EULEX (European Union Rule of Law Mission in Kosovo) and ICO (International Civilian Office)¹⁰⁰. On the one side, this

⁹⁹ M. HARTMUTH, *De-Constructing a 'Legacy in Stone': Of Interpretative and Historiographical Problems concerning the Ottoman Cultural Heritage in the Balkans*, *Middle Eastern Studies*, Taylor & Francis Ltd., Vol. 44, No. 5, 2008, pp. 695-713; M. TODOROVA, *The Ottoman Legacy in the Balkans*, in G.G. ÖZDOĞAN and K. SAYBASILI (eds), *Balkans. A Mirror of the New International Order*, Istanbul: Eren, 1995, pp. 55.74.

¹⁰⁰ These two institutions were in charge of progressively substituting the functions carried on by UNMIK. The ICO was in charge of overseeing the implementation of the executive functions in line with the Ahtisaari Plan. The EULEX was started its mandate in 2008, and it was a technical body in charge of implementing the security /police, justice and customs

means that the “Kosovo Monument Complex” cannot be preserved but especially not guarded by the Serbian state, thus creating a very peculiar political circumstance where contested religious heritage is again under UNESCO’s remit. On the other side, this means that UNESCO World Heritage Sites in the territory recognized as Kosovo’s institutions are protected and preserved under UNESCO’s framework, notwithstanding the lack of cultural heritage sites labelled as Kosovo heritage sites under UNESCO’s remit.

In no other similar instances of conflict of sovereignties UNESCO recognizes a contested religious heritage site as belonging to a State (Serbia), notwithstanding its location within the boundaries of another sovereign State (Kosovo).

sectors, with monitoring, consultancy, and training functions. The mandate was extended until June 2018.

- *The Case of the Temple of Preah Vihear: Cambodia vs. Thailand*

The Dispute in a Nutshell

The sacred site of Prasat Preah Vihear is located in the disputed border between Cambodia and Thailand. It is the last of the three cases to be discussed in this final part of the dissertation.

“The Temple of Preah Vihear is an ancient sanctuary and shrine situated on the borders of Thailand and Cambodia. Although now partially in ruins, this Temple has considerable artistic and archaeological interest, and is still used as a place of pilgrimage. It stands on a promontory of the same name, belonging to the eastern sector of the Dangrek range of mountains which, in a general way, constitutes the boundary between the two countries in this region — Cambodia to the South and Thailand to the north. Considerable portions of this range consist of a high cliff-like escarpment rising abruptly above the Cambodian plain. This is the situation at Preah Vihear itself, where the main Temple buildings stand in the apex of a triangular piece of high ground jutting out into the plain”⁵¹¹.

On the one side, the dispute mirrors several similarities and interactions with the two other cases of contested religious properties (The case of the Old City of Hebron / Al-Khalil Old Town and the Four Medieval Monuments in Kosovo and Metohija). Infact, it is a religious site and it is contested between Cambodia and Thailand. In 2008, the Temple has been listed as a Cambodian UNESCO World Heritage Site⁵¹². This aspect is once again related to the criticized and dubious use of the nomination process as a political instrument, finalized to assert the Cambodian sovereignty, supremacy and *nationness* over a contested territory. In other words, the choice made by UNESCO in a context of competing sovereignty challenges the neutrality and impartiality of those global instruments set forth by UNESCO, thus putting them in a questionable area. Incidentally, the integrity of those traditional principles of international law embedded in the ICJ's 1962 and 2013

⁵¹¹ ICJ Reports, 1962, p. 15; E. LAUTERPACHT, *International Law Reports*, Vol. 33, London ButterWorths, 1967, pp. 47-155 (Part III- State Territory); P. CAUSAY, *Borders on the Fantastic: Mimesis, Violence, and Landscape at the Temple of Preah Vihear*, *Modern Asian Studies*, Vol. 32, No. 4, October, 1998, pp. 849-890; S. TYLER, *Of Temples and Territory: The ICJ's Preah Vihear Decision and Implications for Regional Dispute Resolution*, *University of District of Columbia Law Review*, Vol. 19, 2016, pp. 133-178.

⁵¹² World Heritage Committee, 31 COM 8B.24 (Inscriptions on the World Heritage List); UNESCO, WHC-11/35.COM/7B. Add.2, *Temple of Preah Vihear (Cambodia)* (C 1224rev); Advisory Body Evaluation (ICOMOS), No. 1224/2008.

verdicts⁵¹³, on which UNESCO's decision finds its legal grounding, seems to be again jeopardized through the analysis of this case of contestation. Indeed, the claims might merely seem to be pertinent to a classical territorial dispute on the recognition of borders and a leading case on estoppel. To a more accurate analysis though, the peculiarity of the dispute pertains to the object of the claim. It is a religious site, that fluctuated for more than a hundred years between Cambodia and Thailand⁵¹⁴: in this circumstance, the allocation of the territorial sovereignty in a dispute with a strong religious and cultural ground has several implications.

On the other side, this dispute has its own cultural, historical, and political peculiarities, deriving both from the interactions between Khmers⁵¹⁵ and Tai people⁵¹⁶ and from the French colonial rule established in Cambodia (known as Indochina) from 1887 until 1953⁵¹⁷. Taking into consideration that territorial disputes generally arise either in a case where one country claims the ownership over another neighbouring country's land/territory or in case of disagreement on where the boundary line is supposed to be⁵¹⁸, several international treaties have

⁵¹³ ICJ, Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand, Judgement of 15 June 1962; Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 11 November 2013, International Court of Justice, online: ICJ (<http://www.icj-cij.org>) [Request for Interpretation (Temple of Preah Vihear)].

⁵¹⁴ Cambodia used to be under Siamese (Thai) domination before the arrival of Western Colonialism.

⁵¹⁵ I. MABBETT, D. CHANDLER, *The Khmers*, Blackwell, Oxford, 1995; D. CHANDLER, *A History of Cambodia*, 4th Ed., Boulder, Westview, 2008; M. MacDONALD, *Angkor and the Khmers*, Oxford University Press, Singapore, 1987.

⁵¹⁶ C. BAKER, P. PHONGPAICHIT, *A History of Thailand*, 3rd Edition, Cambridge University Press, Port Melbourne, 2014.

⁵¹⁷ Indochina, also called (until 1950) French Indochina or French Indochine Française, includes the three countries of Vietnam, Laos, and Cambodia formerly associated with France, first within its empire and later within the French Union. After gradually establishing suzerainty over Indochina between 1858 and 1893, the French created the first Indochinese Union to govern it. Except in Cochinchina (French: Cochinchine), the southernmost portion of Vietnam, the original Vietnamese, Cambodian, and Laotian royal houses continued under a federal-type central government that had exclusive authority in foreign affairs, finance, defense, customs, and public works and was headed by a French governor-general responsible to the French minister for trade. In Cochinchina the administration was under a prefect and a French bureaucracy, Indochina, Definition, History & Map, Britannica; D. CHANDLER, *A History of Cambodia*, Routledge, NY, 4th Ed., 2018; J. A. TULLY, *The French on the Mekong: A history of the Protectorate in Cambodia (1863–1953)*, University Press of America, Lanham, 2002; P. BROCHEUX, D. HEMÉRY, *Indochina: An Ambiguous Colonization, 1858-1954*, University of California Press, Berkeley, Los Angeles, London, 2011.

⁵¹⁸ J. PAIK, S. LEE, K. Y.L. TAN, *Asian Approaches to International Law and the Legacy of Colonialism: The Law of the Sea, Territorial Disputes and International Dispute Settlement*, London and NY, Routledge, 2013; J. E. NÚÑEZ, *Territorial Disputes and State Sovereignty*,

been signed between Siam and French officials with the aim of regulating the territorial boundaries. The main reference is to the series of Franco-Siamese treaties beginning in 1867³¹⁹, continuing in 1904³²⁰, 1906³²¹, 1907³²², and 1908³²³. The validity of these treaties has been

International Law and Politics, Routledge, Abingdon-Oxon, 2020; M. G. KOHEN, M. HÉBIE, Research Handbook on Territorial Disputes in International Law, Elgar, Cheltenham-Northampton, 2018; E. MILANO, M. NICOLINI, F. PALERMO, Law, Territory and Conflict Resolution, Brill Nijhoff, Leiden, 2016; S. PANCHALI, The Dispute Over Preah Vihear: Seen Problems, Unseen Stakes, IPCS Special Report, 129, June 2012.

³¹⁹ This treaty establishes the cession of Cambodian territory to Thailand.

³²⁰ This treaty is crucial, as it establishes the general boundary between Cambodia and Thailand, leaving to a Franco-Siamese Mixed Commission the task of establishing the exact boundary. It specifically places the Temple of Preah Vihear in Cambodia and Article 3 of the 1904 Treaty stated that the demarcation would be carried out by a Franco-Thai mixed commission (the "First Mixed Commission"), which was created pursuant to the 1904 Treaty; Cambodian Center for Human Rights, Blurred Boundaries: A Briefing Note on the Cambodian-Thai Border Tensions, 2011, available at: <https://cchrcambodia.org/admin/media/analysis/analysis/english/Blurred%20Boundaries%20-%20A%20Briefing%20Note%20on%20the%20Cambodian-Thai%20Border%20Tensions.pdf>, p. 9.

³²¹ It was agreed that, for the purposes of demarcating the frontier, the First Mixed Commission should travel along the Dânggrêk mountain range carrying out all the necessary reconnaissance, and that a survey officer of the French deputation of the First Mixed Commission should survey the whole of the eastern part of the range. The presidents of the French and Thai deputations of the First Mixed Commission made this journey, which included visits to Preah Vihear; Cambodian Center for Human Rights, Blurred Boundaries: A Briefing Note on the Cambodian-Thai Border Tensions, 2011, available at: <https://cchrcambodia.org/admin/media/analysis/analysis/english/Blurred%20Boundaries%20-%20A%20Briefing%20Note%20on%20the%20Cambodian-Thai%20Border%20Tensions.pdf>, p. 9.

³²² The president of the French deputation reported to the French Government that the frontier had been definitively established. However, while it appeared that a frontier was surveyed and decided upon, there is no actual record of any decision and no reference to the Dânggrêk region in any minutes of the meetings of the First Mixed Commission after 2 December 1906. The 1907 Treaty officially transferred the Cambodian provinces of Siem Reap, Sisophon, Banteay Meanchey and Oddar Meanchey, Thai-held Battambang to France, in exchange for Thailand's regaining sovereignty of Trat province and the Amphoe Dan Saj area of Loei province. Various districts in the western Dânggrêk area, previously in Thailand, became a frontier region, and a second mixed commission (the "Second Mixed Commission") was established to demarcate the frontier in this region, Cambodian Center for Human Rights, Blurred Boundaries: A Briefing Note on the Cambodian-Thai Border Tensions, 2011, available at: <https://cchrcambodia.org/admin/media/analysis/analysis/english/Blurred%20Boundaries%20-%20A%20Briefing%20Note%20on%20the%20Cambodian-Thai%20Border%20Tensions.pdf>, p. 9.

³²³ 1908 was a focal year where the demarcation was officialized through the preparation of maps by French officers on the Thai Government's request. These maps were completed in the autumn of 1907 by a team of French officers, some of whom had been members of the First Mixed Commission. Among the eleven maps was a map of the Dânggrêk range (the "Map") showing Preah Vihear to be on the Cambodian side. An annotated copy of the Map is annexed to this Briefing Note at Annex 1; Cambodian Center for Human Rights, Blurred Boundaries: A Briefing Note on the Cambodian-Thai Border Tensions, 2011,

challenged on two occasions. The treaties' effectiveness has been questioned first in 1962 and 2013 before the International Court of Justice⁵²⁴, through the occupation of the Temple of Preah Vihear by Thailand⁵²⁵, and in 2008 after UNESCO's nomination of the site. It is in connection with UNESCO's nomination that several criticalities arise: can we affirm that UNESCO is in the position of attributing a nationality to the Outstanding Universal Value, thus taking a decision that, although being based on subjective values, is raising a political sensitivity and has an impact on the political setup of States? This is indeed the last case of contested religious heritage that induces us to reflect more carefully on the use of political powers by UNESCO when contested religious heritage is at stake. Is this ambiguous use a general practice or rather, is it related in a more stringent manner to situations where problems of sovereignty and determination of borders interact with the global rules applied and created by UNESCO⁵²⁶? What is the salient feature in the assessment of the OUV, both by Governments and UNESCO, in this case of the Temple of Preah Vihear? Is contestation taken into consideration? Moreover, is intangible heritage a constituent part of the nomination dossier, used to justify the OUV of the Temple of Preah Vihear?

1. The Global Dimension of the Nomination Process: UNESCO and the OUV of the Temple of Preah Vihear

The dispute between Cambodia and Thailand on the ownership of the Temple of Preah Vihear leaves several aspects uncharted if analysed through the lenses of UNESCO's decision⁵²⁷.

available at:
<https://cchrcambodia.org/admin/media/analysis/analysis/english/Blurred%20Boundaries%20-%20A%20Briefing%20Note%20on%20the%20Cambodian-Thai%20Border%20Tensions.pdf>, p. 9.

⁵²⁴ Cambodia filed a lawsuit at the ICJ regarding the sovereignty and ownership of the Temple of Preah Vihear. The ICJ Judgment dismissed Thailand's objections and declared itself to have jurisdiction to adjudicate on the dispute. The ICJ Judgment is discussed in more detail at Paragraph 4, Critical Comments, Relevant Issues and the Impact of UNESCO's Decision.

⁵²⁵ After Cambodia became independent in 1953 and French forces withdrew from Cambodia, the Temple was immediately occupied by Thai forces. In this sense, Thailand "was reluctant to accept that its satellite of the 1840's was now a sovereign State", D. CHANDLER, *A History of Cambodia*, 4th Ed., Boulder, Westview, 2008, p.36.

⁵²⁶ See more in details Chapter II, Paragraph 3 (The Erosion of the Traditional Doctrine on the Sovereignty of States through UNESCO's Rules and Cultural Heritage: Open Issues) and Paragraph 4 (The Element of Contestation in UNESCO's System: Same Legal Backgrounds of Contestation, Different Political Outcomes).

⁵²⁷ World Heritage Committee, 31 COM 8B.24 (Inscriptions on the World Heritage List); UNESCO, WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear (Cambodia) (C 1224rev), p.6; Advisory Body Evaluation (ICOMOS), No. 1224/2008.

The religious site, precisely located on a promontory at the top of a cliff of the disputed border with Thailand, leads to some consideration on the construction of its Outstanding Universal Value as a non-neutral tool to demarcate contested borders. In this perspective, the impact of UNESCO's decision as to which State recognize the property of the site is not devoid of consequences under several perspectives²⁸.

First, the decision of including the sacred site on the World Heritage List has raised much criticism and concerns both on the global and on the national scenarios. After many years of (unresolved) conflict between Cambodia and Thailand as to which State the property belongs, UNESCO decided to recognize the property as Cambodian in 2008: the site has incredibly relevant artistic, architectural, historical, cultural and religious values²⁹, but this is a decision taken once again in a sensitive/non-ordinary context of competing sovereignty.

Second, those reflections raised for the two other cases of contested religious heritage (the Old City of Hebron and the Medieval Monuments in Kosovo and Metohija) are replicable also in this instance of contestation. The issues, perplexities and discrepancies derive from the use of those instruments set forth by UNESCO. We should not forget that these instruments are applied in a sensitive context or non-ordinary circumstance of competing sovereignty, with consequences on the political and cultural setup of two disputing countries.

On the one side, criticalities emerge in relation to the evaluation made by UNESCO: indeed, it seems necessary to carefully assess the presumption advanced by Global Institutions that the evaluation of the disputed sites' OUV has a universal, impartial and scientific magnitude. On the other side, criticalities emerge in relation to the effects of this decision taken by UNESCO in a disputed territory: it seems necessary to investigate the political impact of a decision dealing with disputed religious heritage in the portion of territory claimed by Thailand. This

²⁸ For further details, see Paragraph 4 of the current chapter (Critical Comments, Relevant Issues and the Impact of UNESCO's Decision).

²⁹ C. JACQUES, P. LAFOND, *L'Empire Khmer, Cités et Sanctuaires, Ve-XIIIe siècles*, Fayard, Paris, 2004; J. AUBOYER, *Les Arts de l'Extrême-Orient*, FeniXX Réédition Numérique, Presses Universitaires de France 108, Boulevard Saint-Germain, 108, Paris, 1949; H. I. JESSUP, *Art and Architecture of Cambodia*, London, Thames & Hudson, 2004; H. PARMENTIER, *L'Art Khmer Classique, Monuments du Quadrant Nord-Est*, École Française d'Extrême-Orient, Paris, 1939; H. PARMENTIER *Complément à l'Inventaire Descriptif des Monuments Du Cambodge*, Bulletin de l'École Française d'Extrême-Orient, Vol. 13, No. 1, 1913, pp. 1-64; T. ZEPHIR, *L'Art Khmer, L'Art de l'Asie du Sud-Est*, Citadelles & Mazenod, Paris, 1994, p. 151-250; V. ROVEDA, *Sacred Angkor*, River Books/Thames & Hudson, Bangkok/London, 2002; D. ROONEY, *Angkor, an introduction to the Temples*, Hong Kong, Odyssey, 1994.

part of the analysis will lead to some further considerations on the interaction between the application of the traditional rules on the definition/clarity of borders, those on the title to exercise sovereign powers and their revitalization through the new rules and decisions adopted by UNESCO³³⁰.

The monument is included in the World Heritage List under several criteria. Under *criterion i*), the property is chosen because it represents a masterpiece of human creative genius. The site of the Temple and its environment represent a particularly significant example of the Khmer genius for adapting monuments to the difficult and secluded environment. It is very “pure” both in plan and in the detail of its decoration³³¹. These are the arguments that justify the OUV of the Temple under *criterion i*).

Under *criterion iii*), the OUV is justified because the promontory at the end of the Dangrek Range dominating the plain is an exceptional testimony to the cultural traditions of the hermitages. The caves in this 500m high cliff, which are accessible without too much danger from the crest of the promontory only through Thai territory, enabled the hermits to settle there. Their presence led to the foundation of a sanctuary at the beginning of the 9th century on the promontory, from which the sacred ensemble developed. ICOMOS was of the opinion that the Temple is indeed an exceptional witness to the capacity of the Khmer civilisation to make use of a difficult site over a long period as a settlement site and as a source of materials. In this way the mountain was levelled over a considerable area to permit the building of the temple. The sandstone extracted for this purpose was used as the building material for the temple. Also, according to the Advisory Body, the Temple demonstrates an important interchange in human values and developments in art, architecture, planning, and landscape design³³².

Under *criterion iv*), the OUV of the site is reconnected to the inextricable link between the temple and its environment/territory: a natural landscape which is exceptional by virtue of its topography and the boundless view that it gives over the Cambodian plain. From whichever direction the temple is approached and viewed, it is

³³⁰ For further details, see Paragraph 4 of the current chapter (Critical Comments, Relevant Issues and the Impact of UNESCO’s Decision).

³³¹ World Heritage Committee, 31 COM 8B.24 (Inscriptions on the World Heritage List); UNESCO, WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear (Cambodia) (C 1224rev), p.6; Advisory Body Evaluation (ICOMOS), No. 1224/2008.

³³² World Heritage Committee, 31 COM 8B.24 (Inscriptions on the World Heritage List); UNESCO, WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear (Cambodia) (C 1224rev), p.6; Advisory Body Evaluation (ICOMOS), No. 1224/2008.

indissolubly linked with the cliff upon which it sits and of which it is the expression³⁵³.

Once again, as remarked for the three other cases, the issues illustrated above by this nomination are leading us to question if it is really possible to affirm that UNESCO's instruments are used in a neutral, objective and impartial way in such a sensitive context of competing sovereignty. Rather, should we affirm that it becomes a matter of exercise of discretionary powers in a pathological context of legal, political, cultural and religious frictions? As previously introduced, the evaluation made by the Cambodian Government³⁵⁴ and the decision taken by the World Heritage Committee induce us to think more carefully on the role of Global Institutions that take decisions in a pathological context, where the political interests of Cambodia have prevailed. Are they *partial judges* that exercise their discretionary powers while determining the identity of the OUV of sites in pathological circumstances of competing sovereignty?

The nomination dossier of the site reveals that the OUV is strictly related to the religiosity of the site as one of its intrinsic attributes. There is a constant association with Hindu beliefs. This character is further strengthened through the idea that the position of the Temple in the mountain peaks to the east and west of the site demonstrates an association with the Hindu divine triad of Vishnu, Shiva and Brahma³⁵⁵. In this respect, relevance is attributed to the architectural decorations of the Temple, that embodies its artistic value through harmonious and highly detailed compositions of the sculptures on the lintels, pillars, pilasters: these decorations represent Hindu Gods and other religious figures such as Shiva, Vishnu, Indra and Krishna³⁵⁶. On the basis of these

³⁵³ World Heritage Committee, 31 COM 8B.24 (Inscriptions on the World Heritage List); UNESCO, WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear (Cambodia) (C 1224rev), p.6; Advisory Body Evaluation (ICOMOS), No. 1224/2008. This criterion is going to be analyzed more into depth in Paragraph 3, of the current Chapter (Intangible Heritage as a Tool to Claim Contested Tangible Heritage: Architectural Techniques of Construction, Religious Traditions, and Mythology as Proof of the OUV of the Temple of Preah Vihear).

³⁵⁴ Royaume de Cambodge, Ministère de la Culture et des Beaux Arts, Le Site Sacré de Préah Vihear, Demande d'Inscription sur la Liste de Patrimoine Mondial, UNESCO.

³⁵⁵ C. JACQUES, P. LAFOND, The Khmer Empire: Cities and Sanctuaries, THE THIRTEENTH CENTURIES, Tom White trans., River Books, 2009; S. LONDHE, A Tribute to Hinduism: Thoughts and Wisdom Spanning Continents and Time about India and Her Culture, Pragn Publication, 2008; For more details, see Paragraph 3 of the current Chapter (Intangible Heritage as a Tool to Claim Contested Tangible Heritage: Architectural Techniques of Construction, Religious Traditions, and Mythology as Proof of the OUV of the Temple of Preah Vihear).

³⁵⁶ V. ROVEDA, The Archaeology of Khmer Images, Aséanie, Sciences humaines en Asie du Sud-Est, Vol. 13, 2004, pp. 11-46; J. BURGESS, Temple in the Clouds: Faith and Conflict at Preah Vihear, River Books, Bangkok, 2015.

considerations, the religious character of the site, directly connected to the spread of the Khmer civilization, contributes to the construction of the Outstanding Universal Value of this religious place as a typical Cambodian emblem³²⁷.

Interestingly, the spread of Khmer civilization, epitomized through such a religious architectural complex, is presented as the cradle of modern Cambodia. Emphasis is added on the political importance of the Khmer empire and on the use of this cultural, religious, artistic and political inheritance as a tool to enforce the OUV of the site: the latter results from the choice of the ancient values impersonated by the Khmer Empire as instruments to represent the very best of modern Cambodia. In this regard, two main considerations arise. From the political point of view, Cambodia became independent in 1953 and it absorbed the (French) Western approach of concepts such as the territoriality of States, statehood, and clear definition of borders. The Kingdom of Thailand and Cambodia have changed over times into modern states, but the issue of the exact boundary is hard to discern up to now³²⁸. From the historical point of view, the spread of the Khmer civilization involves other neighbouring countries, such Thailand and Laos. Nonetheless, no one of these countries identify their current cultural, political and religious values with those of the ancient Khmer Empire: yet, Khmer religious architecture and art can be massively found in the territories of these countries without being labelled as UNESCO World Heritage³²⁹.

These aspects reveal that the choice of those values used to build the OUV of (contested) religious heritage are of a subjective nature, even though there is an attempt of formalizing them through objective and canonized criteria. The choice of selecting certain artistic, religious and political value as outstanding is certainly the result of a subjective choice that primarily reflects a nationalistic/non-neutral approach adopted by the Government of Cambodia. As a way of example, even though the OUV is justified through canonized and objective criteria (criterion *(i)*, criterion *(iii)* and criterion *(iv)*), the choice of constructing the OUV of the Temple of Preah Vihear seems to be subjective in its core content on

³²⁷ Hinduism was the Khmer Empire's main state religion. Angkor Wat, the largest temple complex in the world (now converted to a Buddhist temple) was once a Hindu temple, D. CHIHARA, *Hindu-Buddhist Architecture in Southeast Asia*, E. J. Brill, Leiden, 1996, p. 71.

³²⁸ M. PAKDEEKONG, *Who Owns the Preah Vihear Temple—A Thai Position*, *Journal of East Asia and International Law*, Vol. 2, No. 1, 2009, pp. 229-238; B. TOUCH, *Who Owns The Preah Vihear Temple—A Cambodian Position*, *Journal of East Asia and International Law*, Vol. 2, No. 1, 2009, pp. 205-228.

³²⁹ For further details, see Paragraph 4 of the current chapter (Critical Comments, Relevant Issues and the Impact of UNESCO's Decision).

the basis of three main reasons: the site has a religious intrinsic value, that acquired a political dimension after the withdrawal of French colonial rule, after becoming the centre of claims for the exercise of sovereign powers; the connection between ancient Khmer Empire and modern Cambodia is reflecting a political choice taken at the national level first and then approved by the World Heritage Committee; the weight attributed to the element of contestation becomes both the sensitive part of UNESCO's decision and an additional tool to test the "amount of neutrality" of a decision taken in a context of active and prolonged conflict.

2. Contestation and Nomination of the Temple of Preah Vihear: the Role of National Governments and UNESCO

The existence of the Temple of Preah Vihear, and namely, its physical presence in an inhospitable territory, is the object of claims for the exercise of sovereign powers in a contested territory: this is what essentially makes this dispute a peculiar case, both for its religious qualities and for its strategic geographical position.

Especially when it comes to the analysis of the element of contestation as an active or marginal element in UNESCO's decision, some ambiguities can be observed. This case could be merely regarded as a classical boundary dispute, and as a leading case on estoppel before the International Court of Justice (1962). To a more careful analysis though, the way the OUV is formulated induces us to consider the relevance attributed to the element of contestation in the nomination process. In this respect, two aspects shall be recalled:

a) neither the 1972 World Heritage Convention, nor the Operational Guidelines do require the Committee to explicitly and directly consider any relevant political dispute or claim related to proposed sites. Actually, this obligation never existed and there is no mention to the element of claim/active political tensions as a tool that grounds UNESCO's decisions. This could result either in a neutral use of the Agency's decisional-making powers and instruments, or in a very flexible use of the same powers and instruments (World Heritage List, World Heritage in Danger List). The last hypothesis is particularly pertinent to this case, especially after the analysis of several UNESCO's nominations, where the legal background of the decisions is equivalent, but the outcome is not the same. The Temple of Preah Vihear shall be included among these examples.

b) the use of the World Heritage List impersonates the subsistence of public interests existing behind the nomination of sites: this element is

even more blatant if the site is contested. Is the existence of public interests and sensitive issues related to the existence of a conflict between sovereign powers? Rather, is it a circumstance detected also in ordinary nomination processes?

According to UNESCO's rules, if the property is contested, the adversary's consent is not required: in other words, only the consent of the State submitting sites for nomination (Cambodia) is legally required. The circumstances surrounding this case are not totally coherent with this statement. At this point of the quest, we should wonder what is the role of the World Heritage Convention in cases of disputed heritage. Is it related to the interests of the Cambodian Government to have defined territorial borders through UNESCO's decisions? Is this political interest prevailing through UNESCO's decision a physiology or a pathology?

In order to shed a light on this aspect, I asked the following question to Mounir Bouchenaki⁵⁰: *Given the existence of a boundary dispute, what is the attitude of UNESCO in the case of the dispute surrounding the Temple of Preah Vihear? This point is related to the exercise of discretionary*

⁵⁰ The interview with Mr. Mounir Bouchenaki has been made on June the 9th, 2021. For this interview I want to express my gratitude to Doctor Architect Maria Teresa Iaquina, that supported my research with her extremely beneficial efforts. Mr. Mounir Bouchenaki is an Algerian historian and archaeologist. He holds a Ph.D. in Archeology and Ancient History from the University of Aix-en-Provence and worked for the Algerian government from 1969 to 1981. Appointed Director of Cultural Heritage at the Ministry of Information and Culture in 1976, he was responsible for the preparation of six Algerian nominations for World Heritage. In 1982, he joined the Division of Cultural Heritage of UNESCO responsible for international safeguarding campaigns. After becoming its director in 1992, he regularly attended statutory meetings for World Heritage while overseeing sensitive issues, such as the one in Jerusalem. He was Director of the World Heritage Centre between 1999 and 2000, before becoming Assistant Director General for Culture. In 2006, Mr. Mounir Bouchenaki left UNESCO to become Director General of ICCROM, a position he held until 2011. Since 2012, he has served as an advisor to the Director General of ICCROM and to the Director General of UNESCO, in addition to directing the operations of the Arab Regional Center for World Heritage in Bahrain. His distinctions include the 2000 ICCROM Award and the rank of Officier de l'ordre des Arts et des Lettres français. He is the author of *Tipasa, site du patrimoine mondial* (ENAG, 1988) and several articles, including *The Extraordinary Development of Museums in the Gulf States*, published in *MUSEUM International* in 2011. Doctor Architect Maria Teresa Iaquina has more than 30 years of successful experience managing regional programs in support of cultural heritage conservation. Her activity included the organization and coordination of training and education initiatives and international cooperation projects, mainly related to the development of operational capabilities for preserving cultural heritage. Through her institutional career in an intergovernmental environment, she consolidated her experience in external relations, particularly related to governance issues and institutional cooperation with host country institutions. Among her tasks, she led special projects for the restitution of heritage artefacts (Axum Stelae) and organized international corporate events on cultural topics.

powers by UNESCO: to what extent can the Agency apply strict rules and canons, since it is a political game of power between states?

He replied that:

“I was in charge of the negotiations between the Thai authorities and the Cambodian authorities about Preah Vihear, because this case is the example of a real conflict: there were people killed because of this situation. So what UNESCO was doing in 2008/2009, was to try to find a way to compromise the circumstance. What was the situation like? There is a territory which is called Cambodia. The limit of this territory was established by the French power when it was Indo-China. And through the limitations, this temple, which is on the top of the hill, [...] looking down to the territory of Thailand, is really located at the border. The question was: was it possible to inscribe the site without a buffer zone? Because the problem is to ensure a protection surrounding the site: this was the subject of the conflict. Because from the Cambodian point of view the temple is in Cambodia. For us at UNESCO, we are not allowed to discuss the situation of the borders because it's not in our competence: it is a prerogative of the UN, so we asked the Cambodian Government to go to the International Court of Justice. The ICJ stated that the temple was in Cambodia. We could not discuss: we could just agree with it. Then we had a meeting with the General Assembly and the State Parties in Paris and I received a huge delegation from Thailand which was led by the Minister of Culture of Thailand: we had the whole morning of discussion in order to find a way out. UNESCO is not imposing, because it is not in our power and it is not in line with Article 11. What we tried to make is to propose a kind of gentlemen's agreement ensuring that the site is open to everyone, whether coming from Cambodia or from Thailand. But at that time, the political situation in Thailand was so tense that the Ministry of Thailand, after a long discussion, went back to the room and said: “I leave UNESCO and we leave the Convention”. It was really a very strong statement. ICCROM as well was included because the war was also involving the temple of Preah Vihear. So we organized an ICCROM mission. During the mission I went with Professor engineer Giorgio Croce to see the situation of an almost abandoned place, because nobody was able to go there. When we went, we were protected by the Army of Cambodia, but we have in front of us the Army of Thailand. This was the situation after the nomination and after this very important mission. We were also having Mr. Matsuura as Former Director General of UNESCO who went both to Cambodia and to Thailand. This is what UNESCO can do. That means that UNESCO is not imposing because we cannot impose: this is not a power in our hands. Our role is to try to bring a kind of coordination, acceptance of terminology for better coexistence

in this site, and now I think the situation has really evolved positively. Now there is a museum which has been built not far from the Temple. There is no army anymore, because the troops from Thailand and Cambodia were there: it was a very tense situation”.

This interview reveals that, notwithstanding the lack of a formal provision obliging UNESCO to consider political tensions or claims on sites, several consultations in the spirit of conciliation between the members of UNESCO and the representatives of the two disputing countries occurred before the nomination. This demonstrates that those long-standing claims and political tensions on the Temple of Preah Vihear were taken into consideration and had an impact on the nomination process. The relevance attributed to this aspect would have allowed three possibilities: a) a trans-border nomination of the site between Thailand and Cambodia⁵⁴¹; b) conferral of a borderless status to the nomination (no designation of ownership to a single country); c) inscription of the site in the List of the World Heritage in Danger, given the subsistence of the “outbreak or thread of armed conflict” factor⁵⁴². Anyhow, no one of these options actually took place and the site has been included in the World Heritage List of Cambodia. On the one side, the official document pertaining to the inscription of Preah Vihear indicates that no threats to its preservation, notwithstanding the damage caused by some bullets that have hit the walls and the occupation by Thai troops⁵⁴³. On the other side, the nomination dossier presents a particular attention to the acceptance of the nomination by Thailand: “The State Party of Cambodia and the State Party of Thailand are in full agreement that the Sacred Site of the Temple of Preah Vihear has Outstanding Universal Value and must be inscribed on the World Heritage List as soon as possible. Accordingly, Cambodia and Thailand agree that Cambodia will propose the site for formal inscription on the World Heritage List at the 32nd session of the World Heritage Committee in 2008 with the active support of Thailand. They also agree

⁵⁴¹ N. LIMSAMARNPHUN, Opinion, Cambodia Should Consider Joint Inscription of Preah Vihear Site, Nation, (Thail.), June 28, 2008, <http://www.nationmultimedia.com/search/read.php?newsid=30076732&keyword=Cambodia+should+consider+joint+inscription+Preah+Vihear+Site> (describing goals of the joint communiqué signed June 18, including the naming of Preah Vihear as a World Heritage Site); A. GALIS, UNESCO Documents and Procedure: The Need to Account for Political Conflict When Designating World Heritage Sites, Georgia Journal of International and Comparative Law, vol. 38, no.1, 2009, pp. 205-236.

⁵⁴² WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 179.

⁵⁴³ Available at: <http://whc.unesco.org/en/list/1224/threats/>;

that the site is in need of urgent attention and requires international financial and technical assistance and close cooperation between them"⁵⁴⁴.

The decision taken by the World Heritage Committee is probably related to the verdict of the ICJ (1962): the full sovereignty of Cambodia over the disputed Temple was recognized. This judgement cannot be vacated or revoked, but this does not explain the efforts made by UNESCO to make sure that the nomination accomplishes with the formal acceptance by Thailand. Since the ICJ stated that it has no sovereign powers over the Temple, and UNESCO has no formal duty to consider political tensions and claims, what is the purpose of making sure that the claiming party accepts the nomination?

It is true that countries differ from their motives for seeking site inscription and that UNESCO's goal of preserving sites may not be the priority in the strategy of selecting countries⁵⁴⁵. The reality though is that it is UNESCO's decision that re-ignited the claims for the territorial inclusion of the site within the Thai boundaries⁵⁴⁶, and caused escalations of violence and damages to the Temple in 2008 and 2011⁵⁴⁷. In this perspective, the inscription of the Temple within the Cambodian World Heritage List is again a decision that, although far from being a political statement, raises a certain degree of cultural and political sensitivity and has a political impact⁵⁴⁸. UNESCO should have foreseen that the inscription of the site would have led to an outbreak of armed force with violent repercussions. UNESCO should have also taken into consideration that rules on cultural heritage have changed, since the ICJ's decision occurred 10 years before the World Heritage Convention entered into force and 26 years before the inscription of the Temple of Preah Vihear.

⁵⁴⁴ They further agree that it is essential to strengthen conservation and management at the site including by the development of an appropriate management plan, as required under paragraph 108 of the Operational Guidelines, that will ensure the future protection of this property.

"[...] They understand, following consultation with the World Heritage Centre, that financial and technical assistance for the development of a management plan will be available through the World Heritage Centre's International Assistance programme", World Heritage Committee, 31 COM 8B.24 (Inscriptions on the World Heritage List), para. 2.

⁵⁴⁵ H. SILVERMAN, *Border Wars: the Ongoing Temple Dispute between Thailand and Cambodia and UNESCO's World Heritage List*, *International Journal of Heritage Studies*, Vol. 17, No. 1, 2011, p. 15.

⁵⁴⁶ *Royaume de Cambodge, Ministère de la Culture et des Beaux Arts, Le Site Sacré de Préah Vihear, Demande d'Inscription sur la Liste de Patrimoine Mondial, UNESCO.*

⁵⁴⁷ <https://casebook.icrc.org/case-study/cambodiathailand-border-conflict-around-temple-preah-vihear>.

⁵⁴⁸ UNESCO, WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear (Cambodia) (C 1224rev), p.6; Advisory Body Evaluation (ICOMOS), No. 1224/2008.

As a consequence, it seems implausible to deny the clash between UNESCO's Outstanding Universal Value as a scientific tool to evaluate the value of cultural heritage and its connection with political and nationalistic contents and uses. In the same way, since there is no formal rule that pushes UNESCO to account for political conflicts, it is dubious to state that the element of contestation is not used as a tool to better justify the Cambodian OUV of the Temple of Preah Vihear⁴⁹.

3. Intangible Heritage as a Tool to Claim Contested Tangible Heritage: Architectural Techniques of Construction, Religious Traditions, and Mythology as Proof of the OUV of the Temple of Preah Vihear

Particular emphasis shall be attributed to the constant presence of intangible heritage elements encased in the nomination dossier of the Temple of Preah Vihear. This is indeed the last of three examples of contested religious heritage where the use of intangible heritage is particularly intense if analysed through the lenses of UNESCO's decision. In other words, are the architectural techniques of construction, the rituals and the mythology represented in the Temple a sufficient tool to demonstrate the inextricable link between intangible cultural heritage, tangible cultural heritage, and the exercise of sovereign powers over the Temple?

In relation to these aspects, the nomination dossier of the Temple of Preah Vihear emphasizes several elements that can be classified as intangible heritage, implicitly incorporated in a nomination dossier dealing with contested tangible heritage. They are implied to justify the OUV of the Temple of Preah Vihear in its Cambodian declination.

First, in the documentation received from the State Party in January 2008, ICOMOS found that the association with Hindu beliefs is strengthened through the idea that the siting of the temple buildings on their massif in relation to mountain peaks⁵⁰. This demonstrates a strong link with the Hindu divine triad of Vishnu, Shiva, and Brahma⁵¹. The element that connects these featuring trademarks and provide the spiritual values to the monument is the territory (Cambodian plain), and

⁴⁹ A. GALIS, UNESCO Documents and Procedure: The Need to Account for Political Conflict When Designating World Heritage Sites, Georgia Journal of International and Comparative Law, vol. 38, no.1, 2009, pp. 205-236.

⁵⁰ A. HAENDEL, Old Myths and New Approaches: Interpreting Ancient Religious Sites in Southeast Asia, Monash University Publishing, 2012.

⁵¹ World Heritage Committee, 31 COM 8B.24 (Inscriptions on the World Heritage List); UNESCO, WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear (Cambodia) (C 1224rev), p.4; Advisory Body Evaluation (ICOMOS), No. 1224/2008.

this territory is object of a contestation on the identity and sovereignty of the Temple.

Second, under the “Justification of the Outstanding Universal Value” Section, emphasis is added on two elements:

- a) the quality of the architectural composition adapted both to the territorial constraints of the site and to the religious traditions (such as Hindu and Buddhist pilgrimages and festive events), practiced by both monks and Cambodians: this religious praxis certainly adds a factor of self-determination, thus unifying religious beliefs and political reasons as essential links between Cambodia and the Temple of Preah Vihear⁵⁵².
- b) the exceptionality of the property in terms of the quality of its carved stone ornamentation (based on scenes of Hindu mythology representing miraculous events), confers the Temple its cultural significance⁵⁵³.

Third, under criterion *iv*), the Outstanding Universal Value of the site is referred to as unicity of the architectural ensemble made up of a series of Hindu sanctuaries linked by a system of pavements and staircases. This architectural ensemble has a religious (and ethnic) characterization, that is constantly emphasized throughout the nomination dossier. This element is used to confer and strengthen the link between OUV, Cambodian identity and Khmer legacy of a contested site, with the ultimate effect of including the property within the territory claimed by Thailand. The interesting fact is that Khmer art and architecture are widespread also in neighbouring Thailand and Laos, but they are not instrumental to the enforcement of the OUV of these properties. As a way of example, Sukhothai, in central Thailand, had been a Khmer garrison which, upon its capture by Tai forces (between 1219 and 1243), developed into the capital of the first Tai empire in Thailand⁵⁵⁴: it absorbed much of the Khmer culture of the classic period, including urban planning, art and architecture, royal institutions, the Hindu-Brahmanic religious traditions and rituals, Khmer music and

⁵⁵² S. SVAY, Analysis of the Preah Vihear Temple Case, Cambodia v/s Thailand at the International Court of Justice under Common Territorial Claims Involving Land Disputes, *Journal of Law, Policy and Globalization*, Vol. 36, No. 12, 2015.

⁵⁵³ “Expansive renovations by Suryavarman I were supposedly inspired by the miraculous manifestation in physical form of a god on Earth. As a testament to this miracle, an inscription at the site reads, “His Majesty, by the strength of his asceticism, brought it about that the god Bhadresvara of Lingapura came to reign over Shri Shikhareshvara to manifest his power visibly, for the world to behold”, A. GALIS, UNESCO Documents and Procedure: The Need to Account for Political Conflict When Designating World Heritage Sites, *Georgia Journal of International and Comparative Law*, vol. 38, no.1, 2009, pp. 205-236; W. DONIGER O’FLAHERTY, *Hindu Myths*, Penguin Books, London, 1975.

⁵⁵⁴ V. LIEBERMAN, *Strange Parallels. Southeast Asia in Global Context, c. 800-1830*, Vol.1: *Integration on the Mainland*, Cambridge University Press, Cambridge, 2003, p. 244.

dance, and the Khmer script⁵⁵. However, the town labelled as UNESCO World Heritage Site is not emphasized in its Khmer dimension: in other words, its Khmer art and architecture are not used to emphasize the OUV thus connecting it to the Thai nation; rather, it is described as the political and administrative capital of the first Kingdom of Siam, even though no one could deny its Khmer origins.

In this sense, several elements are to be connected: UNESCO, following the ruling of the International Court of Justice, recognizes the disputed site to Cambodia, thus conferring a Cambodian identity to the architectural techniques of construction, rituals and mythology depicted and carved at the Temple. These elements are widely spread and common also to neighbouring Thailand. The result is that through the fusion of tangible and intangible cultural heritage, the decision of the International Court of Justice is reinforced by the decision of UNESCO. These decisions have an impact on the matter of the definition of boundaries, that have been the subject of a long dispute for the territory and for the exercise of sovereign powers. For these reasons, we could affirm that this is the third case of contested religious heritage where intangible heritage is used as a tool to strengthen the Outstanding Universal Value of the Temple in a Cambodian perspective, thus legitimating and strengthening the territorial claims of the Cambodian State. Therefore, this approach raises ambiguities under two main perspectives:

a) the 2003 ICH Convention was supposed to mitigate both political and commercial appropriations of living cultural practices. We should notice that Cambodia has several nominations in the Representative List of the Intangible Cultural Heritage of Humanity: these inscriptions, including the Sbek Thom (Khmer Shadow Theatre)⁵⁶ and the Royal ballet of Cambodia (Khmer Classical Dance)⁵⁷, took place in 2008, thus coinciding with the inscription of the Temple of Preah Vihear. Thailand, on its side, included these folklorized performances of Khmer culture as its national heritage, but no Khmer element, either tangible or intangible, is inscribed in the list of the State Party of Thailand as a tool to enforce the present political identity of the Thai state. For this reason, much bias is

⁵⁵ M.D. COE, *Angkor and the Khmer Civilization*, Thames and Hudson, New York, 2003, p. 207. D. CHANDLER, *A History of Cambodia*, Routledge, NY, 4^e Ed., 2018; M. M. EBIHARA, A. C. MERTHA, *Svay: A Khmer Village in Cambodia*, Cornell University Press, Ithaca and London, 2018.

⁵⁶ Sbek Thom, Khmer shadow theatre, Cambodia, Inscribed in 2008 (3.COM) on the Representative List of the Intangible Cultural Heritage of Humanity (originally proclaimed in 2005).

⁵⁷ Royal ballet of Cambodia, Cambodia, Inscribed in 2008 (3.COM) on the Representative List of the Intangible Cultural Heritage of Humanity (originally proclaimed in 2003).

addressed to the alleged historical appropriation of the Khmer cultural identity perpetuated by the State of Cambodia founded in 1953⁵⁵⁸.

b) the implicit incorporation of intangible heritage in this nomination dossier was not meant to be instrumentalized in order to strengthen the political agendas of two disputing States through contested religious heritage. Nor intangible heritage was meant to be put at the service of contested tangible heritage to further legitimate the claims of Cambodia. This case is indeed translating the attitude of UNESCO towards intangible heritage as an attempt of encapsulating architectural techniques of construction, religious traditions, and mythology within national boundaries artificially determined by modern States: is this a physiology or a pathology related to anomalous cases of contestation?

4. Critical Comments, Relevant Issues and the Impact of UNESCO's Decision

The Cambodian sovereignty over the Temple of Preah Vihear has been primarily and originally confirmed by the 1962 ICJ's Decision⁵⁵⁹. Following this verdict, some reflections derive from the evaluation of the OUV made by UNESCO: indeed, the (subjective) values constituting the Outstanding Universal Value are deemed to be the main expression and statement of "Cambodian Statehood" over the Temple.

a) It is necessary to investigate the role of the World Heritage Convention in cases of disputed heritage. Is it related to the interests of the Cambodian Government to have defined territorial borders through UN's decisions (UNESCO and the ICJ)? Is the political interest prevailing

⁵⁵⁸ Since the late eighteenth century, the link between Khmers and Thai nation was built through performances of Khmer ethnicity as a symbolic of the tributary relations between the Siamese court and the principality known to Ayutthaya and, later, to the Chakri kings in Bangkok as the "domain of the forest Khmer", A. DENES, *Recovering Khmer Ethnic Identity from the Thai National Past: An Ethnography of the Localism Movement in Surin Province*, Doctoral Dissertation, Cornell University, 2006; A. DENES, *The Revitalization of Khmer Ethnic Identity in Thailand: Empowerment or Confinement?*, Routledge Handbook of Heritage in Asia, Routledge, Abingdon, 2012; M. PAITON, *Social and Cultural History of Northeastern Thailand from 1868-1910: A Case Study of Huamuang Khamen Padong (Surin, Sangha and Khukhan)*, Doctoral Dissertation, University of Washington, 1984; W. TOEM, *History of Isan*, Thammasat University Press, Bangkok, 1999.

⁵⁵⁹ ICJ, *Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand*, Judgement of 15 June 1962; S. B. TAYLOR, *Territorial Disputes at the International Court of Justice*, *Duke Law Journal*, Vol. 53, No. 1779, 2004; A.O CUKWRAH *The Settlement of Boundary Disputes in International Law*, Manchester University Press, Manchester, 1967; A. BUSS, *The Preah Vihear Case and Regional Customary Law*, *Chinese Journal of International Law*, Vol. 9, No. 1, 2010, pp. 111-126.

through UNESCO's decision a physiology or a pathology? More specifically, the link between Khmer civilization and Cambodian sovereignty over the site can be criticized, since the Khmer civilization is widespread also in neighboring countries, such as Thailand and Laos. In this perspective, the formulation and evaluation of the OUV as a rigorously scientific and impartial characterization of disputed religious heritage becomes a universal postulation with feeble foundations. Indeed, the Temple of Preah Vihear is part of the network of sites on the Khorat Plateau, Isan⁵⁶⁰. It is so similar to other sites that the southern flank of Isan is referred to as an "upland Cambodia"⁵⁶¹. Several of Preah Vihear's sister sites on the Thai side of the current border (Phimai, Muang Tam and Phanom Rung) are compatible in architectural layout, construction, iconographic programme and size to the Temple of Preah Vihear⁵⁶². On the one side, the historical and cultural reference of Cambodia are Angkor Wat and Preah Vihear as main legacy of the Khmer Empire that currently identifies the Cambodian political and national scenarios. This cultural and ethnic choice is illustrated by several scholars. They do recognize that relics of the Khmer Empire are selected as "symbolic of Cambodia's glorious historical heritage"⁵⁶³, but it is important to understand that this is a recent appropriation of the past that reflects the need of re-connecting Angkor Wat to the nationhood and pride of modern Cambodians⁵⁶⁴.

The striking fact is related to the importance of establishing the sovereignty of the site through UNESCO's nomination as a national project, wrapped up in Cambodia's current pervasive identification with the ancient Khmer Empire, from which the vast majority of Cambodians descend as ethnic Khmers⁵⁶⁵. On the other side, the historical and cultural

⁵⁶⁰ W. TOEM, *History of Isan*, Thammasat University Press, Bangkok, 1999.

⁵⁶¹ S. SIRIBHADRA, E. MOORE, *Palaces of Gods: Khmer Art and Architecture in Thailand*, Bangkok, River Books, 1992; M. FREEMAN, *A Guide to Khmer Temples in Thailand and Laos*, Bangkok, River Books, 1996.

⁵⁶² H. SILVERMAN, *Border Wars: the Ongoing Temple Dispute between Thailand and Cambodia and UNESCO's World Heritage List*, *International Journal of Heritage Studies*, Vol. 17, No. 1, 2011.

⁵⁶³ "Angkor is everywhere in Cambodia: on the flag, the national beer, hotels and guest-houses, cigarettes— anything and everything. It's a symbol of nationhood and of fierce pride: Cambodians built Angkor Wat and doesn't come bigger than that", T. WINTER, L.C-P. OLLIER, *Introduction, Cambodia and the Politics of Tradition, Identity and Change*, In T. WINTER, L.C-P. OLLIER, *Expressions of Cambodia: The Politics of Tradition, Identity and Change*, Routledge, Oxon, 2006, pp. 1-19.

⁵⁶⁴ K. TAYLOR, *The Early Kingdoms*, In N. TARLING, ed. *The Cambridge History of Southeast Asia*, Vol. 1, Part 1, Cambridge University Press, 1999, p. 163 and pp. 137-182.

⁵⁶⁵ H. SILVERMAN, *Border Wars: the Ongoing Temple Dispute between Thailand and Cambodia and UNESCO's World Heritage List*, *International Journal of Heritage Studies*, Vol. 17, No. 1, 2011, p. 6; I. MABBETT, D. CHANDLER, *The Khmers*, Blackwell, Oxford, 1995.

reference of Thailand are the Historic City of Ayutthaya⁵⁶⁶ and the Historic Town of Sukhothai and Associated Historic Town⁵⁶⁷, main legacy of the Siamese Empire: their religious, cultural, art-historical and archaeological values are identified with present values of the Thai nation. There is a salient aspect that is worthy of consideration: several pieces of Khmer architecture located in Thailand are in the Tentative List of Thailand (Phra That Phanom its related historic buildings and associated landscape; Ensemble of Phanom Rung, Muang Tam and Plai Bat Sanctuaries)⁵⁶⁸. In the “Comparison with Other Similar properties” section, the Temple of Preah Vihear is explicitly mentioned, but no reference is made to Khmer architecture/art as a funding element of the OUV of a Thai site. Another religious site, Prasat Ta Muen Thom⁵⁶⁹, Khmer architecture, is contested between Thailand and Cambodia, but it is located in the portion of territory internationally recognized under the sovereignty of Thailand, although right up against the Cambodian border. This is another disputed site: it is part of the amount of Angkor monuments scattered between Cambodia and north-eastern Thailand, but it did not become the symbol of an ethnic-based Thai nation, as it happened for the Temple of Preah Vihear. Actually, the Thais developed a nationalistic concept of Thainess that incorporates the monuments of the ancient Khmers in modern Thailand as part of their own cultural heritage⁵⁷⁰: however, this vision did not prevail in UNESCO’s decision as it did for the Temple of Preah Vihear.

What is the difference between the Temple of Preah Vihear and the Temple of Ta Muen Thom? Is the Temple of Ta Muen Thom *less outstanding*? The main difference is that the Ta Muen Thom is not labelled as UNESCO World Heritage Site, and it is evident that Khmer heritage becomes an *agent provocateur*: these decisions of including or not including an outstanding piece of Khmer religious architecture under the Cambodian or Thai List are certainly the result of a political

⁵⁶⁶ Historic city of Ayutthaya, WHC, 15COM XV - Inscription: Historic City of Ayuttaya and associated historic towns (Thailand), 1991.

⁵⁶⁷ Historic Town of Sukhothai and Associated Historic Town, 15COM XV - Inscription: Historic Town of Sukhothai and associated historic towns (Thailand), 1991.

⁵⁶⁸ Many other religious sites are the legacy of the Khmer Empire in Thailand: Muang Tam; (Prasat Hin) Phimai; Phanom Rung; Sdok Kok Thom; Prasat Sikhoraphum; Prasat Muang Sing; Phra Prang Sam Yot; Wat Kamphaeng Laeng.

⁵⁶⁹ S. SIRIBHADRA, E. MOORE, *Palaces of Gods: Khmer Art and Architecture in Thailand*, Bangkok, River Books, 1992; C. JACQUES, P. LAFOND, *L’Empire Khmer, Cités et Sanctuaires, Ve-XIIIe siècles*, Fayard, Paris, 2004.

⁵⁷⁰ The nationalist ideologues like Luang Wichit Wathakan claimed that the Thais were true heirs of Khmer civilization, S. BARMÉ, *Luang Wichit Wathakan and the Creation of a Thai Identity*, Social Issues in Southeast Asia, Institute of Southeast Asian Studies, Singapore, 1993.

decision⁵⁷¹. Behind this explanation, one should consider that there is no evidence for any strong connection between the Temple of Preah Vihear and the political and cultural complex of the Cambodian lowlands, at least until French colonial rule: it was French scholars like Henri Parmentier who defined Preah Vihear as one of the most important pieces of the classical Khmer art and part of the national heritage of Cambodia⁵⁷².

One could find several arguments to justify the inclusion or exclusion of a site from the World Heritage List, but these observations dismantle and reveal that there cannot be a universal postulation and evaluation of the Outstanding Universal Value, especially when these values become the object of conflicts of sovereignty between States.

b) The Temple of Preah Vihear is an example of contested religious heritage inserted in the World Heritage List. The definition of the territorial boundaries of the two disputing political entities is strictly dependent upon this decision. Even before the institution of UNESCO, the ICJ recognized that the Temple of Preah Vihear was under the Cambodian sovereignty and administration⁵⁷³. The Court did not consider the allocation of the site as the main object of the pronouncement in 1962. It did not even consider the cultural, archaeological, and religious significance of the site, but it ensued that the political claims of the parties were also to be interpreted in the light of the intrinsic nature

⁵⁷¹ Another additional answer to this question is given by Joseph Mussomeli, American Ambassador to Cambodia, who illustrates how seemingly separate are conjoined issues, such as: "The pending inscription of Preah Vihear Temple on the UNESCO World Heritage List and Cambodia's bilateral debt with the US. Delegation members and the embassy believe that successful resolution of the Preah Vihear issue could open the door to a resolution of overlapping claims area in the Gulf of Thailand", L. MESKELL, *A Future in Ruins: UNESCO, World Heritage, and the Dream of Peace*, Oxford University Press, Oxford, 2018, p. 120.

⁵⁷² H. PARMENTIER, *L'Art Khmer Classique, Monuments du Quadrant Nord-Est*, École Française d'Extrême-Orient, Paris, 1939; H. PARMENTIER, *Complément à l'Inventaire Descriptif des Monuments Du Cambodge*, Bulletin de l'École Française d'Extrême-Orient, Vol. 13, No. 1, 1913, pp. 1-64.

⁵⁷³ ICJ, *Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand*, Judgement of 15 June 1962; D.H. JOHNSON, *The Case Concerning the Temple of Preah Vihear*, 11 ICQL, 1962, p. 1183; J. P. COT, *Cour Internationale de Justice: Affaire du Temple de Préah Vihéar*, AFDI, 1962, p. 217; B. HAUSER-SCHÄUBLIN, *World Heritage Angkor and Beyond: Circumstances and Implications of UNESCO Listings in Cambodia*, Göttingen Studies in Cultural Property, Vol. 2, 2011; Similarities arise with the South West Africa Cases, Second Phase, Judgment of 18 July 1966, [1966] I.C.J. Rep. 6 [South West Africa cases], V. KATTAN, *Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the South West Africa Cases*, Asian Journal of International Law, Vol. 5, No. 2, 2015; V. KATTAN, *The Ghosts of the Temple of Preah Vihear/Phra Viharn in the 2013 Judgement*, Asian Journal of International Law, Vol. 5, No. 1, 2015, p. 17.

of the site⁵⁷⁴. This judgement brings up legal problems, since UNESCO's decision is adhering to the position adopted by the ICJ. First, the Outstanding Universal Value as expression of the Cambodian Statehood has been built on a pathologic circumstance of contestation, where claims and objections have been raised by Thailand against the ICJ's judgement. Mainly, the 1962 judgement was decided on the basis of a misleading sketch map produced to only one side of the dispute (Annex I Map⁵⁷⁵, produced by French officials without consulting Siam and presenting it as a *fait accompli*), and a single photograph. Annex I Map was said to be inaccurate⁵⁷⁶ and yet, the Court assigned the Temple to Cambodia: the Court deduced the acceptance of Annex I Map by Thai authorities because Siam's silence amounted to acquiescence/estoppel⁵⁷⁷.

⁵⁷⁴ Cambodia asked the International Court of Justice to adjudge and declare that the sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which have been removed from the Temple by the Thai authorities since 1954 were to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand, ICJ, Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand, Judgement of 15 June 1962, p. 10. In a later occasion, the International Court of Justice paid much attention to the cultural value of the site, and ruled that both parties this time should withdraw all military personnel currently occupying the Temple area, Request for the Interpretation of the Judgement of 15 June 1962 in the Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand, Order of 18 July 2011 (Request of indication of provisional measures), ICJ Reports 537/2011; A. JAKUBOWSKI, Cultural Rights as collective Rights: An International Law Perspective, Brill-Nijhoff, 2016; A. JAKUBOWSKI, The effects of state succession on cultural property: ownership, control, protection, PhD diss., European University Institute, 2011, <https://cadmus.eui.eu/handle/1814/18414>.

⁵⁷⁵ V. KATTAN, The Ghosts of the Temple of Preah Vihear/Phra Viham in the 2013 Judgement, Asian Journal of International Law, Vol. 5, No. 1, 2015, p. 21.

⁵⁷⁶ As Sir Percy observed: "The frontier line delineated in Annex 1 deviates considerably from the watershed." This was due to "a mistake caused by an incorrect location of a river known as the O'Tasem. This mistake resulted in throwing the frontier line shown on Annex I completely out of alignment with the line of the watershed in the region of the Temple", see the Dissenting Opinion of Sir Percy Spender; see Dissenting Opinion of Judge Moreno Quintana; see Dissenting Opinion of Judge Wellington Koo; V. KATTAN, The Ghosts of the Temple of Preah Vihear/Phra Viham in the 2013 Judgement, Asian Journal of International Law, Vol. 5, No. 1, 2015, p. 21.

⁵⁷⁷ A lack of clarity in the jurisprudence on the distinction between acquiescence and estoppel has led to disputation, J.R. CRAWFORD, Brownlie's Principles of Public International Law, 9th ed., Oxford University Press, Oxford, 2019; R. HIGGINS, Problems and Process: International Law and How We Use It, Oxford University Press, 1995, p. 36; P.C.W. CHAN, Acquiescence/Estoppel in International Boundaries: Temple of Preah Vihear Revisited, Chinese Journal of International Law, Vol. 3, No. 2, pp. 421-444; Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Declaration of Judge ad hoc Guillaume, 11 November 2013, International Court of Justice, online: ICJ (<http://www.icj-cij.org/docket/files/151/17711.pdf>); Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Declaration of Judge ad hoc Cot, 11 November 2013, International Court of Justice, online: ICJ (<http://www.icj-cij.org/docket/files/151/17713.pdf>); and Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Joint Declaration of Judges Owada, Bennouna, and Gaja,

This was true even though Thailand had sought to demonstrate *effectivité* of its presence and control over the disputed area⁷⁹. Additionally, there could be no doubt that the French topographical officers who produced Annex I Map “acted in complete good faith, used all their skill, and fully believed that the watershed in the Preah Vihear region ran as indicated by the Annex I line”⁷⁹. In other words, with Thailand’s evidence of *effectivité* dismissed by the Court and with the good faith of French officials given for granted⁸⁰, the Temple could not but be in Cambodia: contrariwise, there was no inclination to believe that the Thai authorities equally acted in good faith. For these reasons, we should observe that at the time of the nomination of UNESCO in 2008, the borders were not clearly defined as required by the Operational Guidelines. Yet, UNESCO took a decision that, besides the political and religious sensitivity it raises, is based on a heavily debatable judgement of the ICJ.

In this perspective, although several relevant aspects have been avoided in both the ICJ’s decisions, emphasis should be added on the application of UNESCO’s rules to a dispute that international law and the ICJ were not able to define and solve. Likewise, the latest ICJ’s interpretation in 2013 of the 1962 verdict has further confirmed that Cambodia has legal ownership over the Temple. The relevant issue that remains unregulated is the question over the sovereignty of the area beyond the promontory over which the Temple sits: this portion of territory is partially included in UNESCO’s nomination, and up to now, the problem of the sovereignty of that area remains unsolved, thus causing legal and political uncertainties⁸¹.

This case demonstrates that international cultural heritage law does not have an ad hoc mechanism of norms enforcement and dispute

11 November 2013, International Court of Justice, online: ICJ (<http://www.icj-cij.org/docket/files/151/17706.pdf>).

⁷⁹ The evidence that Thailand presented (collection of taxes, grant of permits to cut timbers, inspections of forestry officers, construction of a road to the foot of Mount Preah Vihear, presence of guardians to the Temple), were dismissed because they were not “clothed in legal form”.

⁸⁰ See Separate Opinion of Sir Gerald Fitzmaurice, where he seems to have been persuaded by the evidence of one of Thailand’s witnesses that he saw no evidence of inhabitants, rice cultivations, or forestry during a visit he made to the Temple in 1961, V. KATTAN, The Ghosts of the Temple of Preah Vihear/Phra Viharn in the 2013 Judgement, Asian Journal of International Law, Vol. 5, No. 1, 2015, p. 24.

⁸¹ The French topographical officers, who were long deceased, believed in good faith that the Temple was part of their Empire; V. KATTAN, The Ghosts of the Temple of Preah Vihear/Phra Viharn in the 2013 Judgement, Asian Journal of International Law, Vol. 5, No. 1, 2015.

⁸² V. GRABOWSKI, Heritage and Nationalism in the Preah Vihear Dispute; S. UDOM DETH, A Response to “Heritage and Nationalism in the Preah Vihear Dispute”, Voices from Cambodia, Discourses on the Preah Vihear Conflict, p. 16; P. M. RATTANASENGCHANH, The Role of Preah Vihear in Hun Sen’s Nationalism Politics, 2008–2013, Journal of Current Southeast Asian Affairs, Vol. 36, No. 3, pp. 63–89, 2017.

resolution⁵⁸²: basically, neither the ICJ (intended as a general Court for the resolution of disputes concerning contested holy sites under UNESCO's remit⁵⁸³), nor UNESCO were able to solve at an ultimate stage the problem of the sovereignty of the area that surrounds the temple. What is sure is that through UNESCO's nomination, the Temple, and hence the borders, are attributed to the sovereignty of State of Cambodia. In this regard, the World Heritage Committee recognizes that the integrity of the property has to a degree been compromised by the absence of part of the promontory from the perimeter of the property⁵⁸⁴. However, part of the disputed area on the promontory is attributed as well to the sovereignty of Cambodia, even if no effective bilateral agreement was signed between Cambodia and Thailand, nor any previous ICJ's pronouncement on this matter occurred⁵⁸⁵. In other words, the political impact is mainly connected to the enforcement of the ICJ's decision through UNESCO's nomination as a tool that indirectly enforces the classical theories on the definition of disputed borders and on acquiescence/estoppel. In the case of the Temple of Preah Vihear, revived in 2013 before the ICJ in matters of interpretation, disputed religious heritage was not the core object *in se et per se* of the judgement, but it was the point of reference for the establishment of a controversial boundary dispute⁵⁸⁶.

d) On the one side, there is a fundamental difference from the three other instances of contestation: it is related to the pronouncement issued by the International Court of Justice, that occurred before UNESCO's decision to list the site as Cambodian⁵⁸⁷. On the one side, the two other instances of contestation did not see the active involvement of the ICJ in matters related to the sovereignty of any State (Palestine or Kosovo) on its

⁵⁸² F. FRANCONI, J. GORDLEY, *Enforcing International Cultural Heritage Law*, Cultural Heritage Law and Policy, Oxford University Press, 2013.

⁵⁸³ Even UNESCO's Committee on restitutions, which is the result of an internal decision of the Organisation rather than an institutional body provided by the 1970 Convention, is severely under-utilized and remains unavailable to private parties.

⁵⁸⁴ World Heritage Committee, Decision 32 COM 8B.102, Examination of Nominations—Sacred Site of the Temple of Preah Vihear (CAMBODIA), Para. 13.

⁵⁸⁵ "This defines the core area (N.1) as being the monument and the immediate area surrounding it and is thus considerably smaller than the area originally nominated as core. It excludes much of the promontory on which the main monument sits, including the caves in its cliffs and the monumental staircase to the east. On the map, only a general area, with no boundaries, is indicated for the buffer zone (N.2) and for the area of joint management (N.3). It is not clear if the buffer zone to south and east is as extensive as that proposed in the original nomination, as the new map does not cover the extent of those areas", p. 2.

⁵⁸⁶ F. FRANCONI, J. GORDLEY, *Enforcing International Cultural Heritage Law*, Cultural Heritage Law and Policy, Oxford University Press, 2013, p.17.

⁵⁸⁷ S. SVAY, *Analysis of the Preah-Vihear Temple Case, Cambodia vs. Thailand at the International Court of Justice under Common Territorial Claims involving Land Disputes*, *Journal of Law, Policy and Globalization*, Vol. 36/2015.

contested religious heritage. On the other side, the existence of a pronouncement issued by the ICJ recognizing the Cambodian sovereignty on a contested religious site is a legal circumstance that strengthens UNESCO's position. The problem is that the element of contestation gained new life right after the inscription of the site in the World Heritage List⁵⁸⁸. On the other side, there is a similarity with the three other instances in terms of practical scenario (contestation) and recognition of the dispute on borders as a factor that affects the property. Surprisingly though, even if the site is still currently the object of the harshest tensions between Thailand and Cambodia, the site has not been inscribed in the World Heritage in Danger List, nor processed on an emergency basis⁵⁸⁹. The status of the site would fall, at least on a theoretical basis, under the protection of the "risk of outbreak or threat of armed conflict (or occupation)" clause. This is an intriguing and relevant circumstance: UNESCO should have foreseen that the inscription of the Temple as a Cambodian site would have immediately led to more violence and make bilateral resolutions⁵⁹⁰ of the surrounding border dispute more difficult. Circumstances have proven that this was the case: in this perspective, after UNESCO's inscription, the Agency seems to be out of compliance with its own principle of non-adjudication and professed stance of political neutrality⁵⁹¹.

⁵⁸⁸ <https://casebook.icrc.org/case-study/cambodiathailand-border-conflict-around-temple-preah-vihear>; K. SHULMAN, The Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand): The ICJ Orders Sweeping Provisional Measures to Prevent Armed Conflict at the Expense of Sovereignty, *Tulane Journal of International and Comparative Law*, Vol. 20, No. 2, 2012, pp. 555-570.

⁵⁸⁹ WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear, Cambodia, (C 1224rev), p.6; Advisory Body Evaluation (ICOMOS), No. 1224/2008.

⁵⁹⁰ The truth to be told, several agreements and memoranda of understanding have been signed between Cambodia and Thailand since 1991. The most relevant one is the Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on the Survey and Demarcation of Land Boundary: the MOU established the institution of a Joint Commission, with the aim of demarcating land boundaries in accordance with Art. I of the MOU 2000, Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on the Survey and Demarcation of Land Boundary, 2000, available: <http://sokheounpang.files.wordpress.com/2010/08/mou-2000-eng.pdf>; Cambodian Center for Human Rights, *Blurred Boundaries: A Briefing Note on the Cambodian-Thai Border Tensions*, 2011, available at: <https://cchr-cambodia.org/admin/media/analysis/analysis/english/Blurred%20Boundaries%20-%20A%20Briefing%20Note%20on%20the%20Cambodian-Thai%20Border%20Tensions.pdf>.

⁵⁹¹ H. SILVERMAN, *Border Wars: the Ongoing Temple Dispute between Thailand and Cambodia and UNESCO's World Heritage List*, *International Journal of Heritage Studies*, Vol. 17, No. 1, 2011.

Conclusions

a) The legal, political and religious manipulation of the Outstanding Universal Value through the lenses of UNESCO's decisions: the Cases of Hebron (Palestine), the Complex of Monuments in Kosovo and Metohija (Serbia), the Temple of Preah Vihear (Cambodia)

Throughout the dissertation several defiant aspects have been tackled and several questions have been raised. The detailed scrutiny on the neutrality of the OUV and its funding values, the use of UNESCO's instruments, the relevance of the element of contestation, the interconnection and instrumentality of intangible heritage in UNESCO's nomination processes are revealing a variety of outcomes valid both in a general perspective and then perfectly fitting to those cases of contested religious heritage considered. This variety of outcomes derive from the research questions that have been developed in the general part and in the special part:

1) Are State Parties forging the formulation of the Outstanding Universal Value according to the political circumstances and public interests they want to emphasize through UNESCO's nomination? Is UNESCO evaluating the OUV in a scientific and impartial way or rather, is this evaluation implying a wide and flexible use of the instruments set forth by UNESCO? Is this instrumental use a physiology or a pathology?

2) The element of contestation is an additional factor that challenges an impartial and neutral evaluation of the OUV: what is its relevance of these political claims in the nomination process of the selected case studies?

3) Are the architectural techniques of construction, rituals practiced in sacred spaces, liturgies, and mythology (traditionally classified as intangible heritage) a sufficient tool to claim the ownership of (tangible) contested religious sites?

4) To what extent Cultural Heritage, and mainly Religious Cultural Heritage, represent the vehicle throughout which UNESCO has enforced, impaired, defined the boundaries of National Identities in areas of competing sovereignty? Is Religious Cultural Heritage used as a political tool to enforce, impair national identities or define their boundaries?

Throughout the examination, a first aspect —*Outstanding Universal Value*, has revealed interesting insights. As Professor Sabino Cassese states, legal instruments, both domestic and global, are generally demonstrated to be non- neutral tools⁵⁹². Institutions are the fundamental rules of the game: they do create values, habits, and patterns of thoughts. In this perspective, he notices that these institutions are frequently considered the malleable part of society. This means that they are adapted to the political will of the society, thus becoming a mere envelope. And so it is for the concept of Outstanding Universal Value: on the one side it is adjusted to the political will of Governments struggling for the exercise of sovereign powers through contested religious heritage. In this sense, it becomes a tool to enforce and enhance certain cultural, religious and political components. On the other side, the OUV is an instrument in the hands of the World Heritage Committee and Advisory Bodies, that accept political declinations when the OUV is manipulated by States. In this perspective, the World Heritage Committee has the power of accepting sites to be inscribed in the World Heritage List or in the List of the World Heritage in Danger: these decisions not only raise political sensitivity, but they also have a political impact. In other words, even if the presentation and evaluation of the OUV is made according to modern scientific methods through standardized procedures of nominations, the content of the OUV cannot be neither universal, nor scientific, nor impartial. The core content is *ab initio* based on factors whose perception varies from culture to culture, with the passing of time, and according to the political circumstances a country may find itself in. This means that the threshold of UNESCO's nomination (OUV), is made up of subjective, sensitive and politically-laden elements. Inevitably, the way in which Governments build the concept of OUV, the way the World Heritage Committee evaluate the OUV, and the outcomes of UNESCO's decisions are not universal, scientific, impartial or uniform. Passably, these results are severely impacted by the different political circumstances⁵⁹³.

⁵⁹² P. LASCOUMES, P. GALÈS, *Gli Strumenti per Governare*, Prefazione S. Cassese, Milano, Bruno Mondadori, 2009.

⁵⁹³ J. JOKILEHTO, *The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties*, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6; *Monuments and Sites of History and Art and Archaeological Excavations: Problems of Today*, UNESCO, Museums, Vol.3, n. 1, 1950; *Per la Salvezza dei Beni Culturali in Italia*, Atti e Documenti della Commissione d'Indagine per la Tutela e la Valorizzazione del Patrimonio Storico, Archeologico, Artistico e del Paesaggio, Vol. I-II-III (Sezione II, Da Atti e Convegni di Enti Comunitari), Casa Editrice Colombo, Roma, 1967; S. LABADI, UNESCO, *Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and*

Throughout the examination, a second aspect —*contestation*, has revealed interesting insights.

The statements of the previous section are demonstrated to be credible especially after the analysis of the Outstanding Universal Value of three contested religious heritage sites, located in context of competing sovereignty.

The nomination of Hebron/ Al Khalil Old Town (2017) reconnects the architectural and art-historical values to the religious significance of the town, that confers the contested city a Palestinian Outstanding Universal Value. The OUV of the town prevails in a Palestinian sense even if relevant Jewish religious elements (Tell Rumeida) have been excluded from the nomination, and even if close similarities occur both with the Old City of Jerusalem (independent site) and with other Arab towns. Additionally, due to political reasons, an evaluation of the OUV made according to modern scientific methods was not available at the time of the nomination⁵⁴.

Intangible Cultural Heritage Conventions, Lanham, MD: AltaMira Press, 2013; S. LABADI, World Heritage, Authenticity and Post-Authenticity, S. Labadi and C. Long (eds.), 2010; S. LABADI, Representations of the Nation and Cultural Diversity in Discourses on World Heritage, *Journal of Social Archaeology*, Vol. 7, No.2, 2007; F. FRANCIONI, F. LENZERINI, The future of the World Heritage Convention: Problems and prospects. In F. Francioni and F. Lenzerini, eds. *The 1972 World Heritage Convention: A commentary*. New York: Oxford University Press; V. SCHMUTZ, M. A. ELLIOTT, World Heritage and the Scientific Consecration of “Outstanding Universal Value”, *International Journal of Comparative Sociology*, Vol. 58(2), 2017, pp. 140–159; L. MESKELL, UNESCO’s World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation, *Current Anthropology*, Vol. 54, N. 4, 2013; P. CHONG, Legitimate Judgement in Art, the Scientific Word Reversed?, *Social Studies of Science*, Vol. 43, 2013, pp. 265–281; S. TIMMERMANS, S. EPSTEIN, A World of Standards but Not a Standard World, *Annual Review of Sociology*, Vol. 36, 2010, pp. 69–89; T. M. SCHMITT, Global Cultural Governance: Decision-Making Concerning World Heritage Between Politics and Science, *Erdkunde*, Vol. 63, No. 2, 2009, pp. 103–121; G. BELCHER, Values in World Heritage Sites, in *Cultural Heritage Ethics: Between Theory and Practice*, Constantine Sandis (eds.), Open Book Publishers, Cambridge, 2014; P. GAZZOLA, Restoring Monuments: Historical Background, in *Preserving and Restoring Monuments and Historic Buildings*, UNESCO, Paris, 1972; S. BARBAGALLO, The Universal Value of Ecclesiastical Property, *Uniform Law Review*, UNIDROIT, Oxford University Press, Vol. 20, N.4/2015, pp.583–593; J.A. ESTRELLA FARIA, The International Protection of Religious Cultural Property, *Uniform Law Review*, UNIDROIT, Oxford University Press, Vol. 20, N.4/2015, pp. 594–609.

⁵⁴ H. TAHA, Inventory of Cultural and Natural Heritage Sites of Potential Outstanding Universal Value in Palestine, Palestinian National Authority, Ministry of Tourism and Antiquities, Department of Antiquities and Cultural Heritage, 2009; Y. REITER, *Contested Holy Places in Israel-Palestine: Sharing and Conflict Resolution*, Routledge, London and New York, 2017; N. LUZ, *The Mamluk City in the Middle East: History, Culture, and the Urban Landscape*, Cambridge University Press, Cambridge, 2014; M. RISTIC, S. FRANK, *Urban Heritage in Divided Cities: Contested Pasts*, Routledge, NY, 2019; J. S. AUERBACH,

An even more nationalistic consideration of the values constituting the OUV is presented in the nomination dossier of the complex of Medieval Monuments in Kosovo and Metohija (2004-2006). In order to highlight a substantial difference from the Palestinian case, UNESCO recognizes that the sites are a good propaganda for Kosovo's heritage, but it also recognizes that the contested site is the cradle of the Serbian cultural identity and, for this reason, it belongs to the Serbian State, notwithstanding their location in a territory that is no longer Serbian⁹⁹⁵.

The temple of Preah Vihear (2008) has artistic and architectural values evaluated as outstanding representatives of Khmer art and architecture. In this case, the OUV has a Cambodian identity, although these cultural elements are widespread also in Thailand and although the reconnection between Khmer past dynasties and modern Cambodia is the result of a recent appropriation to enforce specific political identities. Additionally, as for the case of the contested sites of the Old Town of Hebron/ Al-Khalil and the Medieval Monuments in Kosovo,

Hebron Jews: Memory and Conflict in the Land of Israel, Rowman & Littlefield, Lanham, 2009; M. DUMPER, *Contested Holy Cities: The Urban Dimension of Religious Conflicts*, Routledge, NY, 2019.

⁹⁹⁵ More specifically, the Dečani Monastery is owned by the Serbian Orthodox Church, and the property is legally protected from 1947, on the basis of the Protection of Cultural Monuments and Natural Rarities Law (FPRY Official Acts, N. 81/46), decision on determining immobile cultural properties of exceptional significance (SR Serbia Official Act, N. 25/90), and the Cultural Property Law, (Official Acts of the Republic of Serbia, N. 71/94); UNESCO, *Cultural Heritage in South-East Europe: Kosovo; Protection and Conservation of a Multi-Ethnic Heritage in Danger; Mission Report*, 26-30 April, 2004; ICOMOS, *Advisory Body Evaluation*, No. 724 and 724-bis, Dečani (Serbia-Montenegro), 2004; F. MANISCALCO, *The Loss of Kosovo Cultural Heritage*, <http://www.webjournal.unior.it> – Vol. 2, 2006, ISSN 1827-8868; D. MASSON, *South-Slavonic Churches— The Serbian*, *MacMillan's Magazine*, Vol. X, 1864; D. PÉTRONIEVITCH, *Les Cathédrales de Serbie*, Paris, Société Française d'Imprimerie et de Librairie, 1917, p. 21, p. 65; G. MILLET, *L'Ancien Art Serbe: Les Églises*, Paris, 1919; V.R PETKOVIĆ, D. BOŠKOVIĆ, *Monastir Dečani I-II*, Beograd, 1941; J. LAFONTAINE-DOSOGNE, *Iconographie de l'Enfance de la Vierge Dans l'Empire Byzantine et en Occident I*, Bruxelles, 1964, 48 et passim; T. MARK-WEINER, *Narrative Cycle of the Life of St. George in Byzantine Art*, *Ann Arbor* 1990, 50/51 et passim; V. J. DURIC (urednik), *Zidno Slikarstvo Manastira Dečana*, Beograd, SANU, 1995; S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V. VASIĆ, A. FULGOSI, B. JOKIĆ, *The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia*, Faculty of Law, University of Belgrade, Belgrade, 2010; D. VOJVODIĆ, D. POPOVIĆ, *Byzantine Heritage and Serbian Art II: Sacral Art of the Serbian Lands in the Middle Ages*, published on the occasion of the 23rd International Congress of Byzantine Studies, Belgrade, 2016; S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ed. Silvio Ferrari and Andrea Benzo, *Cultural Diversity and Law*, Ashgate Publishing Company, Burlington, 2014.

the religious element is interconnected to the artistic and architectural qualities of the site in a context of competing sovereignty⁹⁹⁶.

Hebron/ Al Khalil Old Town has been recognized as Palestinian, the Complex of Monuments in Kosovo and Metohija has been recognized as Serbian, and the Temple of Preah Vihear has been recognized as Cambodian.

These nominations took place in contexts of political, religious and cultural claims, with states struggling to affirm their sovereignties: for these reasons, these nominations cannot be said to be detached from political considerations, especially if the effects of these decisions are furtherly assessed.

b) Political Contestation of Religious Cultural Heritage and UNESCO: the Ambiguous Approach of Global Institutions and National Governments

The political sensitivity attached to contested religious heritage acquires an even less neutral and impartial dimension when the element of contestation enters the scenario of UNESCO's decisional-making processes. The use of the World Heritage List and the List of the World Heritage in Danger are used to document this hypothesis⁹⁹⁷.

⁹⁹⁶ C. JACQUES, P. LAFOND, *L'Empire Khmer, Cités et Sanctuaires*, Ve-XIIIe siècles, Fayard, Paris, 2004; J. AUBOYER, *Les Arts de l'Extrême-Orient*, FeniXX Réédition Numérique, Presses Universitaires de France 108, Boulevard Saint-Germain, 108, Paris, 1949; H. I. JESSUP, *Art and Architecture of Cambodia*, London, Thames & Hudson, 2004; H. PARMENTIER, *L'Art Khmer Classique, Monuments du Quadrant Nord-Est*, École Française d'Extrême-Orient, Paris, 1939; H. PARMENTIER *Complement à l'Inventaire Descriptif des Monuments Du Cambodge*, Bulletin de l'École Française d'Extrême-Orient, Vol. 13, No. 1, 1913, pp. 1-64; T. ZEPHIR, *L'Art Khmer, L'Art de l'Asie du Sud-Est, Citadelles & Mazenod*, Paris, 1994, p. 151-250; V. ROVEDA, *Sacred Angkor*, River Books/ Thames & Hudson, Bangkok/London, 2002; D. ROONEY, *Angkor, an introduction to the Temples*, Hong Kong, Odyssey, 1994; V. ROVEDA, *The Archaeology of Khmer Images*, Aséanie, Sciences humaines en Asie du Sud-Est, Vol. 13, 2004, pp. 11-46; D. CHIHARA, *Hindu-Buddhist Architecture in Southeast Asia*, E. J. Brill, Leiden, 1996.

⁹⁹⁷ J.H MERRYMAN, *The Public Interest in Cultural Property*, California Law Review, Vol. 77, no. 2, 1989, pp. 339-364; J. BLAKE, *On defining the cultural heritage*, International and Comparative Law Quarterly, Vol. 49, 2000; S. BATTINI, *The Procedural Side of Legal Globalization: The Case of the World Heritage Convention*, International Journal of Constitutional Law, vol. 9, no. 2; A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, Wolters Kluwer, CEDAM, 2018; C. FOCARELLI, *Trattato di Diritto Internazionale*, UTET, Milan, 2015. QC M. N. SHAW, *International Law*, Cambridge University Press, New York, Eighth Edition, 2017; Crawford J., *The Creation of States in International Law*, Oxford University Press, Oxford/New York, Second Edition, 2006; A. GALIS, *UNESCO Documents and Procedure: The Need to Account for Political Conflict When Designating World Heritage Sites*, Georgia Journal of International and Comparative Law, vol. 38, no.1, 2009.

As for the first instrument —World Heritage List, the Temple of Preah Vihear is an example of contested religious heritage inserted in the World Heritage List. The effect of this decision is striking, since it allowed for the definition of the territorial boundaries disputed by two political entities. In fact, the Temple has been the object of a dispute for the definition of the territorial sovereignty between Thailand and France (as sovereign over French Indo-China which included Cambodia). Even before the institution of UNESCO, the ICJ recognized that the Temple of Preah Vihear was under the Cambodian sovereignty and administration. Although the Court did not explicitly consider the cultural, archaeological and religious significance of the site in 1962, the political claims of the parties were also to be interpreted in the light of the intrinsic nature of the site. More interestingly, especially after the inscription of the Temple under the Cambodian World Heritage List, the claims for the territorial inclusion of the site within the Thai boundaries led to escalations of violence and damages to the Temple. In this perspective, the inscription of the Temple within the Cambodian World Heritage List is again a decision that, although far from being a political statement, raises a certain degree of cultural and political sensitivity. One may accuse UNESCO of not having foreseen the possible outbreak of conflicts⁵⁹⁸.

⁵⁹⁸ Royaume de Cambodge, Ministère de la Culture et des Beaux Arts, *Le Site Sacré de Préah Vihear*, Demande d'Inscription sur la Liste de Patrimoine Mondial, UNESCO; Cambodia asked the International Court of Justice to adjudge and declare that the sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which have been removed from the Temple by the Thai authorities since 1954 were to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand, ICJ, *Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand*, Judgement of 15 June 1962, p. 10. In a later occasion, the International Court of Justice paid much attention to the cultural value of the site, and ruled that both parties this time should withdraw all military personnel currently occupying the Temple area, *Request for the Interpretation of the Judgement of 15 June 1962 in the Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand*, Order of 18 July 2011 (Request of indication of provisional measures), ICJ Reports 537/2011; A. JAKUBOWSKI, *Cultural Rights as collective Rights: An International Law Perspective*, Brill-Nijhoff, 2016; S. SVAY, *Analysis of the Preah-Vihear Temple Case, Cambodia vs. Thailand at the International Court of Justice under Common Territorial Claims involving Land Disputes*, Journal of Law, Policy and Globalization, Vol. 36/2015; H. SILVERMAN, *Border Wars: the Ongoing Temple Dispute between Thailand and Cambodia and UNESCO's World Heritage List*, International Journal of Heritage Studies, Vol. 17, No. 1, 2011; A. HAENDEL, *Old Myths and New Approaches: Interpreting Ancient Religious Sites in Southeast Asia*, Monash University Publishing, 2012; L. MESKELL, *A Future in Ruins: UNESCO, World Heritage, and the Dream of Peace*, Oxford University Press, Oxford, 2018; V. KATTAN, *The Ghosts of the Temple of Preah Vihear/Phra Viharn in the 2013 Judgement*, Asian Journal of International Law, Vol. 5, No. 1, 2015; F. FRACIONI, J. GORDLEY, *Enforcing International Cultural Heritage Law*, Cultural Heritage Law and Policy, Oxford University Press, 2013.

As for the second instrument —List of the World Heritage in Danger, within the two instances of Palestine and Kosovo, the normal timetable and definition of completeness for the submission and processing of nominations was not followed. The properties were endangered by ascertained dangers or potential dangers that would constitute an emergency situation for which an immediate decision by the Committee is required. In this case, the Advisory Bodies and the Committee took an immediate decision on the outstanding values of those sites. In this perspective, adding emphasis on the element of contestation, the content of the WHC's decisions cannot be said to be detached from political considerations⁵⁹⁹.

First, it is not clear to what extent the concepts of Outstanding Universal Value, authenticity and integrity are contaminated by political considerations, especially when national institutions ask for the urgent inscription of their most representative sites within the World Heritage in Danger List. In other words, the impact of the element of contestation in UNESCO's decisions is certainly consistent, although differently considered case by case and with consequent different political impacts. This is particularly true when religious heritage becomes the core of politically related-content choices that raise institutional sensitivity and change the institutional setup of two conflicting parties. More in details, it is significant under several aspects that Hebron/Al-Khalil Old Town and the Monasteries in Kosovo (in 2004–06), were all inserted in the system of protection provided for by the 1972 Convention, with the Temple of Preah Vihear inserted in the World Heritage List notwithstanding the existence of a real conflict. More specifically, the difference from the two other instances of contestation is related to the

⁵⁹⁹ E. BENVENISTI, *The International Law of Occupation*, Oxford University Press, Oxford, 2012; Y. DINSTEIN, *The International Law of Belligerent Occupation*, Cambridge University Press, Cambridge, 2019; Y. MIZRACHI, *Tell Rumeida: Hebron's Archaeological Park*, Emek Sheveh, 2014; O. AVISHAR, *Hebron: City of the Patriarchs and its Settlement Through the Ages*, Keter Publishing, Jerusalem, 1970; A. LAÏDI-HANIEH, *Arts, Identity, and Survival: Building Cultural Practices in Palestine*, *Journal of Palestine Studies* 35, no. 4, 2006; P. SELICK, *The Old City of Hebron: Can It Be Saved?*, *Journal of Palestine Studies* 23, no. 4, 1994; M. BENVENISTI, *City of Stone: The Hidden History of Jerusalem*, University of California Press, Berkeley, 1996; Y. REITER, *Contested Holy Places in Israel-Palestine: Sharing and Conflict Resolution*, Routledge, London and New York, 2017, pp. 247-264; S. BOSE, *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka*, Harvard University Press, Cambridge, 2007, p. 204; M. DUMPER, *Contested Holy Cities: The Urban Dimension of Religious Conflicts*, Routledge, NY, 2019; R. LAVALLÉ, *Legal Aspects of the Kosovo Crisis and its Outcome: An Overview*, *Révue Hellenique de Droit International*, No. 2, 2000; D. BINDER, *Kosovo and Metohija*, in *Fare Well, Illyria*, Central European University Press, 2013; D.B. MACDONALD, *Balkan Holocausts? Serbian and the Croatian Victim-Centred Propaganda and the War in Yugoslavia*, Manchester University Press, Manchester and New York, 2002.

pronunciation issued by the International Court of Justice that took place before UNESCO's decision to list the site as Cambodian. This legal circumstance is indeed a factor that strengthens UNESCO's position, but the element of contestation gained new life right after the inscription of the site in the World Heritage List. There is a similarity with the two other instances in terms of practical scenario (contestation) and recognition of the dispute on borders as a factor that affects the property. Surprisingly though, even if the site is still currently the object of the harshest disputes between Thailand and Cambodia, thus falling under the provision that contemplates the risk of outbreak or threat of armed conflict (or occupation), it has not been inscribed in the World Heritage in Danger List, nor processed on an emergency basis.

Second, a clear definition of the legislative measures and an adequate delineation of the boundaries of the property were not provided when Palestine, Serbia and Cambodia asked for the inscription of their contested properties. Interestingly, the above-mentioned cases are emblematic examples of long-standing struggles for the affirmation of their statehood or borders. The need of affirming their statehood and the need of having clearly delineated political boundaries is manifested through claims for the exercise of sovereign powers over cultural heritage sites. Hence, even though required by the rules for the nomination of endangered sites, we cannot properly speak of a strong legal background existing when nominations were submitted (Palestine and Serbia/Kosovo). We can indeed observe that legal measures and cultural heritage laws have been enacted or consistently amended by their national Institutions once the properties have already been listed. Additionally, we cannot speak of properly defined territorial borders from the legal and political perspectives (Palestine, Kosovo, Cambodia)

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⁶⁰⁰ Operational Guidelines for the Implementation of the World Heritage Convention, WHC 13/01, July 2013, para. 97; WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019, para. 96-119.; Palestinian Ministry of Tourism and Antiquities, Palestinian Decree Law on Tangible Cultural Heritage, 2018; Assembly of Kosovo, Cultural Heritage Law, No. 02/L-88, 9 October 2006; Kosovo's Declaration of Independence, 17 February 2008; Constitution of the Republic of Kosovo, 15 June 2008; ICJ, Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for an Advisory Opinion), 22 July 2010; Law on Cultural Property n. 71/1994, amended in 2011 (Serbia, Sl. glasnik RS", br. 71/94, 52/2011 - dr. zakoni i 99/2011); Law on Museum Activities, 2008, Serbia; In the case of Cambodia, the last law on cultural property has been enacted when the nomination was submitted in 2007 (Law on customs -20 July 2007), but an Agreement between the Government of Cambodia and the Government of the Kingdom of Thailand to combat illicit trafficking and cross-border smuggling of movable cultural property and to reconstitute it to the country of origin has been signed in 2000; Article 8, (Intergovernmental Committee

In all the three cases, when referred to cultural property, the ascertained danger is referred to as imminent and specific dangers, including: serious deterioration of materials, serious deterioration of structure and/or ornamental features, serious deterioration of architectural or town-planning coherence, serious deterioration of urban or rural space, or the natural environment, significant loss of historical authenticity, important loss of cultural significance. In the case of cultural property, the potential danger is referred to as modification of juridical status of the property diminishing the degree of its protection, lack of conservation policy, and the outbreak or threat of armed conflict (or occupation)⁶⁰¹. In all the instances, their political framework, involving considerations related to the important loss of cultural significance (ascertained danger) and the modification of juridical status of the property diminishing the degree of its protection (potential danger), were justifying their inscription on an emergency basis.

In all the three cases, these legal and political circumstances would have justified and inscription in the World Heritage in Danger List, but these instruments have been differently used and the conflict has been generally mentioned as a legal circumstance, not as a reason founding UNESCO's decisions. This is a particularly relevant aspect that raises additional problems, currently unsolved, related to the application of the rules set forth by UNESCO⁶⁰².

The hypothesis that the contestation has a relevant position in UNESCO's nomination and it is not detached from political discourses, although with different results, finds a meaningful confirmation in these cases of longstanding struggles for the exercise of sovereign powers. These decisions on religious heritage are used either to carve and enforce the territorial limitation of national sovereignty, or limit the territorial extension of the countries: however, in UNESCO's decisions, no reference is made to the element of contestation as an active tool used to

for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

⁶⁰¹ Article 11.4, III (Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage), UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; Operational Guidelines for the Implementation of the World Heritage Convention, WHC 13/01, July 2013, para. 179.

⁶⁰² For further details, see Chapter II, at Paragraph 4. (The Element of Contestation in UNESCO's System: Same Legal Backgrounds of Contestation, Different Political Outcomes).

neutralize the political adversaries' policies in flagrant violation with international and global rules.

As a way of example, why did the Committee decide to inscribe Jerusalem as an independent site, but decide to inscribe the Temple of Preah Vihear as a Cambodian item, thus attributing a specific political identity to the site? Why did the Committee decide to immediately inscribe the Old City of Hebron as a Palestinian site and the Monasteries located in Kosovo as Serbian sites? In the case of Jerusalem and Hebron, the Committee adopted two different approaches in the same context of longstanding occupation and competing sovereignty. The risk of outbreak or threat of armed conflict (or occupation) is a legal circumstance that characterizes both Jerusalem and Hebron⁶⁰³, thus justifying their position in the List of the World Heritage in Danger. The first site though has no Palestinian nor Israeli nationality, while the second site has a purely Palestinian OUV. Kosovo is not a ratifying party to the 1972 World Heritage Convention, but the provision of the "risk of outbreak or threat of armed conflict (or occupation)" is certainly applicable to the complex of monuments, currently positioned in the List of the World Heritage in Danger⁶⁰⁴. The sites are located in a territory that is no longer Serbian, but this circumstance is granting the Serbian presence in a territory that is undergoing a State building process, thus fomenting the risk of controversies that originate from an already contested site. UNESCO's decision is again a political choice and an additional factor that foment the political tensions between two conflicting sovereign states. Indeed, in this case, the connection between UNESCO's decisions, religious contested heritage, and potential outbreak of an even stronger political conflict is blatant. Moreover, similarities and differences with the Palestinian and Cambodian cases are emerging. On the one side, the provision of the "risk of outbreak or threat of armed conflict (or occupation)" set forth by UNESCO is a common denominator. On the other side, the Outstanding Universal Value of the Monasteries has a Serbian identity, but it is claimed by

⁶⁰³ WHC, 06COM X.28-35 - Nomination of the "Old City of Jerusalem and its Walls" to the list of World Heritage in danger, 1982; WHC/19/43.COM/ 7 (Site proposed by Jordan), WHC/19/43.COM/7A.Add, WHC/19/43.COM/7A.Add.2, WHC/19/43.COM/7A.Add.3 and WHC/19/43.COM/7A.Add.3.Corr; WHC, 41COM 8C.1 - Update of the List of World Heritage in Danger (Inscribed Properties), 2017; WHC/Decision 42 COM 7A.28 and WHC/18/42.COM/7A.Add.2; Paris, 15 June 2018, Hebron/ Al-Khalil Old Town, Palestine, (C 1565).

⁶⁰⁴ WHC, 28COM 14B.47 - Nominations of Cultural Properties to the World Heritage List, Dečani Monastery, Serbia, 2004; WHC, 30COM 8B.54 - Inscription on the List of the World Heritage in Danger, Medieval Monuments in Kosovo, Serbia, 2006; WHC, 30COM 8B.53-Extension of Properties Inscribed on the World Heritage List, Medieval Monuments in Kosovo, Serbia, 2006.

Kosovo. The process cannot be said to be neutral or detached from political considerations since the context is particularly sensitive. In conclusion, the administrative procedure applied for the nomination of the Monasteries is the same as that used for the nomination of Hebron. In the first case, the procedure set forth by the UNESCO results in the impairment of Kosovo's political identity. In the second case the procedure set forth by the UNESCO results in the strengthening of Palestine's political identity.

All in all, UNESCO's decisions result in the empowerment of national sovereignties (The Old City of Hebron), impairment of national sovereignties (Medieval Monuments and Wall Paintings in Kosovo), or definition of borders (Temple of Preah Vihear). This means that UNESCO's decisions are a tool to implicitly reinforce, impair and define the traditional theories of international law on the territorial integrity of states, sovereignty of states and establishment of political boundaries.

As for the first case, it seems a quite plausible hypothesis that these decisions are a political tool, also considering the strategic geographical and political position of the sites. The decision on Hebron represents the most powerful attempt to use religious cultural heritage as a mean to legitimate national discourses, shape the geographical borders of a contested land through religious heritage sites under protection and re-connect a population to the cultural elements of its territory. Israel may indeed reject the applicability of UNESCO's legislation in its territory, including the decisions of the Agency in the Haram al-Sharif compound, but it would not be able to compress the exercise of UNESCO's powers in area A, being under the full civil and military sovereignty of the Palestinian Authority. Moreover, this statement seems to be true if we consider that the inclusion of those religious heritage sites under the Palestinian World Heritage List is an international act of recognition of a disputed territory. In this regard, what makes the Palestinian case a unique instance within the international scenario is that these decisions can represent a concrete mean throughout which UNESCO is using religious cultural heritage to forge the Palestinian national identity⁷⁶⁵.

Furthermore, the classical theory on state sovereignty is particularly challenged also in the problematic case of Kosovo, involved in a state-building process and seeking recognition as an independent

⁷⁶⁵ M. N. SHAW QC, *International Law*, Cambridge University Press, Sixth Edition, 2008, pp. 445-483; J. CRAWFORD, *The Creation of States in International Law*, Second Edition, Oxford, 2006; J. DUGARD, *Recognition and the United Nations*, Cambridge, 1987; H. LAUTERPACHT, *Recognition in International Law*, Cambridge, 1947; S. TALMON, *Recognition of Governments in International Law*, Oxford, 1998.

State: the cultural heritage located in its boundaries though, is recognized by UNESCO as Serbian. This means that the Medieval Monuments in Kosovo, located in Kosovo and claimed by Kosovo, have been listed as Serbian heritage sites in danger, notwithstanding the attribution of monitoring tasks to those Kosovo's transitional institutions established for overseeing the settlement of democratic and autonomous self-government institutions in Kosovo. This is indeed an anomaly in the international law and international cultural heritage law scenario, also according to the classical theory of the principle of territoriality. The status of Kosovo was extremely controversial since the regime on the dismemberment of the SFRY, based on the principle of *uti possidetis*⁶⁰⁶, did not grant the automatic right to secede from the Serbian province. Accordingly, the initial international framework for Kosovo was perceived only as humanitarian assistance, with the aim of securing peaceful coexistence between the conflicting communities of Serbs and Albanians inhabiting the region. However, in the process of Kosovo's independence, the adoption of human rights and cultural heritage obligations constituted the fundamental basis for the constitutional framework of the new state.

UNESCO is recognizing the Serbian sovereignty in a territory that is no longer Serbian thus impairing the State-Building of Kosovo. In other words, this is a contingency that allows UNESCO to bypass the principle of full respect of Kosovo's territorial integrity, thus resulting in the impairment of Kosovo's sovereign rights. This case is putting in place a deviation related to the application of the rules generally applied by UNESCO⁶⁰⁷.

⁶⁰⁶ This is a principle of customary international law on territorial sovereignty that originally served to preserve the boundaries of colonies emerging as a State: in particular, territory and property remains with its possessor at the end of the conflict, unless differently provided by a treaty. It was originally applied to establish the boundaries of decolonized territories in Latin America and then it became a rule of wider application, notably in Africa. More generally, it is logically connected to the phenomenon of the obtaining of independency, ICJ, Case Concerning the Frontier Dispute: Burkina Faso vs. Republic of Mali, 22 December 1986, Para. 20; M. SHAW, *The Heritage of States: The Principle of Uti Possidetis Juris Today*, BYIL 67/75, 1996.

⁶⁰⁷ The Republic Institute for the Protection of Cultural Monuments (Belgrade), the Ministry of Culture and Public Information of the Republic of Serbia, are among those major institutions involved in the protection and management of the sites. Furthermore, the Kosovo Force (KFOR), the United Nations Interim Mission in Kosovo (UNMIK), the European Union Rule of Law Mission (EULEX), the Kosovo Police and local authorities are in charge of protecting the Dečani Monastery and the three other monumental complexes located in Kosovo (Gracanica Monastery, Patriarchate of Pec, The Virgin of Ljevisa Church), while monitoring all the developments which may potentially compromise the integrity, the conservation and the security of the properties; ICJ, Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for an Advisory Opinion), 22 July 2010; S. CHESTERMAN, *You, the People: The United Nations, Transitional Administration and State- Building*, Oxford University Press, NY, 2004; N. BROVINA, A. RAMADANI, *Process of State Building in Kosovo*, UBT

Political issues arise also with respect to the theory on the clear definition of borders. According to the traditional theories of international law this condition is necessary in order to have a State. According to UNESCO's rules, this condition is necessary in order to include a site under UNESCO's Lists. Its traditional and substantial content has been challenged in the case of the Temple of Preah Vihear, recognized as Cambodian but claimed by Thailand. This is indeed a major deviation related to the application of the rules provided by Global Institutions⁸⁸.

c) Intangible Heritage as a tool to claim Contested Religious Heritage: strong proofs of the political instrumentality of ICH in the cases of Hebron (Palestine), the Complex of Monuments in Kosovo and Metohija (Serbia), and the Temple of Preah Vihear (Cambodia)

Throughout the examination, a third aspect —*intangible heritage*, has revealed interesting insights.

When it comes to contested religious heritage, there are some particularly meaningful instances that testify the intense role of architectural techniques of construction, rituals, mythology, and liturgy as tools to attribute a precise nationality to the OUV. The case of the Old City of Hebron, the Medieval Monuments in Kosovo and Metohija, and

International Conference, 2017; A. ZIMMERMANN, STAHN. C, Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the Current and Future Legal Status of Kosovo, *Nordic Journal of International Law*, Issue 4, Vol. 70, 2001, pp. 423-460; S. BIANCHINI, State Building in the Balkans, Longo Editore, Ravenna, 1998; H. BIRKENKÖTTER, Review of Vijayashri Sripati, *Constitution-Making Under UN Auspices: Fostering Dependency in Sovereign Lands*, *International Journal of Constitutional Law*, Volume 19, Issue 1, January 2021, Pages 358–363, I-CONS JOURNAL; G. VIZOKA, *Shaping Peace in Kosovo: the Politics of Peacebuilding and Statehood, Rethinking Peace and Conflict Studies*, Oliver P. Richmond Series Editor, Springer Nature, Switzerland, 2017; M. T. KAMMINGA, *Extraterritoriality*, MPIL, 2020; K. M. MEESEN, *Extraterritorial Jurisdiction in Theory and Practice*, Kluwer Law International, London, The Hague, Boston, 1996; S. CHOUDHRY, *Secession and post-sovereign constitution-making after 1989: Catalonia, Kosovo, and Quebec*, *International Journal of Constitutional Law*, Volume 17, Issue 2, April 2019.

⁸⁸ M. N. SHAW, *Title to Territory*, Ashgate, 2005; R. Y. JENNINGS, *The Acquisition of Territory in International Law*, Manchester University Press, Manchester, 1963; J.R. CRAWFORD, *Brownlie's Principles of Public International Law*, 9th ed., Oxford University Press, Oxford, 2019; F. FRANCONI, J. GORDLEY, *Enforcing International Cultural Heritage Law*, *Cultural Heritage Law and Policy*, Oxford University Press, 2013; M. G. KOHEN, M. HÉBÉ, *Research Handbook on Territorial Disputes in International Law*, Elgar, Northampton, 2018.

the case of the Temple of Preah Vihear are among these emblematic examples⁶⁰⁹.

In particular, the case of Hebron, exemplifies how the architectural techniques of construction of the entire city, characterizing the religious sites therein located, are recognized by UNESCO as Palestinian. This decision is instrumental to the ascertainment of the Palestinian identity in a context of competing sovereignty. If this architectural technique of construction is qualified as Palestinian in a context of competing sovereignty, without mentioning its relevance as intangible heritage, then the link between intangible heritage and the decision of UNESCO of inscribing the Old Town of Al-Khalil/Hebron in the Palestinian World Heritage in Danger List is particularly strong, although not explicit. Hence, this architectural technique of construction becomes symbolic of the Palestinian political sovereignty over a contested site. In such a complex institutional process connotated by elements of great political, cultural and religious sensibility, the architectural technique of construction is a fundamental tool used by the Palestinian Government and UNESCO to justify the Outstanding Universal Value of those religious heritage sites located in the West Bank and recognized as Palestinians⁶¹⁰.

⁶⁰⁹ See more in Details in Chapter III and IV (Special Part/ Case Studies), (UNESCO and the Case of Hebron: Palestine vs. Israel, UNESCO and the Case of the Dečani Monastery: Serbia vs. Kosovo, UNESCO and the Case of the Temple of Preah Vihear: Cambodia vs. Thailand); F. LANZERINI, Il valore 'soggettivo' del patrimonio culturale come elemento essenziale dell'identità dei popoli, in A. GENTILI, La Salvaguardia dei beni culturali nel Diritto Internazionale, Milano, Giuffrè, 2008; F. LANZERINI, Intangible Cultural Heritage: The Living Culture of Peoples, *The European Journal of International Law*, Vol. 22, No. 1, 2011; L. LIXINSKI, Selecting Heritage: the Interplay of Art, Politics and Identity, *The European Journal of International Law*, Vol. 22, no. 1, 2001; D. DE COPPET, Understanding Rituals, London and New York, Routledge, 1992; A. WARBURG, W. F. MAINLAND, A Lecture on Serpent Ritual, *Journal of the Warburg Institute*, Vol. 2, No. 4, 1939; J. BLAKE, Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch, *International Journal of Cultural Property*, No. 21, 2014.

⁶¹⁰ T. CANAAN, *The Palestinian Arab House, Its Architecture and Folklore*, Syrian Orphanage Press, Jerusalem, 1933; M. BENVENISTI, *City of Stone: The Hidden History of Jerusalem*, University of California Press, Berkeley, 1996; D. KHASAWNEH, M. GRÖNDAHL, F. RAHHAL, *Memoirs Engraved in Stones: Palestinian urban mansions*, Riwaq-Centre for Architectural Conservation, Ramallah, 2000; E. PALAZZO, *Recupero Urbano nelle Città Storiche del Territorio Palestinese Occupato*, EdA, Esempi di Architettura, Il Prato Casa Editrice, anno III, n.7/2009, Padova; J. AWAD, *Conserving the Palestinian Architectural Heritage*, *International Journal of Heritage Architecture Studies* Repairs and Maintenance, Vol. 1(3), 2017; R. FUCHS, *The Palestinian Arab House and the Islamic "Primitive Hut"*, *Muqarnas*, Vol. 15, 1998, pp. 157-177; S. MAKDISI, *The Architecture of Erasure*, *Critical Inquiry*, Vol. 36, No. 3, 2010, pp. 519-559; C.A. BREBBIA, V. ECHARRI, *Structural Studies, Repairs and Maintenance of Heritage Architecture XV*, WIT Press, 2017, (Classification of Residential Buildings in the Old City of Hebron).

Another case with particularly relevant legal profiles is the Temple of Preah Vihear. UNESCO, following the ruling of the International Court of Justice, recognizes the disputed site to Cambodia. Although these elements are widely spread and common also in Thailand, UNESCO confers a Cambodian identity to the architectural techniques of construction, decorative motifs, mythology and rituals performed in the Temple. In this way, through tangible and intangible cultural heritage, the decision of the International Court of Justice, reinforced by the decision of UNESCO, results in the definition of boundaries that have been the subject of a long dispute for the territory and for the exercise of territorial powers¹¹.

In the case of the Medieval Monuments in Kosovo and Metohija, the Orthodox ritual and the liturgy are recognized as Serbs by UNESCO (*under criterion (ii), criterion (iii), criterion (iv), and criterion (vi)*). They do serve to justify the Serbian presence in a territory that is no longer Serbian, thereby weakening Kosovo's political and cultural identity. In addition, this also has repercussions on the widening of the mesh of the traditional theories of sovereignty and territorial integrity that UNESCO declares to respect. Although so far widely unexplored, intangible aspects of religious cultural heritage may be complementary, and even instrumental, to strengthen the sense of belonging of heritage sites to a country, thus enforcing the principle of territoriality. As a way of example, according to the nomination dossier, the artistic style of the Dečani sculptures is strictly dependant in theme to those ritualistic practices described in Orthodox liturgical texts and works of the old Serb literature, resulting in a conglomerate of religion, art and religious iconography, intangible heritage, and political contestation: this observation goes beyond the traditional conception of the principle of sovereignty. Likewise, these rituals and liturgical celebrations appear as crucial elements to justify the Serbian identity of the Dečani and its Outstanding Universal Value, although claimed by Kosovo and, most importantly, located in the territory recognized by the UN as Kosovo. Indeed, the ritual reflected also in the artistic style of the Dečani, is

¹¹ W. DONIGER O'FLAHERTY, *Hindu Myths*, Penguin Books, London, 1975; A. HAENDEL, *Old Myths and New Approaches: Interpreting Ancient Religious Sites in Southeast Asia*, Monash University Publishing, 2012; V. LIEBERMAN, *Strange Parallels. Southeast Asia in Global Context, c. 800-1830, Vol.1: Integration on the Mainland*, Cambridge University Press, Cambridge, 2003; A. DENES, *Recovering Khmer Ethnic Identity from the Thai National Past: An Ethnography of the Localism Movement in Surin Province*, Doctoral Dissertation, Cornell University, 2006; A. DENES, *The Revitalization of Khmer Ethnic Identity in Thailand: Empowerment or Confinement?*, Routledge Handbook of Heritage in Asia, Routledge, Abingdon, 2012; M. PAITON, *Social and Cultural History of Northeastern Thailand from 1868-1910: A Case Study of Huamuang Khamen Padong (Surin, Sangha and Khukhan)*, Doctoral Dissertation, University of Washington, 1984; W. TOEM, *History of Isan*, Thammasat University Press, Bangkok, 1999.

directly associated with a precise political identity, without being qualified as intangible heritage. This ritual is classified as intangible heritage according to the 2003 Convention and it is referred to a contested site, but it is not inscribed within the Serbian List of Representative Intangible Heritage of Mankind⁴⁰².

In the light of these considerations, it emerges that rituals and architectural techniques of construction based on religious lifestyle are part of those nomination dossiers throughout which disputing States and UNESCO are attributing a precise nationality to the contested religious sites. Even if these elements are not listed neither in the Representative List of the Intangible Heritage of Humanity, nor in the List of Intangible Heritage in Need for Urgent Safeguarding, rituals, traditions, liturgies, sacred mythology, and architectural techniques of construction enhance the OUV, the identity, and the political significance of contested religious sites examined. These approaches are conferring credibility to the idea that intangible cultural heritage, is being progressively used as an instrument to shape the political and cultural relevance of tangible cultural heritage, thus enforcing also its characterization in terms of OUV being classified as belonging to a nation rather than to another. In particular, in some cases, religious

⁴⁰² S. MARJANOVIĆ-DUŠANIĆ, *The Holy King: The Cult of St. Stefan of Dečani*, Belgrade, SANU, Balkanološki Institut, 2007; D. POPOVIĆ, *Pod okriljem svetosti: kult svetih vladara i relikvija u srednjovekovnoj Srbiji* (Under the wing of holiness: cult of holy rulers and relics in Medieval Serbia), Balkanološki Institut, SANU: Posebna izdanja 2006. D. VOJVODIĆ, *Prilog poznavanju ikonografije i kulta sv. Stefana u Vizantiji i Srbiji* (Contribution to knowledge of iconography and cult of St. Stefan in Byzantine and Serbia), *Zidno slikarstvo manastira Dečani: građa i studije*, SANU: odeljenje istorijskih nauka, Posebna izdanja 1995; G. DUIJZINGS, *Religion and the Politics of Identity in Kosovo*, Hurst & London, 2000, pp. 66-69 (*The Muslim Gypsy Pilgrimage to Gračanica*); A. KOSTER, M. BAX, *Power and Prayers: Religious and Political Processes in Past and Present*, VU University Press, 1993; D. MILOŠEVIĆ, *Gračanica Monastery*, Institute for the Protection of Cultural Monuments of the Socialist Republic of Serbia, 1989; S. ĆURČIĆ, *Gračanica and the Cult of the Sainly Prince Lazar*, *Recueil des travaux de l'Institut d'études byzantines*, XLIV, 2007; S. ĆURČIĆ, *Gračanica. Istorija i arhitektura*, Beograd i Priština 1988 (*Gračanica. King Milutin's Church and its Place in Late Byzantine Architecture*), University Park and London, 1979; M. MARKOVIĆ, D. VOJVODIĆ, *Artistic Heritage of the Serbian People in Kosovo and Metohija: History, Identity, Vulnerability, Protection*, Serbian Academy of Arts and Sciences, 2017; B. TODIĆ, *Serbian Medieval Painting: The Age of King Milutin*, Dragančić, University of Virginia, 1999; D. T. BATAKOVIĆ, M. VASILJEVIĆ, *The Christian Heritage of Kosovo and Metohija: the Historical and Spiritual Heartland of the Serbian People*, Sebastian Press, 2015; S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V. VASIĆ, A. FULGOSI, B. JOKIĆ, *The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia*, Faculty of Law, University of Belgrade, Belgrade, 2010; UN S/RES 1244/1999, throughout which the UNMIK was established to facilitate a political process to determine Kosovo's future status; ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (Request for an Advisory Opinion), 22 July 2010.

rituals and festive events or religious traditions are classified as intangible heritage⁴⁰³. In other cases, such as the Medieval Monuments of Kosovo and the Temple of Preah Vihear, the liturgy and the mythology are not listed as their intangible heritage, but as elements that (implicitly) persuade the OUV on the basis of standardized criteria of evaluation that UNESCO itself adopted.

These considerations related to the instrumentalization of intangible heritage used as a tool to claim tangible heritage brings to life two additional profiles. On the one side, there is an inner contradiction with the fluid character that ICH should have according to its original conception in UNESCO's formulation, and namely, its non-dependency to territorial borders. Indeed, it is ambiguous how States and UNESCO, in making decisions concerning contested religious heritage, are seeking to enclose intangible heritage within territorial boundaries, thus making it instrumental to tangible heritage through choices that raise strong political, religious and cultural sensitivity. On the other side, through the application of rules set forth by UNESCO, different impacts on the territorial integrity of States and on their political setups can be observed.

In particular, the case of Hebron (Palestine vs. Israel) is presented as a peculiar use of the architectural techniques of construction of the entire city, characterizing the religious sites therein located, recognized by UNESCO as Palestinian. In the context of the decision taken by the World Heritage Committee in a sensitive political situation intangible heritage is instrumental to reinforce the ascertainment of the Palestinian identity in a context of competing sovereignty. On the same line of reasoning, the ritual and the liturgy practiced in the Medieval Monasteries in Kosovo (Kosovo vs. Serbia), are recognized by UNESCO as Serbian, but the impact of this decision that emphasizes the identity of these intangible elements in a nationalistic sense, is instrumental to the justification of the Serbian presence in a territory that is no longer Serbian. In this sense, this decision produces the impact of impairing Kosovo's political and cultural identity with emphasis added on those Serbian intangible cultural heritage. Another case that presents peculiar legal profiles in the field of intangible heritage is the Preah Vihear Temple (Thailand vs. Cambodia): UNESCO, following the ICJ's ruling, attributes the disputed sites to Cambodia, thus conferring a Cambodian identity to the Temple of Preah Vihear, both in terms of rituals and Khmer architectural techniques of construction.

⁴⁰³ See more in details at Paragraphs 5 and 5.1 in Chapter III and in Chapter IV (Special Part / Case Studies), (The Case of Hebron: Palestine vs. Israel, The Case of the Dečani Monastery: Serbia vs. Kosovo and The Case of the Temple of Preah Vihear: Cambodia vs. Thailand).

d) Ascent of a new sub-category under the category of cultural heritage?

Is there a sub-category under the category of cultural heritage law? The selected cases present a common ground that has challenged the neutral and impartial application of UNESCO's rules. This common ground (the religiosity of the site, the contestation, the use of intangible heritage as an instrument to claim tangible heritage) is the salient feature that leads us to question if it were not the case to consider these peculiar nominations as independent sub-categories of cultural heritage law.

These elements, and mainly, the substantial (religious element), political (contestation) and cultural (strong interactions between intangible and tangible) characterizations of the sites induce us to consider contested religious heritage as a separate category from the broader scenario of cultural heritage under UNESCO's remit.

Within the general scenario, UNESCO's nominations are not as tricky as those of contested holy sites in terms of recognition of the OUV, nomination processes and impact of the decisions. Additionally, these three cases are spread in three different areas of the world (Middle-East, Europe, Asia) and nonetheless they present several aspects that strengthen the hypothesis that contested religious cultural heritage should be treated as a sub-category under the category of cultural heritage law.

The idea that this group of contested heritage should be treated as a *corpus separatum* from other typologies of ordinary nominations is strengthened by the effects of UNESCO's decisions: it is possible to observe that, given the non-ordinary and sensitive context, they certainly had a political impact on the institutional setup of these States and raised political and cultural sensitivity.

In this perspective, given the cultural, political and legal difficulties of these nominations, such as the existence of a conflict of sovereignties between States, this sub-category should follow its own rules of evaluation under several perspectives. As a way of example, the religious quality of the site should be the object of a careful assessment both by national governments and by the Advisory Bodies. The religious characterization, also intended as the additional artistic and historical value of the site, should be evaluated in conjunction with the current political situation of the site, with its own rules and decisional-making process.

Bibliography

Treaties, Conventions, Charters, Laws, Resolutions, Recommendations, Case-law, and UNESCO's Legal Documents (listed in chronological order):

Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, International Committee of the Red Cross, 29 July 1899.

Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, International Committee of the Red Cross, 18 October 1907.

Rules Concerning the Control of Wireless Telegraphy in Time of War and Air Warfare, Drafted by a Commission of Jurists at the Hague, International Committee of the Red Cross, December 1922-February 1923.

The Case of the S.S. Wimbledon, PCIJ, Series A01, 1923.

The Case of the S.S. Lotus, PCIJ, Series A, No. 10, 1927.

Antiquities Ordinance, Palestine, 1929.

Law on the Serbian Orthodox Church, <http://licodu.cois.it/?p=4113&lang=en>, 1929.

ICOMOS, Athens Charter for the Restauration of Historic Monuments, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, 1931.

Antiquity Rules (1930), The Laws of Palestine, Vol. III, 1934.

The Laws of Palestine, Vol. I, 1934.

UN Charter, San Francisco, 26 June 1945.

UNESCO Constitution, 1945.

Protection and Cultural Monuments and Natural Rarities Law, FPRY, Official Acts N. 81/1946.

UN Doc A/RES/181 (II), "Future Government of Palestine", 29 November 1947.

Universal Declaration of Human Rights, G.A. Res. 217a, 71 UN GAOR., 3rd Session, 1st plenary meeting., U.N. Doc. A/810, December 12, 1948.

Provisional Government of Israel Official Gazette: Number 1; Tel Aviv, 5 Iyar 5708, 14/5/1948.

A/AC.25/Com. Jer/W.14, UN Conciliation Committee for Palestine, 8 April 1949.

Meeting of Experts on Sites and Monuments of Art and History, The Protection of Town with an Artistic Value, UNESCO/MUS/ Conf. 1/ 16, Paris, 14 October 1949.

UNGA Res. 303 (IV), UN Doc. A/RES/303 (IV), "Palestine: Question of an International Regime for the Jerusalem Area and the Protection of the Holy Places", 9 December 1949.

UNESCO, Monuments and Sites of History and Art and Archaeological Excavations: Problems of Today, Museums, Vol.3, n. 1, 1950.

UNESCO, Convention for the Protection of Cultural Property in the Event of an Armed Conflict, The Hague, Netherlands, 1954.

European Convention for the Protection of Human Rights and Fundamental Freedoms, ECHR, 1950.

UN General Assembly Resolution 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, OHCHR, 1960.

ICJ, Case Concerning the Temple of Preah Vihear, Cambodia v. Thailand, Judgement of 15 June 1962.

Venice Charter for the Conservation and Restoration of Monuments, 1964.

ICJ Rep. 6, South West Africa Cases, Second Phase, [South West Africa cases], Judgment of 18 July 1966.

Law on Antiquities, Hashemite Kingdom of Jordan, n. 51/1966.

UNGA, International Covenant on Civil and Political Rights, 1966.

Per la Salvezza dei Beni Culturali in Italia, Atti e Documenti della Commissione d'Indagine per la UNESCO, Tutela e la Valorizzazione del Patrimonio Storico, Archeologico, Artistico e del Paesaggio, Vol. I-II-III (Sezione II, Da Atti e Convegni di Enti Comunitari), Casa Editrice Colombo, Roma, 1967.

Protection of Holy Places Law 5727, 1967.

UN Security Council Resolution 242, November 22, 1967.

Vienna Convention on the Law of Treaties, Vienna, 1969.

American Convention on Human Rights (San José Convention), 1969.

UN Declaration on Principles of International Law Friendly Relation and Co-operation among States in accordance with the Charter of the UN, 24 October 1970.

UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970.

UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972.

Israel, Military Order 462/1973.

UNESCO, Statement to UNESCO Clubs and Associations, UNESCO and Israel- The Sudden "Politization" of UNESCO?, Public Liason Division, COM.74/WS.25, 1974.

Conference on Security and Co-operation in Europe Final Act, The Helsinki Final Act, Helsinki, 1975.

UNESCO Meeting in Morges, Informal Consultation of Intergovernmental And Non-Governmental Organizations On The Implementation Of The Convention Concerning The Protection Of The World Cultural And Natural Heritage, Morges, Final Report, 19-20 February 1976.

Universal Declaration of the Rights of Peoples (The Algiers Declaration), 4 July 1976.

UNESCO, CC-77/ CONF. 001/8, Operational Guidelines for the World Heritage Committee, Paris, 30 June 1977.

ICOMOS, Advisory Body Evaluation, Fasil Ghebbi, Gandar Region, Ethiopia, N. 18, 7 June 1978.

ICOMOS, Advisory Body Evaluation, The Historic Center of Warsaw, The Peoples' Republic of Poland, 1978.

ICOMOS, Églises creusées dans la roc de Lalibela, Ethiopie, (Evaluation of Property), Paris, N. 18, 7 June 1978; World Heritage Committee, CC-78/CONF.010/10 Rev., Final Report, Paris, 9 October 1978.

World Heritage Committee, CC-79/CONF.003/13 Rev., Report of the Rapporteur on the Third Session of the World Heritage Committee, Paris, 30 November 1979.

ICOMOS, Advisory Body Evaluation, Ensemble architectural de Santa Maria delle Grazie, avec la Cène de Léonard de Vinci, Italie, N. 93 bis, 1980.

Basic Law, "Jerusalem: the Capital of Israel", available online on the website of the Israel Ministry of Foreign Affairs, 5 August 1980.

UNESCO, CC-80/CONF.016/10, Paris, 29 September 1980.

WHC, Decision Conf. 016V.12, Consideration of Item 4 of the Agenda, Nominations of the World Heritage List (inscribed sites), Paris, 29 September 1980.

WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, October 1980.

African Charter on Human and Peoples' Rights, 1981.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN, 1981.

ICOMOS, Advisory Body Evaluation, No. 148, Jerusalem; State of Conservation Report, CLT-82/ CH/ CONF. 014/3, Paris, 13 May 1982; State of Conservation Report, CLT-82/CONF. 014/6, Paris, 20 August 1982.

Rila Monastery, Bulgaria, (Evaluation of Property), ICOMOS, N. 216, 29 April 1982.

WHC, 06COM X.28-35 - Nomination of the "Old City of Jerusalem and its Walls" to the list of World Heritage in danger, 1982.

The Jesuit Missions of the Guaranis: San Ignacio Mini, Santa Ana, Nuestra Senora de Loreto and Santa Maria Mayor, Argentina and Brazil, 1983.

WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, November 1983.

Ruins of Sao Miguel das Missoes (Brazil), Inscription on the World Heritage List, CONF. 009 VIII.29 and Advisory Body Evaluation (ICOMOS), 1983 and 1984.

The Great Mosque and Hospital of Divrigi, Turkey, ICOMOS, Advisory Body Evaluation, N. 358, December 31, 1985.

ICJ, Nicaragua Case, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), 1986.

ICOMOS, The Sacred City of Kandy, Sri Lanka, World Heritage List, No. 450, 1986.

Israel, Military Order No. 1166/1986.

ICOMOS, The Ancient Town of Djenné, Mali, N. 116 Rev., 1987.

WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, January 1987.

WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, December 1988.

UNESCO, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989.

Serbian Republic Official Acts N. 25/1990.

The Jesuit Missions of the Chiquitos (Bolivia), Inscription on the World Heritage List, 14 COM. VII A, and Advisory Body Evaluation (ICOMOS), 1990.

Historic city of Ayutthaya, WHC, 15COM XV - Inscription: Historic City of Ayutthaya and associated historic towns (Thailand), 1991.

Historic Town of Sukhothai and Associated Historic Town, 15COM XV - Inscription: Historic Town of Sukhothai and associated historic towns (Thailand), 1991.

General Assembly Resolution 47/135, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.

WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, 27 March 1992.

ICCPR, General Comment No. 22/48, The Right to freedom of thought, conscience and religion, U.N. Doc. CCPR/C/21/Rev. 1/Add. 4, July 30, 1993.

Oslo I Accord, Declaration of Principles on Interim Self-Government Arrangements, 1993.

Report of the commission of inquiry regarding the massacre in the Cave of the Patriarchs in Hebron, Jerusalem: Government Press, 1994.

The Nara Document on Authenticity, ICOMOS, 1994.

WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, February 1994.

Oslo II Accord, Interim Agreement on the West Bank and on the Gaza Strip, 1995.

ICOMOS, The Historic Fortified Town of Carcassonne, France, (Evaluation of Property), N. 345 Rev, 28 June 1996.

Jerusalem and the implementation of 147 EX/Decision 3.6.1 (150 EX/ 13 and 150 EX/42), 1996.

WHC/2 Revised, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, February 1996.

Palestine-Israel: Protocol Concerning the Redeployment in Hebron, 1997, Part III, Yearbook of Islamic and Middle Eastern Law, Vol. 3, 1996/1997.

UNESCO, World Heritage Committee, 20th Session, Mérida, Mexico, 2-7, 1996, Report of the Twentieth Session, Annex, Report of the Twentieth Session, Annex V, U.N. Doc. WHC-96/CONF.201, 10 March 1997.

Asian Human Rights Commission, Asian Human Rights Charter, 1998.

ICOMOS, Shrines and Temples of Nikko, Japan, No. 913, 1998.

Haghpat Monastery, Armenia, ICOMOS, No. 777, 1995; Haghpat/Sanahin, Armenia, ICOMOS, No. 777 bis, 1999.

UN Security Council Resolution 1244/1999.

WHC.99/2, UNESCO, World Heritage Committee, Operational Guidelines for the Implementation of the World Heritage Convention, March 1999.

MOU 2000, Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on the Survey and Demarcation of Land Boundary, available: <http://sokheounpang.files.wordpress.com/2010/08/mou-2000-eng.pdf>, 2000.

The Riga Charter on Authenticity and Historical Reconstruction in Relation to Cultural Heritage,

ICCROM/Latvian National Commission for UNESCO/State Inspection for Heritage Protection of Latvia, [in cooperation with: World Heritage Committee and Cultural Capital Foundation of Latvia], Riga, Latvia, 23-24 October 2000.

Tiwanaku, the Spiritual and Political Centre of the Tiwanaku Culture, Plurinational State of Bolivia, WHC Nomination Documentation, No. 567 Rev., 2000.

Filling the Gaps: An Action Plan for the Future/La Liste du Patrimoine Mondial: Comblers les lacunes- UN Plan D'action pour le futur, ICOMOS, München, Monuments and Sites, Vol. XXI, 2001.

Hebron Rehabilitation Committee, RAWIQ, Swedish International Development Cooperation Agency (SIDA), Survey of the Traditional Town neighbourhoods and buildings, HRC, Hebron, Palestine, 2001.

UNESCO, Universal Declaration on Cultural Diversity, 2 November 2001.

Dečani Monastery, Yugoslavia, Nomination of the Cultural Monument for Inclusion on the World Heritage List, Nomination Dossier Compiled by the Republic Institute for the Protection of the Cultural Monuments, Belgrade, 2002.

UNESCO, 165 EX/ INF. 9, Third Round Table of Ministers of Culture: "Intangible cultural heritage – a mirror of cultural diversity", Istanbul, 16-17 September 2002.

Conservation of Living Religious Heritage- Papers from the ICCROM 2003 Forum on Living Religious Heritage Sites: Conserving the Sacred, ICCROM Conservation Studies, Rome, 2005.

Holy Assembly of the Bishops of the Serbian Orthodox Church, 2003.

ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, issued on 9 July, 2004.

Law on Construction, Kosovo, http://old.kuvendikosoves.org/common/docs/ligjet/2004_15_en.pdf, 2004.

UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

UNESCO, Mission Report, Cultural Heritage in Kosovo: Protection and Conservation of a Multi-Ethnic Heritage in Danger, 2003.

Council of the League of the Arab States, Arab Charter on Human Rights, 2004.

WHC Decision-04/28.COM/14B REV, Bahrain, 2004.

WHC Decision 28 COM 14B.47 (Nominations of Cultural Properties to the World Heritage List, Dečani Monastery), 2004.

Convention on the Value of Cultural Heritage for Society, Faro Convention, 2005.

General Law on the restitution of confiscated properties and on the compensation for the territories that currently belong to Kosovo and Macedonia, 2005.

ICOMOS General Assembly Resolution, encouraging the "establishment of an International Thematic Programme for Religious Heritage", 2005.

ICCROM, Conservation Studies, Conservation of Living Religious Heritage, Papers from the ICCROM 2003 Forum on Living Religious Heritage: Conserving the Sacred, 2005.

UNESCO, Convention for the Promotion and Protection of the Diversity of Cultural Expressions, 2005.

UNESCO, Executive Board, 180/EX 10, Preservation of Jerusalem Cultural Heritage, Action Plan, Paris, 5 October, 2005.

WHC. 05/2, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005.

Assembly of Kosovo, Cultural Heritage Law, No. 02/L-88, 9 October 2006.

Law No. 02/L-88 on Cultural Heritage, (Law on Cultural Heritage), Kosovo, <http://licodu.cois.it/?p=10079&lang=en>, and its corresponding sublegal provisions, 6 November 2006.

Law on the restitution of properties confiscated from churches and religious groups, Serbia, 2006.

Medieval Monuments in Kosovo (Serbia) (C 724 bis), Nomination File, 2004-2006.

Historic Centre of Lucca, Ministry of Cultural Heritage, Italy, Tentative List, Ref. No. 340, 2006.

Royaume de Cambodge, Ministère de la Culture et des Beaux Arts, Le Site Sacré de Préah Vihear, Demande d'Inscription sur la Liste de Patrimoine Mondial, UNESCO, 2006.

UNESCO and Indigenous People: Partnership to Promote Cultural Diversity, CLT.2004/WS/5 REV. (Eng/Spa), CLT.2007/WS/01 (Eng/Fre), 2006.

WHC Decision 30 COM 8B.53 (Approval of the extension of the Dečani Monastery, to include the Patriarchate of Peć Monastery, Gračnica Monastery and the Church of the Virgin of Ljeviša), 2006.

WHC Decision 30 COM 8B.54 (Inscription of the Medieval Monuments in Kosovo on the List of the World Heritage in Danger), 2006.

WHC Decision 30 COM 8C.1 (Update of the World Heritage List in Danger), Vilnius, 2006.

Declaration on the Rights of Indigenous People, OHCHR, 2007.

Tentative List, Georgia, David Gareji Monasteries and Hermitages, Ministry of Culture, Monuments Protection and Sport of Georgia, Ref. No. 5224, 2007.

UN Doc. S/2007/168/Add.1, Comprehensive Proposal for the Kosovo Status Settlement, The Ahtisaari Plan, 26 March 2007.

WHC-07/31.COM/9 Paris, Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Discussion on Outstanding Universal Value, 23 May 2007.

WHC, 31COM 7B.11, State of conservation of World Heritage properties, Arabian Oryx Sanctuary, Oman, 2007.

WHC, 31 COM 8B.24 (Inscriptions on the World Heritage List), 2007.

Constitution of the Republic of Kosovo, <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>, 2008.

Law No. 03/L-039 on Special Protective Zones, and its corresponding sublegal provisions, Kosovo, <http://old.kuvendikosoves.org/?cid=2,191,248>, 15 June 2008.

Law on Local Self Government, Kosovo, <http://licodu.cois.it/?p=10135&lang=en>, 2008.

Law on the Protection and Promotion of the Rights of Communities and their Members, Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531&langid=2>, 2008.

Royal ballet of Cambodia, Cambodia, (3.COM) on the Representative List of the Intangible Cultural Heritage of Humanity, originally proclaimed in 2003, Inscribed in 2008.

Sbek Thom, Khmer shadow theatre, Cambodia, (3.COM) on the Representative List of the Intangible Cultural Heritage of Humanity, originally proclaimed in 2005, Inscribed in 2008.

UNESCO, WHC-11/35.COM/7B. Add. 2, Temple of Preah Vihear (Cambodia) (C 1224rev). Advisory Body Evaluation (ICOMOS), No. 1224/2008.

UNESCO, Decision WHC 31 COM 7A.18, Application of the Reinforced monitoring mechanism at the property since 2007 and Document CLT 82/CH/CONF.015/8; 29 COM 7A.31; 30 COM 7A.34; World Heritage 32 COM, WHC-08/32.COM/7.A. Add.2, State of conservation of the properties inscribed on the List of World Heritage in Danger, 27 June 2008.

UNESCO/IUCN, Guidelines for the Conservation and Management of Natural Sites, 2008.

UNESCO/MAB/IUCN, Guidelines for the Conservation and Management of Sacred Natural Sites, 2008.

WHC-08/32.COM/9 Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Discussion on Outstanding Universal Value, Paris, 22 May 2008.

Hebron Rehabilitation Committee, Old Hebron, The Charm of a Historical City and Architecture, HRC, Hebron, Palestine, 2009.

UNESCO World Report: Investing in Cultural Diversity and Intercultural Dialogue, UNESCO Publishing, Paris, 2009.

WHC-09/33.COM/9 Paris, Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Discussion on Outstanding Universal Value, 11 May 2009.

WHC, 33COM 7A.26, Dresden Elbe Valley, Germany, (C 1156), 2009.

4.COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Religious Festival of the Garhwal Himalayas and Ritual, India, and <https://ich.unesco.org/en/RL/ramman-religious-festival-and-ritual-theatre-of-the-garhwal-himalayas-india-00281>, 2009.

ICJ, Advisory Opinion on Kosovo's Declaration of Independence (Accordance with International Law on the Unilateral Declaration of Independence in Respect of Kosovo), 22 July 2010.

Memory of the World Register, Warsaw Reconstruction Office, Directorate for the Reconstruction of Warsaw and Department of Historical Architecture of the Warsaw Reconstruction Office and the Conservator Office for the Capital City of Warsaw, Ref. N. 39-2010.

UNESCO Executive Board Decision 185, Item 15, 2010.

WHC-10/34.COM/20, Item 11, 2010.

Cambodian Center for Human Rights, Blurred Boundaries: A Briefing Note on the Cambodian-Thai Border Tensions, available at: <https://cchr-cambodia.org/admin/media/analysis/analysis/english/Blurred%20Boundaries%20-%20A%20Briefing%20Note%20on%20the%20Cambodian-Thai%20Border%20Tensions.pdf>, 2011.

Cultural Properties Law, Official Acts of the Republic of Serbia N. 71/94 amended in 2011. ICOMOS General Assembly Resolution on Protection and Enhancement of Sacred Heritage Sites, Building and Landscapes, 2011.

La Nazione, Lucca Scelta dall'UNESCO, Lucca, 8 Settembre 2012.

Law No. 04/L-062 on the Village of Hoçë e Madhe/Velika Hoça, Kosovo, 9 July 2012.

Law No. 04/L-066 on Historic Centre of Prizren, <http://old.kuvendikosoves.org/?cid=2,191,940>, 9 July 2012.

7.COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Buddhist Chanting of Ladakh: recitation of sacred Buddhist texts in the trans-Himalayan Ladakh region, Jammu and Kashmir, India, File No. 839, 2012.

Executive Council, UNESCO, Decision 191/EX10, 2013.

ICOMOS, Advisory Body Evaluation, Taj Mahal, India, N. 252, 1983; 36 COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, 2012; 37 COM 7B.103 Omnibus Decision, 2013.

Law on Spatial Planning, Kosovo, <http://old.kuvendikosoves.org/common/docs/ligjet/Law%20on%20spatial%20planning.pdf>, 2013.

Protection Concerns and Humanitarian Impact of Settlement Activity in Hebron City (H2), Protection Cluster Occupied Palestinian Territory, Available at: [https://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Occupied Palestinian/files/oPt_PC_factsheet Hebron City H2 2014 EN.pdf](https://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Occupied%20Palestinian/files/oPt_PC_factsheet_Hebron_City_H2_2014_EN.pdf); OCHA, Fact Sheet: The Humanitarian Impact of Israeli Settlements in Hebron City, November 2013.

Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), International Court of Justice, online: ICJ (<http://www.icj-cij.org>) [Request for Interpretation (Temple of Preah Vihear)], Judgment of 11 November 2013.

Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Declaration of Judge ad hoc Guillaume, International Court of Justice, online: ICJ (<http://www.icj-cij.org/docket/files/151/17711.pdf>) 11 November 2013.

Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Declaration of Judge ad hoc Cot,

International Court of Justice, online: ICJ (<http://www.icj-cij.org/docket/files/151/17713.pdf>), 11 November 2013.

Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Joint Declaration of Judges Owada, Bennouna, and Gaja, International Court of Justice, online: ICJ (<http://www.icj-cij.org/docket/files/151/17706.pdf>), 11 November 2013.

WHC 13-37. COM/20, Adoption of Retrospective Statement of Outstanding Universal Value, Paris 5 July 2013.

8.COM 8.1, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Annual Pilgrimage to the Mausoleum of Sidi 'Abd el-Qader Ben Mohammad, Algeria, and <https://ich.unesco.org/en/decisions/8.COM/8.1>, 2013.

8. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Commemoration Feast of Finding of the True Holy Cross of Christ, Ethiopia, and <https://ich.unesco.org/en/RL/commemoration-feast-of-the-finding-of-the-true-holy-cross-of-christ-00858>, 2013.

Decision 38 COM 8B.4, Nominations to be processed on an emergency basis: Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir, 2014.

Netanyahu: Israel Will Not Evacuate Hebron, Beit El as Part of a Peace Deal, Haaretz, available at: <https://www.haaretz.com/.premium-pm-israel-won-t-give-up-hebron-1.5308530>, 6th January 2014.

Old Bridge Area of the Old City of Mostar, Bosnia and Herzegovina, (Evaluation of Property), ICOMOS, N. 946 Rev., 2005; World Heritage Committee Decision, The Old City of Mostar, Bosnia and Herzegovina, No. 946 Rev., 2005; 38COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, Inscriptions on the World Heritage List, 2014.

Serbian Law on the restitution of confiscated properties and compensation, (http://licodu.cois.it/?page_id=1460&lang=en), 2014.

OSCE, Organization for Security and Co-operation in Europe Mission in Kosovo. Challenges in the Protection of Immovable Tangible Heritage in Kosovo, 2014.

39COM 8E, Adoption of Retrospective Statements of Outstanding Universal Value, 2015.

UNESCO, Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, 2016.

UNESCO, Executive Board, Programme and External Relations Commission, Occupied Palestine, 200 EX/PX/DR.25.2 Rev. Paris, 12 October 2016.

UNESCO, Executive Council, Resolution 200 EX/25, Occupied Palestine, 13 October 2016. Case of the Prosecutor v. Ahmad Al Faqi Al Mahdi, app. no. ICC-01/12-01/15, ICC (Public Reparation Order), 17 August 2017.

ICOMOS, Advisory Body Evaluation No. 1565, Hebron/ Al-Khalil Old Town (Palestine), 2017.

Law n. 44, that amends the Law n. 77, February the 20th, 2006, Gazzetta Ufficiale della Repubblica Italiana, March the 8th, 2017.

Republika e Kosovës Republika Kosova - Republic of Kosovo Qeveria - Vlada - Government, Zyra e Kryeministrit – Ured Premijera – Office of the Prime Minister, Agjencia e Statistikave të Kosovës - Agencija za Statistiku Kosova – Kosovo Agency of Statistics, 2017.

12. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Mongolian Traditional practices of worshipping the sacred sites, Mongolia, and <https://ich.unesco.org/en/USL/mongolian-traditional-practices-of-worshipping-the-sacred-sites-00871>, 2017.

WHC/17/41.COM/18 (Nominations to be processed on an emergency basis), Decisions adopted during the 41st session of the World Heritage Committee, Krakow, 2017.

Palestinian Decree Law on Tangible Cultural Heritage, Ministry of Tourism and Antiquities, Palestine, 2018.

State of Palestine, Negotiations Affairs Departement, Palestine's Heritage under Occupation, In Focus: Bethlehem's Denied Potential, December 2018.

42COM 8B.31, Le Colline del Prosecco di Conegliano e Valdobbiadene, Italy, 2018.

UNESCO, Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014), its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) and its seventh session (UNESCO Headquarters, Paris, 4 to 6 June 2018).

UNESCO, Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible, Cultural Heritage, 2008-2018.

UNESCO, WHC/Decision 42 COM 7A.27 and WHC/18/42.COM/7A.Add. Paris, State of conservation of the properties, inscribed on the List of World Heritage in Danger, Birthplace of Jesus, Church of the Nativity and the Pilgrimage Route, Bethlehem, (C 1433), 15 June 2018.

WHC 18/42. COM/7A. Add 2 (State of Conservation of the Properties inscribed on the List of World Heritage in Danger), Paris, 15 June 2018.

WHC 42 COM 7A.28, Hebron / Al Khalil Old Town, Palestine, Ref. N. 1565, 2018.

UNESCO, WHC/Decision 42 COM 7A.29, Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir, 2018.

ICOMOS, Advisory Body Evaluation, Notre Dame cathedral, Palais du Tau and former Abbey of Saint Remi, France, N. 601, 1991; 43COM 8E, Adoption of retrospective Statements of Outstanding Universal Value, Inscriptions on the World Heritage List, 2019. 43COM 8B.37, Le Colline del Prosecco di Conegliano e Valdobbiadene, Italy; Le Colline del Prosecco di Conegliano e Valdobbiadene, Italy, No. 1571 Rev., 2019.

State of Palestine, State of Conservation Report for Hebron / Al Khalil Old Town-Palestine (Ref. 1565) prepared by the Ministry of Tourism and Antiquities in close cooperation with Hebron Municipality, and Hebron Rehabilitation Committee, Annex 1, 2019.

The Old Town of Timbuktu, Mali, ICOMOS, N. 119, December 22, 1987; World Heritage Committee Decision 36COM 8C.1, ICOMOS, Establishment of the World Heritage List in Danger (Inscribed Properties), 2012; World Heritage Committee Decision 43 COM 8C.2, Update of the List of World Heritage in Danger (Retained Properties), 2019.

WHC. 19/01, Operational Guidelines for the Implementation of the World Heritage Convention, 10 July 2019.

WHC/19/43.COM/7, WHC/19/43.COM/7A.Add, WHC/19/43.COM/7A.Add.2, WHC/19/43.COM/7A.Add.3, WHC/19/43.COM/7A.Add.3.Corr., 2019.

14. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Rituals and Practices Associated with Kit Mikayi Shrine, Kenya, and <https://ich.unesco.org/en/USL/rituals-and-practices-associated-with-kit-mikayi-shrine-01489>, 2019.

14. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Holy Week Processions in Mendrisio, Switzerland, and <https://ich.unesco.org/en/RL/holy-week-processions-in-mendrisio-01460>, 2019.

14.COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, Practice of traditional music and dance in Setesdal, playing, dancing and singing (stev/stevjing), Norway, File No. 1432, Item 10.b, at <https://ich.unesco.org/en/10b-representative-list-01098>, 2019.

UNESCO, Report on the State of Conservation of Medieval Monuments in Kosovo (Serbia), Inscribed in the World Heritage List in Danger, Belgrade, January 2019.

UNESCO, Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, 2020.

Rules of Procedure of the General Conference, UNESCO Adopted by the General Conference at its 3rd session and amended at its 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 37th, 39th and 40th sessions, (3 C/110, Vol. II, pp. 89-90, 92-111; 4 C/Resolutions, p. 85; 5 C/Resolutions, pp. 130-33; 6 C/Resolutions, pp. 85-6; 7 C/Resolutions, pp. 106-8; 8 C/Resolutions, pp.14-17; 9 C/Resolutions, pp.70-l; 10

C/Resolutions, pp. 61-3; 11 C/ Resolutions, pp. 12, 94-5; 12 C/Resolutions, pp. 5, 95-7; 13 C/Resolutions, pp. 113-14; 14 C/Resolutions, pp. 107-8; 15 C/Resolutions, pp. 101-6; 16 C/Resolutions, pp. 93-4; 17 C/Resolutions, pp. 113-15; 18 C/Resolutions, pp. 122-3; 19 C/Resolutions, p. 93; 20 C/Resolutions, pp. 141, 160; 21 C/Resolutions, pp. 122-3; 23 C/Resolutions, pp. 110-11; 24 C/Resolutions, p. 168; 25 C/Resolutions, pp. 193-4; 26 C/Resolutions, pp. 133-9; 27 C/Resolutions, p. 102; 28 C/Resolutions, p. 118, pp. 133-34, 143-45; 29 C/Resolutions, pp. 119-26; 30 C/Resolutions, pp. 115-21, 124; 31 C/ Resolutions, pp. 105-6; 32 C/Resolutions, pp. 117-18 ; 37 C/Resolutions pp. 81-83; 39 C/Resolution 87; 40 C/Resolutions 81 and 83), available at: <https://unesdoc.unesco.org/ark:/48223/pf0000373502?posInSet=2&queryId=079fb77c-e960-4477-bd73-48f50ab5591c>, 2020.

2019 Report on International Religious Freedom: Armenia, US Department of State, Office of International Religious Freedom, 10 June 2020.

15. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, The Pilgrimage to the St. Thaddeus Apostle Monastery, Iran and Armenia, and <https://ich.unesco.org/en/RL/pilgrimage-to-the-st-thaddeus-apostle-monastery-01571>, 2020.

Europa Nostra and EIB Institute Announce Europe's 7 Most Endangered Heritage Sites 2021, Europa Nostra, 08/04/2021.

Monastery's Inclusion on Endangered Sites List Irks Kosovo Leaders, Balkan Insights, 09/04/2021.

Kosovo Civil Society Criticise Monastery's Inclusion on Endangered List, Prishtina Insight, 16/04/2021.

The State of Conservation Report (SOC) for the World Heritage Property (WHP) Palestine: Land of Olives and Vines: Cultural Landscape of Southern Jerusalem, Battir, (C 1492), 2022.

Indochina, Definition, History & Map, Britannica, <https://www.britannica.com/place/Indochina>.

Authors (listed in alphabetical order):

T. E. AALBERTS, *Constructing Sovereignty Between Politics and Law*, Routledge, London and New York, 2012.

M. ABUARKUB, *Architectural and Decorative Elements in Traditional Palestinian Houses*, New Design Ideas, Vol. 2, No. 2, 2018.

H. C. ALBERTS, H. D. HAZEN, *Maintaining Authenticity and Integrity at Cultural World Heritage Sites*, *Geographical Review*, Vol. 100, No. 1, 2010.

N. AKAGAWA, *Safeguarding Intangible Heritage: Politics and Practices*, Routledge, New York, 2019.

A. ANGHIE, *Imperialism, Sovereignty, and the Making of International Law*, Cambridge University Press, Cambridge, 2005.

L. ARZIPE, *The Intellectual History of Culture and Development Institutions*, Chapter 8 in Vijayendra Rao and Michael Walton eds., *Culture and Public Action*, Stanford University; *The Cultural Politics of Intangible Cultural Heritage*, *Art Antiquity and Law*, Vol. 12, No. 4, 2007.

G.J. ASHWORTH, B. GRAHAM, and J.E. TUNBRIDGE, *Pluralising Pasts: Heritage, Identity and Place in Multicultural Societies*, 2007.

J. AUBOYER, *Les Arts de l'Extrême-Orient*, FeniXX Réédition Numérique, Presses Universitaires de France 108, Boulevard Saint-Germain, 108, Paris, 1949.

J. S. AUERBACH, *Hebron Jews: Memory and Conflict in the Land of Israel*, Rowman & Littlefield, Lanham, 2009.

O. AVISHAR, *Hebron: City of the Patriarchs and its Settlement Through the Ages*, Keter Publishing, Jerusalem, 1970.

S. AVRAMOVIĆ, D. RAKITIĆ, M. MENKOVIĆ, V. VASIĆ, A. FULGOSI, B. JOKIĆ, *The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohia*, Faculty of Law, University of Belgrade, Belgrade, 2010.

- J. AWAD, *Conserving the Palestinian Architectural Heritage*, International Journal of Heritage Architecture Studies Repairs and Maintenance, Vol. 1(3), 2017.
- C. BAKER, P. PHONGPAICHIT, *A History of Thailand*, 3rd Edition, Cambridge University Press, Port Melbourne, 2014.
- M. BALCELLS, *Left Behind? Cultural Destruction, the Role of the International Criminal Tribunal for the Former Yugoslavia in Deterring it and Cultural Heritage Prevention Policies in the Aftermath of the Balkan Wars*, European Journal on Criminal Policy and Research, Vol. 21, No. 1, 2015.
- G. BALLADORE PALLIERI, *Diritto internazionale pubblico*, 7th rev. ed., Milano, 1956.
- A. BALTAG, V. BERBEGA, C. J. BORGAN, D. CENUSA, M. HATAY, O. NANTOI, I. ROUBANIS, I. SEVERIN, S. TIRYAKI, O. TRINGIDES, R. VRABIE, *Managing Intractable Conflicts: Lessons from Moldova and Cyprus*, ed. Mensur Akgün, IKU, Turkey, 2013, pp. 88-108.
- A. BAR, *A nation of nations? A reply to Joseph H.H. Weiler*, International Journal of Constitutional Law, Volume 17, Issue 4, October 2019, Pages 1307-1314, I-CONS JOURNAL.
- S. BARBAGALLO, *The Universal Value of Ecclesiastical Property*, Uniform Law Review, UNIDROIT, Oxford University Press, Vol. 20, N.4/2015.
- S. BARMÉ, *Luang Wichit Wathakan and the Creation of a Thai Identity*, Social Issues in Southeast Asia, Institute of Southeast Asian Studies, Singapore, 1993.
- D. T. BATAKOVIĆ, M. VASILJEVIĆ, *The Christian Heritage of Kosovo and Metohija: the Historical and Spiritual Heartland of the Serbian People*, Sebastian Press, 2015; *The Foreign Policy of Serbia (1844-1867): Ilija Garašanin's Načertanije*, Institute for Balkan Studies, Serbian Academy of Sciences and Arts, 2014.
- S. BATTINI, *The Procedural Side of Legal Globalization: The Case of the World Heritage Convention*, International Journal of Constitutional Law, vol. 9, no. 2, 2011.
- K. V. BEKKUM, in *From Conquest to Coexistence, Ideology and Antiquarian Intent in the History of Israel's Settlement in Canaan*, 2010.
- G. BELCHER, *Values in World Heritage Sites*, in *Cultural Heritage Ethics: Between Theory and Practice*, Constantine Sandis (eds.), Open Book Publishers, Cambridge, 2014.
- A. di BELLO, *Stato e Sovranità nel De Republica Libri Sex di Jean Bodin*, Liguori Editore, Napoli, 2014.
- E. BENEVESTI, *The International Law of Occupation*, Oxford University Press, Oxford, 2012.
- M. BENVENISTI, *City of Stone: The Hidden History of Jerusalem*, University of California Press, Berkeley, 1996.
- W. BERCKEN, *The Ambiguity of Religious Aesthetics. Reflections on Catholic and Orthodox Religious Art*, in W. Bercken (Ed.), *Aesthetics as a Religious Factor in Eastern and Western Christianity: Selected Papers of the International Conference held at the University of Utrecht, the Netherlands, Leuven, 2004*.
- S. BESSON, *Sovereignty*, Max Planck Encyclopedia of Public International Law, 2011.
- S. BIANCHINI, *State Building in the Balkans*, Longo Editore, Ravenna, 1998.
- H. BIELEFELDT, N. GHANEA-HEROCK, M. WIENER, *Freedom of Religion and Belief: An International Law Commentary*, Oxford University Press, Oxford, 2016.
- D. BINDER, *Kosovo and Metohija*, in *Fare Well, Illyria*, Central European University Press, 2013.
- H. BIRKENKÖTTER, *Review of Vijayashri Sripati, Constitution-Making Under UN Auspices: Fostering Dependency in Sovereign Lands*, International Journal of Constitutional Law, Volume 19, Issue 1, January 2021, I-CONS JOURNAL.
- J. BLACKIE, *On Defining Cultural Heritage*, International and Comparative Law Quarterly, no. 49, 2000; *Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch*, International Journal of Cultural Property, No. 21, 2014; *Introduction to the Draft Preliminary Study on the Advisability of Developing a Standard-Setting Instrument for the Protection of Intangible Cultural Heritage*, UNESCO, International Round Table, "Intangible Cultural Heritage", Working Definitions, Piedmont, Italy, 14 to 17 March 2001; *On Developing a New International*

- Convention for Safeguarding Intangible Cultural Heritage, Art Antiquity and Law, Vol. 8, No. 4, 2003.
- J. BOLL, The Rationalization of Virtue and Virtuosity in World Society, in: Djelic ML and Sahlin-Andersson K (eds), *Transnational Governance*, Cambridge: Cambridge University Press, 2006.
- C. BORTOLOTTI, Les inventaires du patrimoine immatériel en Italie: Etat, Regions et Associations, in *Atti del Colloquio Politiques Publiques du Patrimoine Immatériel en Europe du Sud: Percours, réalisations et perspectives*, Patrimoine Culturel, Lisbonne, Direção-Geral do Património Cultural, 2001.
- S. BOSE, *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka*, Harvard University Press, Cambridge, 2007.
- J-L. BOURGEOIS, B. DAVIDSON, *Spectacular Vernacular: the Adobe Tradition*, Aperture Foundation, 2nd Edition, New York, 1996; S. PRESTON BLIER, *Butabu: Adobe Architecture of West Africa*, Princeton Architectural Press, New York, 2004, (Photograph by J. MORRIS).
- B. BOUTROS-GHALI, *The United Nations and the Independence of Eritrea*, The UN Blue Books Series, Vol. XII, New York, 1996.
- P. J. BOYLAN, The concept of cultural protection in times of armed conflict: From the crusades to the new millennium, In N. Brodie & K. W. Tubb (Eds.), *Illicit antiquities. The theft of culture and the extinction of archaeology*, Oxfordshire: Routledge, 2002.
- C.A. BREBBIA, V. ECHARRI, *Structural Studies, Repairs and Maintenance of Heritage Architecture XV*, WIT Press, 2017 (Classification of Residential Buildings in the Old City of Hebron).
- J. L. BRIERLY, *The Law of Nations*, 6th edition, edited by Waldock, Oxford, 1963.
- P. BROCHEUX, D. HEMÉRY, *Indochina: An Ambiguous Colonization, 1858-1954*, University of California Press, Berkeley, Los Angeles, London, 2011.
- N. BROVINA, A. RAMADANI, *Process of State Building in Kosovo*, UBT International Conference, 2017.
- J. BURGESS, *Temple in the Clouds: Faith and Conflict at Preah Vihear*, River Books, Bangkok, 2015.
- C. CAMERON, *From Warsaw to Mostar: World Heritage Committee and Authenticity*, APT Bulletin, *Journal of Preservation Technology*, Vol. 39, No. 2/3, 2008.
- T. CANAAN, *The Palestinian Arab House, Its Architecture and Folklore*, Syrian Orphanage Press, Jerusalem, 1933.
- F. J. CARRERA HERNÁNDEZ, *La UNESCO y la Gestión del Patrimonio Mundial: Mecanismos de Protección y Garantía*, in *La Protección Jurídico Internacional del Patrimonio Cultural: Especial Referencia a España*, Dirección: C. R. Fernández Liesa, J. Prieto de Pedro, Coordinación: F. Vacas Fernández, P. Zapatero Miguel, *Collección El Derecho de la Globalización*, Colex, n. 18, 2009.
- L. CASINI, *La Globalizzazione dei Beni Culturali*, Il Mulino, 2010; Italian Hours: The Globalization of Cultural Property Law, *International Journal of Constitutional Law*, vol. 9, no. 2, 2011, p. 380.
- A. CASSESE, *International Law*, 2nd Edition, Oxford University Press, 2005; *International criminal law*. Oxford: New York, 2003; *Self-Determination of Peoples: A Legal Reprisal*, Hersch Lauterpacht Memorial Lectures, Cambridge University Press, Cambridge, 1995.
- S. CASSESE, *Oltre lo Stato*, Editori Laterza, Bari, 2006.
- M. CATALDO, *Preservare la Memoria Culturale, il Ruolo della Tecnologia, (L'evoluzione legislativa italiana in materia di riproduzione di immagini)*, Aedon, Il Mulino, Bologna, No. 2, 2020.
- P. CAUSAY, *Borders on the Fantastic: Mimesis, Violence, and Landscape at the Temple of Preah Vihear*, *Modern Asian Studies*, Vol. 32, No. 4, October, 1998.
- J. CÉRIMAN, A. PAVLOVIĆ, *Beyond Territory Principle: Non-Territorial Approach to the Kosovo Question(s)*, *Philosophy and Society*, Vol. 31, No. 3, 2020.
- P.C.W. CHAN, *Acquiescence/Estoppel in International Boundaries: Temple of Preah Vihear Revisited*, *Chinese Journal of International Law*, Vol. 3, No. 2.
- D. CHANDLER, *A History of Cambodia*, Routledge, NY, 4th Ed., 2018.

- D. CHANDLER, *A History of Cambodia*, 4th Ed., Boulder, Westview, 2008.
- S. CHESTERMAN, *You, the People: The United Nations, Transitional Administration and State-Building*, Oxford University Press, NY, 2004.
- D. CHIHARA, *Hindu-Buddhist Architecture in Southeast Asia*, E. J. Brill, Leiden, 1996.
- C. S. CHIVVIS, *EULEX Kosovo (Chapter IV)*, in *EU Civilian Crisis Management: The Record so Far*, Rand Corporation, Santa Monica-Arlington-Pittsburgh, 2010.
- P. CHONG, *Legitimate Judgement in Art, the Scientific Word Reversed?*, *Social Studies of Science*, Vol. 43, 2013.
- S. CHOUDHRY, *Secession and post-sovereign constitution-making after 1989: Catalonia, Kosovo, and Quebec*, *International Journal of Constitutional Law*, Volume 17, Issue 2, April 2019, I-CONS JOURNAL.
- D. CHUTE, *Sacred, Holy or Religious Art?*, *Blackfriars*, Vol. 36, No. 418, 1955.
- G. CIMBALO, *Confessioni e Comunità Religiose nell'Europa dell'Est, Pluralismo Religioso e Politiche Legislative degli Stati*, *Rivista Telematica* (www.statoecheme.it), n. 8/2019.
- J. COCHRAN, *Democracy in the Middle East, The Impact of Religion and Education*, Lexington Books, 2001.
- M.D. COE, *Angkor and the Khmer Civilization*, Thames and Hudson, New York, 2003.
- M. COSSUTTA, *Stato e Nazione: Un'Interpretazione Giuridico-Politica*, Pubblicazioni della Facoltà di Giurisprudenza della Università di Trieste, Milano, Dott. A. Giuffrè Editore, 1999.
- J. P. COT, *Cour Internationale de Justice: Affaire du Temple de Préah Vihear*, AFDI, 1962.
- J. CRAWFORD, *The Creation of States in International Law*, Oxford University Press, Oxford/New York, Second Edition, 2006.
- J.R. CRAWFORD, *Brownlie's Principles of Public International Law*, 9th ed., Oxford University Press, Oxford, 2019.
- A.O CUKURAH, *The Settlement of Boundary Disputes in International Law*, Manchester University Press, Manchester, 1967; A. BUSS, *The Preah Vihear Case and Regional Customary Law*, *Chinese Journal of International Law*, Vol. 9, No. 1, 2010.
- S. ČURČIĆ, *Gračanica and the Cult of the Saintly Prince Lazar*, *Recueil des travaux de l'Institut d'études byzantines*, XLIV, 2007; *Gračanica. Istorija i arhitektura*, Beograd i Priština 1988 (Gračanica. King Milutin's Church and its Place in Late Byzantine Architecture), University Park and London, 1979.
- H. CUYCKENS, *Revisiting the Law of Occupation*, Brill Nijhoff, Leiden-Boston, 2017.
- A. DAVIDOV TEMERINSKI, *Church of the Holy Virgin of Ljeviška in Prizren*, Institute for the Protection of Cultural Monuments of Serbia, Belgrade, 2017.
- C. DE CESARI, *Hebron or Heritage as Technology of Life*, in *Heritage and the Cultural Struggle for Palestine*, Stanford University Press, Stanford, 2019.
- D. DE COPPET, *Understanding Rituals*, London and New York, Routledge, 1992.
- A. DENES, *Recovering Khmer Ethnic Identity from the Thai National Past: An Ethnography of the Localism Movement in Surin Province*, Doctoral Dissertation, Cornell University, 2006; *The Revitalization of Khmer Ethnic Identity in Thailand: Empowerment or Confinement?*, *Routledge Handbook of Heritage in Asia*, Routledge, Abingdon, 2012.
- J. DERRIDA, *Force of Law: The Mystical Foundations of Authority*, *Cardozo Law Review*, Vol. 11, No. 921, 1989-1990.
- K. J. DETLING, *Eternal silence: the destruction of cultural property in Yugoslavia*, *Maryland Journal of Law and Trade*, Vol. 17, No. 1, 1993.
- Y. DINSTEIN, *The International Law of Belligerent Occupation*, Cambridge University Press, Cambridge, 2009.
- W. DONIGER O'FLAHERTY, *Hindu Myths*, Penguin Books, London, 1975.
- GS. DRORI, YS. JANG, JW. MEYER JW, *Sources of Rationalized Governance*, *Administrative Science Quarterly* 51, 2006.
- J. DUGARD, *Recognition and the United Nations*, Cambridge, 1987.
- G. DUIJZINGS, *Religion and the Politics of Identity in Kosovo*, Hurst & London, 2000, pp. 66, footnote 1 (The Muslim Gypsy Pilgrimage to Gračanica).
- M. DUMPER, *Contested Holy Cities: The Urban Dimension of Religious Conflicts*, Routledge, NY, 2019.

- V. J. DURIC (urednik), *Zidno Slikarstvo Manastira Dečana*, Beograd, SANU, 1995.
- G. J. DWEIK, W. SHAHEEN, *Classification of Residential Buildings in the Old City of Hebron*, Conference Paper in WIT Transactions on the Built Environment, 2017.
- M. M. EBIHARA, A. C. MERTHA, *Svay: A Khmer Village in Cambodia*, Cornell University Press, Ithaca and London, 2018.
- E. EISENBERG, *Hebron's Fortifications during the Bronze Period*, *The Land of Israel, Studies in the Land and its Antiquities*, The Book of Amnon Ben-Tor, The Israel Exploration Society, Jerusalem, 2011 (Hebrew).
- R. ELSIE, *Historical Dictionary of Kosova*, Scarecrow Press Inc., Lanham Maryland, Toronto, Oxford, 2004, p. 119.
- R. ELSIE, B. DESTANI, *Kosovo: A Documentary History; From the Balkan Wars to World War the II*, I. B Tauris, 2018.
- K. ENGLE, *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy*, Durham University Press, 2010.
- J.A. ESTRELLA FARIA, *The International Protection of Religious Cultural Property*, *Uniform Law Review*, UNIDROIT, Oxford University Press, Vol. 20, N.4/2015.
- M. D. EVANS, *Religious Liberty and International Law in Europe*, Cambridge University Press, Cambridge, 1997.
- D. FAIRCHILD RUGGIES, H. SILVERMAN, *Intangible Heritage Embodied*, Springer, 2009.
- Y. FARHI, D. BEN-SHLOMO, in *The Settlement of Tel Hebron in the Hellenistic to Byzantine Periods: New Numismatic Evidence*, *Journal of the Institute of Archaeology of Tel Aviv University*, Tel Aviv, Vol. 43, No. 2, 239-261, DOI: [10.1080/03344355.2016.1215556](https://doi.org/10.1080/03344355.2016.1215556).
- S. FERRARI, A. BENZO, *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ed. Silvio Ferrari and Andrea Benzo, *Cultural Diversity and Law*, Ashgate Publishing Company, Burlington, 2014.
- P. FINGESTEN, *Toward a New Definition of Religious Art*, *College Art Journal*, Vol. 10, No. 2, 1951.
- S. FLERE, R. KLANJŠEK, *Serbian Orthodox Religiousness: An Empirical and Comparative Portrait*, *Review of Religious Research*, Vol. 50, No. 1, 2008.
- C. FOCARELLI, *Trattato di Diritto Internazionale*, UTET, Milan, 2015.
- A. FORNEROD, *Le régime juridique du patrimoine religieux*, Paris, L'Harmattan, 2013; *Funding Religious Heritage*. Farnham: Ashgate, 2015.
- C. FRANCESCHINI, UNESCO, *Religious Freedoms and World Cultural Heritage in the Old City of Jerusalem: the line of fire between challenges, comparisons and new perspectives*, *Stato, Chiese e Pluralismo Confessionale*, UNIMI, n. 37/2018; *The Role of UNESCO in Time of Political Changes: Jerusalem and the West Bank Cultural Heritage Law in a Context of Competing Sovereignty*, *Revista General de Derecho Público Comparado*, n.28/2020, RI 423187; *Cultural Heritage Law in Israel: From The Incorporation of Pre-existing Laws on Cultural Heritage to a New Concept of Cultural Heritage in a Context of Competing Sovereignty*, *Il Diritto Ecclesiastico*, Anno CXXIX, 3-4, Luglio-Dicembre, 2018, pp.729-771.
- F. FRANCIONI, J. GORDLEY, *Enforcing International Cultural Heritage Law*, *Cultural Heritage Law and Policy*, Oxford University Press, 2013.
- F. FRANCIONI, F. LANZERINI, *The future of the World Heritage Convention: Problems and prospects*. In F. Francioni and F. Lenzerini, eds. *The 1972 World Heritage Convention: A commentary*. New York: Oxford University Press.
- F. FRANCIONI, M. SCHEININ, *Indigenous Peoples' Cultural Rights and the Controversy over Commercial Use of Their Traditional Knowledge*, *Cultural Human Rights*, Leiden, pp. 119-149.
- T. M. FRANCK, *The Power of Legitimacy Among Nations*, Oxford University Press, New York and London, 1990.
- M. FREEMAN, *A Guide to Khmer Temples in Thailand and Laos*, Bangkok, River Books, 1996.

- R. FUCHS, *The Palestinian Arab House and the Islamic "Primitive Hut"*, Muqarnas, Vol. 15, 1998.
- A. GALIS, *UNESCO Documents and Procedure: The Need to Account for Political Conflict When Designating World Heritage Sites*, Georgia Journal of International and Comparative Law, vol. 38, no.1, 2009.
- C. GALLI, *Sovranità: Disprezzarla o Deriderla*, Il Mulino, Bologna, 2019.
- P. GAZZOLA, *Restoring Monuments: Historical Background*, in *Preserving and Restoring Monuments and Historic Buildings*, UNESCO, Paris, 1972.
- S. S. GHADBAN, M. ASHHAB, *Stone Restoration Practice in Palestinian Territories: A Case Study From Jerusalem*, Journal of Architectural Conservation, Vol 17, No. 3.
- H. GHEBREWEBET, *Identifying Units of Statehood and Determining International Boundaries: A Revised Look at the Doctrine of Uti Possidetis and the Principle of Self-Determination*, Verlag Peter Lang, 2006.
- A. GIDDENS, *The Nation-State and Violence*, Polity Press, Cambridge, 1985.
- J. GILBERT, *Constitutionalism, ethnicity and minority rights in Africa: A legal appraisal from the Great Lakes region*, International Journal of Constitutional Law, Volume 11, Issue 2, April 2013, I-CONS JOURNAL.
- M. KUMM, *Constituent power, boundaries and identity: On the justificatory depth of constitutionalism - A rejoinder to Neil Walker*, International Journal of Constitutional Law, Volume 14, Issue 4, 1 October 2016, I-CONS JOURNAL.
- G. M. GOLINELLI, *Cultural Heritage and Value Creation: Towards New Pathways*, Rome, Springer, 2015.
- V. GRABOWSKI, *Heritage and Nationalism in the Preah Vihear Dispute*; S. UDOMDETH, *A Response to "Heritage and Nationalism in the Preah Vihear Dispute"*, Voices from Cambodia, Discourses on the Preah Vihear Conflict.
- H. GROTIUS, *De Jure Belli ac Pacis (libri tres)*, the Classics of International Law, edited by J. B. Scott, translated by F. W. Kelsey, Oxford, London, 1925; *De Jure Praedae Commentarius*, the Classics of International Law, edited by J. B. Scott, translated by G. L. Williams, Oxford, London, 1950, vol. 1; *Mare Liberum*, the Classics of International Law, edited by J. B. Scott, translated by Magoffin, New York, 1916.
- A. GUALDANI, *Primi Passi Verso una Disciplina di Settore dei Beni Immateriali: Il Caso del Disegno di Legge sulle Manifestazioni, Rievocazioni, e Giochi Storici*, Aedon, Il Mulino, Bologna, No. 3, 2017.
- A. HAENDEL, *Old Myths and New Approaches: Interpreting Ancient Religious Sites in Southeast Asia*, Monash University Publishing, 2012.
- L. HAMMER, *Cultural Heritage Protection and Sacred Spaces Considering Alternative Approaches From Within the Human Rights Framework*, Columbia Human Rights Law Review, Vol. 49, 2017.
- M. HARTMUTH, *De-Constructing a 'Legacy in Stone': Of Interpretative and Historiographical Problems concerning the Ottoman Cultural Heritage in the Balkans*, Middle Eastern Studies, Taylor & Francis Ltd., Vol. 44, No. 5, 2008.
- S. H. HASHMI, *State Sovereignty: State and Persistence in International Relations*, The Pennsylvania State University Press, Pennsylvania, 1997.
- B. HAUSER-SCHÄUBLIN, *World Heritage Angkor and Beyond: Circumstances and Implications of UNESCO Listings in Cambodia*, Göttingen Studies in Cultural Property, Vol. 2, 2011.
- L. HENKIN, *Kosovo and the Law of Humanitarian Intervention*, American Journal of International Law, Cambridge University Press, Vol. 93, No. 4, 1999.
- P. R. HENSEL, M. E. D. ALLISON, A. KHANANI, *Territorial Integrity Treaties, Uti Possidetis, and Armed Conflict Over Territory*, Conflict Management and Peace Science, Special Issue: Building Synergies: Institutions and Cooperation in World Politics, Vol. 26, No. 2, 2009.
- A. HERTOGEN, *Letting Lotus Bloom*, European Journal of International Law, Vol. 26, No. 4, 2015.
- R. HIGGINS, *Problems and Process: International Law and How We Use It*, Oxford University Press, 1995.
- T. HOBBS, *Leviathan*, Mint Editions, First Published in 1651, 2020.

- Col. Sir. T. H. HOLDICH, *Boundaries in Europe and the Near East*, MacMillan and Co., London, 1918.
- H. HOWART, *Jewish Art and the Fear of Image*, Commentary, IX, 2, 1950, pp. 142-150.
- C. W INGRAO, *Confronting the Yugoslav Controversies*, United States Institute of Peace Press, Washington D.C., Purdue University Press, West Lafayette, Indiana, 2010.
- N. IRTI, *La Tenaglia*: In *Difesa dell'Ideologia Politica*, Editori Laterza, Roma-Bari, 2014; *Nichilismo Giuridico*, Editori Laterza, Roma-Bari, 2014; *Norma e Luoghi: Problemi di Geodiritto*, Editori Laterza, Roma-Bari, 2006.
- R. IYOB, *The Eritrean Struggle for Independence: Domination, Resistance, Nationalism, 1941-93*, *Aethiopica*, Vol.1, 1998.
- R. JACKSON, *Quasi-States: Sovereignty, International Relations and the Third World*, Cambridge University Press, Cambridge, 1990.
- V. C. JACKSON, *Comparative constitutional federalism and transnational judicial discourse*, *International Journal of Constitutional Law*, Volume 2, Issue 1, January 2004, *I-CONS JOURNAL*.
- C. JACQUES, P. LAFOND, *L'Empire Khmer, Cités et Sanctuaires, Ve-XIIIe siècles*, Fayard, Paris, 2004.
- A. JAKUBOWSKI, *The effects of state succession on cultural property: ownership, control, protection*, PhD diss., European University Institute, 2011, <https://cadmus.eui.eu/handle/1814/18414>; *Cultural Rights as collective Rights: An International Law Perspective*, Brill-Nijhoff, 2016; *State Succession in Cultural Property, Cultural Heritage Law and Property*, Oxford, 2015.
- R. JENNINGS, *The Acquisition of Territory in International Law*, Manchester University Press, Manchester, 1963.
- H. I. JESSUP, *Art and Architecture of Cambodia*, London, Thames & Hudson, 2004.
- D.H. JOHNSON, *The Case Concerning the Temple of Preah Vihear*, 11 ICQL, 1962, p. 1183.
- J. JOKILEHTO, *The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties*, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6, (Annex 1G by Christina Cameron, Keynote Paper in Kazan (2005), First Definitions of OUV by the Committee, Annex 1 A: UNESCO Meeting in Morges (1976), Annex 1 B: ICCROM on OUV (1976), Annex 1 C: ICOMOS on World Heritage Criteria (1976), Annex 1 E: World Heritage Expert Meeting, Amsterdam (1998), Annex 1F: World Heritage Expert Meeting, Kazan (2005); *Treatment and Authenticity*, in *Management Guidelines for World Cultural Heritage Sites*, ed. B. Feilden and J. Jokilehto, ICCROM-UNESCO-ICOMOS, Rome, 1998; *Questions of Authenticity*, *Conversaciones...con Herb Stovel*, Núm. 8, Diciembre 2019; *A History of Architectural Conservation: The Contribution of English, French, German, and Italian Thought towards an International Approach to the Conservation of Cultural Property*, D. Phil Thesis, The University of New York, England, Institute for Advanced Architectural Studies, 1986, (recomposed in PDF format in 2005).
- M. KALDOR, *New and Old Wars: Organized Violence in a Global Era*, Stanford University Press, Stanford, 1999.
- M. T. KAMMINGA, *Extraterritoriality*, MPIL, 2020; K. M. MEESSEN, *Extraterritorial Jurisdiction in Theory and Practice*, Kluwer Law International, London, The Hague, Boston, 1996.
- Challenges in the Protection of Immovable Tangible Heritage in Kosovo*, Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE), 2014.
- A. KASHER, *Jews, Idumeans, and ancient Arabs: relations of the Jews in Eretz-Israel with the nations of the frontier and the desert during the Hellenistic and Roman era (332 BCE-70 CE)*, J.C.B. Mohr, Tübingen, 1988.
- V. KATTAN, *From Coexistence to Conquest: International Law and the Origins of the Arab Israeli Conflict*, Pluto Press, 2009; *Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the South West Africa Cases*, *Asian Journal of International Law*, Vol. 5, No. 2, 2015; *The Ghosts of the Temple of Preah*

Vihear/Phra Vihear in the 2013 Judgement, *Asian Journal of International Law*, Vol. 5, No. 1, 2015.

H. Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, *Yale Law Journal*, n. 53, 1944.

H. Kelsen, *Principles of International Law*, New York, 1952.

D. Kertzer, *Ritual, politics and power*, New Haven, CT: Yale University Press, 1988.

L. KHARATYAN, A. UMUDOV, G. BOBGHIASHVILI, *The Cultural Heritage of National Minorities in Armenia, Azerbaijan, and Georgia*, *Journal of Conflict Transformation*, Caucasus Edition, 2019, at <https://caucasusedition.net/policies-on-cultural-heritage-of-national-minorities-in-armenia-azerbaijan-and-georgia/>.

D. KHASAWNEH, M. GRÖNDAHL, F. RAHHAL, *Memoirs Engraved in Stones: Palestinian urban mansions*, *Riwaq-Centre for Architectural Conservation*, Ramallah, 2000.

M. G. KOHEN, M. HÉBIÉ, *Research Handbook on Territorial Disputes in International Law*, Elgar, Cheltenham-Northampton, 2018.

M. KOSKENNIEMI, *The Wonderful Artificiality of States*, *ASIL Proceedings*, 88/22, 1994.

M. KOSKENNIEMI, M. GARCÍA-SALMONES ROVIRA, P. AMOROSA, *International Law and Religion: Historical and Contemporary Perspectives*, Oxford University Press, Oxford, 2017.

A. KOSTER, M. BAX, *Power and Prayers: Religious and Political Processes in Past and Present*, VU University Press, 1993.

G. KREIJEN, *The Transformation of Sovereignty and African Independence: No Shortcuts to Statehood, in State Sovereignty and International Governance*, Oxford University Press, Oxford, 2002.

P. KURUK, *Cultural Heritage, Traditional Knowledge and Indigenous Rights: An Analysis of the Convention for the Safeguarding of the Intangible Cultural Heritage*, *Macquarie Journal of International and Comparative Law*, No. 1, 2004.

S. LABADI, UNESCO, *Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions*, Lanham, MD: AltaMira Press, 2013; *Representations of the Nation and Cultural Diversity in Discourses on World Heritage*, *Journal of Social Archaeology*, Vol. 7, No.2, 2007; *World Heritage, Authenticity and Post-Authenticity*, S. Labadi and C. Long (eds.), 2010.

J. LAFONTAINE-DOSOGNE, *Iconographie de l'Enfance de la Vierge Dans l'Empire Byzantine et en Occident I*, Bruxelles, 1964, 48 et passim.

A. LAÏDI-HANIEH, *Arts, Identity, and Survival: Building Cultural Practices in Palestine*, *Journal of Palestine Studies* 35, no. 4, 2006.

F. LANZERINI, *Intangible Cultural Heritage: The Living Culture of Peoples*, *The European Journal of International Law*, Vol. 22, No. 1, 2011; *Il valore 'soggettivo' del patrimonio culturale come elemento essenziale dell'identità dei popoli*, in A. GENTILI, *La Salvaguardia dei beni culturali nel Diritto Internazionale*, Milano, Giuffrè, 2008.

P. LASCOUMES, P. GALÈS, *Gli Strumenti per Governare*, Prefazione di S. Cassese, Milano, Bruno Mondadori, 2009.

H.J. LASKI, *Authority in the Modern State*, The Works of Harold J. Laski, Yale University Press, 1919.

H. LAUTERPACHT, *Recognition in International Law*, Cambridge University Press, Cambridge, 1947.

R. LAVALLE, *Legal Aspects of the Kosovo Crisis and its Outcome: An Overview*, *Révue Hellenique de Droit International*, No. 2, 2000.

V. LIEBERMAN, *Strange Parallels. Southeast Asia in Global Context, c. 800-1830*, Vol.1: *Integration on the Mainland*, Cambridge University Press, Cambridge, 2003.

N. LIMSAMARNPHUN, *Opinion, Cambodia Should Consider Joint Inscription of Preah Vihear Site*, *Nation*, (Thail.), June 28, 2008, <http://www.nationmultimedia.com/seach/read.php?newsid=30076732&keyword=Cambodia+should+consider+joint+inscription+Preah+Vihear+Site> (describing goals of the joint communiqué signed June 18, including the naming of Preah Vihear as a World Heritage Site).

- L. LIXINSKI, *Selecting Heritage: the Interplay of Art, Politics and Identity*, *The European Journal of International Law*, 81– 100. <https://doi.org/10.1093/ejil/chr001>; *Heritage Listing as a Tool for Advocacy: The Possibilities for Dissent, Contestation, and Emancipation in International Law through International Cultural Heritage*, *Asian Journal of International Law*, Vol. 5, No. 2, 2015; *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*, Cambridge University Press, Cambridge, 2021.
- J. LOCKE, *Saggi sulla Legge Naturale*, Edizioni Laterza, Bari, 2019.
- J. LOCKE, *Trattato sul Governo*, Pgrecò, Roma, 2010.
- S. LONDHE, *A Tribute to Hinduism: Thoughts and Wisdom Spanning Continents and Time about India and Her Culture*, Pragun Publication, 2008.
- D. LOWENTHAL, *Counterfeit Art: Authentic Fakes?*, *International Journal of Cultural Property*, Vol.1, Issue One, Cambridge University Press, 2007.
- N. LUBELL, *Human Rights Obligations in Military Occupation*, in *International Review of the Red Cross*, Vol. 94, Spring 2012.
- N. LUZ, *The Mamluk City in the Middle East: History, Culture, and the Urban Landscape*, Cambridge University Press, Cambridge, 2014.
- M. LYNK, *The Legal Foundations of Resolution 242*, *Journal of Palestine Studies*, Vol. XXXVII No. 1, 2007.
- I. MABBETT, D. CHANDLER, *The Khmers*, Blackwell, Oxford, 1995.
- M. MACDONALD, *Angkor and the Khmers*, Oxford University Press, Singapore, 1987.
- D.B. MACDONALD, *Balkan Holocausts? Serbian and the Croatian Victim-Centred Propaganda and the War in Yugoslavia*, Manchester University Press, Manchester and New York, 2002.
- S. MAKDISI, *The Architecture of Erasure*, *Critical Inquiry*, Vol. 36, No. 3, 2010.
- N. MALCOM, *Kosovo: A Short History*, Harper Perennial, New York, 1999.
- F. MANISCALCO, *The loss of the Kosovo Cultural Heritage*, Retrieved from Al Quds University, Institute of Islamic Archaeology, *Web Journal on Cultural Patrimony*, 2/2006; *Relazione sullo Stato del Patrimonio Culturale Mobile nei Balcani*, Verbal Report to the Comando Tutela Patrimonio Culturale Carabinieri, 2000.
- S. MARJANOVIĆ-DUŠANIĆ, *The Holy King: The Cult of St. Stefan of Dečani*, Belgrade, SANU, Balkanološki Institut, 2007.
- T. MARK-WEINER, *Narrative Cycle of the Life of St. George in Byzantine Art*, *Ann Arbor* 1990, 50/51 et passim.
- M. MARKOVIĆ, D. VOJVODIĆ, *Artistic Heritage of the Serbian People in Kosovo and Metohija: History, Identity, Vulnerability, Protection*, Serbian Academy of Arts and Sciences, 2017.
- D. MASSON, *South-Slavonic Churches— The Serbian*, *MacMillan's Magazine*, Vol. X, 1864.
- J.H MERRYMAN, *The Public Interest in Cultural Property*, *California Law Review*, Vol. 77, no. 2, 1989, p. 352; *Counterfeit Art*, *International Journal of Cultural Property*, Vol.1, Issue One, Cambridge University Press, 2007.
- L. MESKELL, *UNESCO's World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation*, *Current Anthropology*, Vol. 54, N. 4, 2013; *A future in Ruins; UNESCO, World Heritage and the dream of peace*, Oxford University Press, June 2018.
- JW MEYER, P. BROOMLEY, *The Worldwide Expansion of "Organization"*, *Sociological Theory*, Vol. 31, 2005, 2013.
- E. MILANO, M. NICOLINI, F. PALERMO, *Law, Territory and Conflict Resolution*, Brill Nijhoff, Leiden, 2016.
- G. MILLET, *L'Ancien Art Serbe: Les Églises*, Paris, 1919.Y. MIZRACHI, *Tel Rumeida: Hebron's Archaeological Park*, Emek Shaveh, 2014.
- D. MILOŠEVIĆ, *Gračanica Monastery*, Institute for the Protection of Cultural Monuments of the Socialist Republic of Serbia, 1989.
- P. MINKKINEN, *Sovereignty, Knowledge, Law*, Routledge, New York, 2009.

V. MORINA, F. KORENICA, D. DOLI, The relationship between international law and national law in the case of Kosovo: A constitutional perspective, *International Journal of Constitutional Law*, Volume 9, Issue 1, January 2011, I-CONS JOURNAL.

M. MUSAJ, Kosovo 2011 Census: Contested Census within a Contested State, *Contemporary Southeastern Europe*, Vol. 2, 2015.

C. MYLONAS, *The Serbian Orthodox Fundamentals: The Quest for an Eternal Identity*, Budapest and New York, Central European University Press, 2003.

J. NAIFEH, Reinterpreting the Authenticity of Reconstructed World Heritage Properties for the Twenty-First Century, *DePaul Journal of Art, Technology and Intellectual Property Law*, Vol. 29, No. 1, 2018.

S. NAVOT, The Constitutional Law of Israel, Kluwer Law International, 2007; G. HALMAL, Constitutionalism, Law and Religion in Israel a State's Multiple Identities, *J Civil Legal Sci* 5:169, 2016.

S. NOVAKOVIĆ, Remaining of the Patriarchate of Peć in One Folk Custom of The Region, *Glasnik SRPSKOG UCENOG DRUSTVA odel. XII*. 1931.

J. E. NÚÑEZ, *Territorial Disputes and State Sovereignty*, International Law and Politics, Routledge, Abingdon-Oxon, 2020.

R. O'KEEFE, R. KOLB, R. HYDE, *An Introduction to the International Law of Armed Conflicts*, Hart Publishing, Oxford, 2009.

R. O'KEEFE, C. PERON, T. MUSAYEV, G. FERRARI, *Protection of Cultural Property. Military Manuals*, UNESCO Publishing, Sanremo, 2016.

J. PAIK, S. LEE, K. Y.L. TAN, *Asian Approaches to International Law and the Legacy of Colonialism: The Law of the Sea, Territorial Disputes and International Dispute Settlement*, London and NY, Routledge, 2013.

M. PAITON, *Social and Cultural History of Northeastern Thailand from 1868-1910: A Case Study of Huamuang Khamen Padong (Surin, Sangha and Khukhan)*, Doctoral Dissertation, University of Washington, 1984.

M. PAKDEEKONG, Who Owns the Preah Vihear Temple—A Thai Position, *Journal of East Asia and International Law*, Vol. 2, No. 1, 2009.

E. PALAZZO, *Recupero Urbano nelle Città Storiche del Territorio Palestinese Occupato*, EdA, Esempi di Architettura, Il Prato Casa Editrice, anno III, n.7/2009, Padova.

S. PANCHALI, The Dispute Over Preah Vihear: Seen Problems, Unseen Stakes, *IPCS Special Report*, 129, June 2012.

H. PARMENTIER, *L'Art Khmer Classique, Monuments du Quadrant Nord-Est*, École Française d'Extrême-Orient, Paris, 1939; *Complement à l'Inventaire Descriptif des Monuments Du Cambodge*, *Bulletin de l'École Française d'Extrême-Orient*, Vol. 13, No. 1, 1913.

A. PAVLOVIĆ, To UNESCO or Not to UNESCO, Serbian Cultural Heritage in Kosovo between Sovereignty and Protection, BiEPAG (joint initiative of the European Fund for the Balkans and the Centre for Southeast European Studies of the University of Graz BiEPAG), Prepared within the framework of the Regional Research Promotion Programme in the Western Balkans (RRPP), implemented by the University of Fribourg upon a mandate of the Swiss Agency for Development and Cooperation, SDC, Federal Department of Foreign Affairs, 2015, available at: <https://biEPAG.eu/to-unesco-or-not-to-unesco-serbian-cultural-heritage-in-kosovo-between-sovereignty-and-protection/>.

P. PETKOFF, Finding a Grammar of Consent for 'Soft Law' Guidelines on Sacred Places: The Legal Protection of Sacred Places within the Existing Public International Law Instruments and Grass-root Approaches, in *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Edited by Silvio Ferrari and Andrea Benzo, Farnham: Ashgate Publishing, 2014.

S. PETKOVIĆ, Manastir Pecka patrijaršija i njegove spahije (Monastery Patriarchy of Peć and its landowners), *Balkanica* 1982–83, No. 13–14.

V.R PETKOVIĆ, D. BOŠKOVIĆ, *Monastir Dečani I-II*, Beograd, 1941.

P.L PETRILLO, *The Legal Protection of the Intangible Cultural Heritage: A Comparative Perspective*, Springer, 2019.

D. PÉTRONIEVITCH, *Les Cathédrales de Serbie*, Paris, Société Française d'Imprimerie et de Librairie, 1917.

F. PIAZZONI, What's Wrong with Fakes? Heritage Reconstructions, Authenticity, and Democracy in Post-Disaster Recoveries, *International Journal of Cultural Property*, Vol. 27, 2020.

Expert Meeting, Great Zimbabwe, 2000.

M. POPKHADZE, Georgia and Azerbaijan's David Gareja Monastery Conundrum, Foreign Policy Research Institute, 2019.

D. POPOVIĆ, Pod okriljem svetosti: kult svetih vladara i relikvija u srednjovekovnoj Srbiji (Under the wing of holiness: cult of holy rulers and relics in Medieval Serbia), Balkanološki Institut, SANU: Posebna izdanja 2006.

K. QAWASMEH, Hebron Rehabilitation Committee, in *The Second Riwaq Biennale*, Ramallah, Riwaq, 2007.

J. QUIGLEY, *The Six Day War and Israeli Self-Defence*, Cambridge University Press, 2013.

P. M. RATTANASENGCHANH, The Role of Preah Vihear in Hun Sen's Nationalism Politics, 2008–2013, *Journal of Current Southeast Asian Affairs*, Vol. 36, No. 3, 2017.

W. REISMAN, Sovereignty and Human Rights in Contemporary International Law, *AJIL*, 84/866, 1990.

Y. REITER, *Contested Holy Places in Israel-Palestine: Sharing and Conflict Resolution*, Routledge, London and New York, 2017.

J. RIEDLMAYER, Destruction of Cultural Heritage in Bosnia-Herzegovina, 1992–1996: A Post-war Survey of Selected Municipalities, in Riedlmayer, A. J., *Bosnia-Herzegovina Cultural Heritage Report*, Cambridge, Massachusetts, 2002.

M. C. RIOLL, From Lake Success to Palestine: the UN Partition Plan, in *A Liminal Church: Refugees, Conversions and the Latin Diocese of Jerusalem*, Leiden, Brill, 2020.

T. RISSE, *Governance Without a State?: Policies and Politics in Areas of Limited Statehood*, Columbia University Press, New York, 2013.

M. RISTIC, S. FRANK, *Urban Heritage in Divided Cities: Contested Pasts*, Routledge, NY, 2019.

A. ROBERTS, Transformative Military Occupation: Applying the Laws of War and Human Rights, *The American Journal of International Law*, Vol. 100, n. 580, 2006.

N. RONZITTI, Il Conflitto del Nagorno-Karabakh e il Diritto Internazionale, G. Giappichelli Editore, Torino, 2014.

D. ROONEY, *Angkor, an introduction to the Temples*, Hong Kong, Odyssey, 1994.

S. ROSAENNE, Israel: Some Legal Aspects of the Transition from Mandate to Independence: December 1947- 15 May 1948, in A. E. KELLERMAN. K. SIEHR, T. EINHORN (eds), *Israel Among the Nations: International and Comparative Law Perspectives on Israel's 50th Anniversary*, Kluwer Law International, 1998.

A. ROSS, *Stone Men: The Palestinians Who Built Israel*, Verso Books, London-NY, 2021.

V. ROVEDA, *Sacred Angkor*, River Books /Thames & Hudson, Bangkok/London, 2002; *The Archaeology of Khmer Images, Aséanie, Sciences humaines en Asie du Sud-Est*, Vol. 13, 2004.

E. SAMSON, Is Gaza Occupied?: Redefining the Status of Gaza Under International Law, *American University International Law Review*, Vol. 25, No. 915, 2010.

P. SANPAOLESI, *Restoring Monuments: Historical Background, in Preserving and Restoring Monuments and Historic Buildings*, UNESCO, Paris, 1972.

J. SAWARD, *The Beauty of Holiness, and the Holiness of Beauty: Art, Sanctity and the Truth of Catholicism*, Ignatius Press, 1996.

O. SCHACHTER, The Decline of the Nation-State and its Implications for International Law, *ColJTL*, 36/7, 1998.

D. SCHINDLER, J. TOMAN, *The Laws of Armed Conflicts*, Martinus Nijhoff Publisher, Dordrecht/ Geneva, 1988.

M. SCHOISWOHL, Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of Somaliland; The Resurrection of Somaliland Against All International "Odds": State Collapse, Secession, Non-Recognition and Human Rights, Martinus Nijhoff Publishers, Leiden/ Boston, 2004.

C. SCHMITT, *Constitutional Theory*, Duke University Press, Durham, First Published in 1928, 2008.

C. SCHMITT, *The Nomos of the Earth in the International Law of the Jus Publicum*, Telos Press, NY, First Published in 1950, 2003.

T. M. SCHMITT, *Global Cultural Governance: Decision-Making Concerning World Heritage Between Politics and Science*, *Erdkunde*, Vol. 63, No. 2, 2009.

M.N. SCHMITT, J. PEJIC, *International Law and Armed Conflict: Exploring the Faultlines*, *International Humanitarian Law Series*, Martinus Nijhoff Publishers, 2007.

V. SCHMUTZ, M. A. ELLIOTT, *World Heritage and the Scientific Consecration of "Outstanding Universal Value"*, *International Journal of Comparative Sociology*, Vol. 58(2), 2017.

T. SCOVAZZI, L. VESTRA, *The Safeguarding of the Intangible Cultural Heritage According to the 2003 UNESCO Convention: The Case of The First Nations of Canada*, *The McGill Journal of International Law and Legal Pluralism*, *InterGentes*, Vol. 1, Issue 2, 2017.

P. SELICK, *The Old City of Hebron: Can It Be Saved?*, *Journal of Palestine Studies* 23, no. 4, 1994.

E. SERBENCO, *The Protection of Cultural Property and Post-Conflict Kosovo*, *Révue Québécoise de Droit International*, Vol. 18, No. 2, 2005.

QC M. N. SHAW, *International Law*, Cambridge University Press, New York, Eighth Edition, 2017.

K. SHULMAN, *The Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand): The ICJ Orders Sweeping Provisional Measures to Prevent Armed Conflict at the Expense of Sovereignty*, *Tulane Journal of International and Comparative Law*, Vol. 20, No. 2, 2012.

H. SILVERMAN, *Border Wars: the Ongoing Temple Dispute between Thailand and Cambodia and UNESCO's World Heritage List*, *International Journal of Heritage Studies*, Vol. 17, No. 1, 2011.

G. SIMPSON, *Great Powers and Outlaw States: Unequal Sovereign Powers in the International Legal Order*, Cambridge University Press, Cambridge, 2004.

S. SIRIBHADRA, E. MOORE, *Palaces of Gods: Khmer Art and Architecture in Thailand*, Bangkok, River Books, 1992.

H. SPRUYT, *The Sovereign State and its Competitors*, Princetown University Press, 1994.

J. H. STUBBS, *Time Honored: A Global View of Architectural Conservation*, Hoboken, New Jersey: John Wiley & Sons, Inc., 2009.

S. SVAY, *Analysis of the Preah-Vihear Temple Case, Cambodia vs. Thailand at the International Court of Justice under Common Territorial Claims involving Land Disputes*, *Journal of Law, Policy and Globalization*, Vol. 36/2015.

T. TAHA, *UNESCO World Heritage Centre and the UNESCO Ramallah Office, Inventory of Cultural and Natural Heritage Sites of Potential Outstanding Universal Value in Palestine*, Palestinian National Authority, Ministry of Tourism and Antiquities, Department of Antiquities and Cultural Heritage, October 2009; *City of Bethlehem nominated as UNESCO World Heritage Site*, Palestinian Assistant deputy for antiquities and cultural matters, Interview released to the Catholic News service on February 8, 2012.

S. TALMON, *Recognition of Governments in International Law*, Clarendon Press, Oxford, 1998.

A. TANZI, *Introduzione al Diritto Internazionale Contemporaneo*, Wolters Kluwer, CEDAM, 2018.

K. TAYLOR, *The Early Kingdoms*, In N. TARLING, ed. *The Cambridge History of Southeast Asia*, Vol. 1, Part 1, Cambridge University Press, 1999.

J. B. TAYLOR, *Religious Ideology and National Identity in the Balkans*, *Islamic Studies*, Vol. 36, No. 2/3, Special Issue: *Islam in the Balkans (Summer/ Autumn 1997)*.

S. B. TAYLOR, *Territorial Disputes at the International Court of Justice*, *Duke Law Journal*, Vol. 53, No. 1779, 2004.

M. TESSLER, *A History of the Israeli-Palestinian Conflict*, Indiana University Press, 1994.

C. THOMPSON, EIB-Institute, Luxembourg, *The 7 Most Endangered in Europe: David Gareji Monasteries and Hermitages, Georgia*, Technical Report, Programme run by Europa Nostra, the Voice of Cultural Heritage in Europe, in partnership with the European Investment Bank Institute.

- S. TIMMERMANS, S. EPSTEIN, *A World of Standards but Not a Standard World*, *Annual Review of Sociology*, Vol. 36, 2010.
- B. TODIĆ, *Serbian Medieval Painting: The Age of King Milutin*, Draganić, University of Virginia, 1999.
- W. TOEM, *History of Isan*, Thammasat University Press, Bangkok, 1999.
- S. TONOLO, *Religious Values and Conflict of Laws: old problems and new perspectives*, in *Tui Memores: La Dimension culturelle du droit international privé*, Publications de l'Institut suisse de droit comparé, Collection dirigée par Christina Schmid et Lukas Heckendorn Urscheler, Ilaria Pretelli/ Gian Paolo Romano/ Tuto Rossi (éds), *Actes de la Journée en l'honneur de Tito Ballarino du 13 juin 2014 à Lausanne et Essais recueillis par ses amis et élèves*, Schulthess, Éditions Romandes, 2017.
- T. TSIVOLAS, *Law and Religious Cultural Heritage in Europe*, Springer International Publishing Switzerland, 2014; *The Legal Foundations of Religious Cultural Heritage*, *Religions*, Vol. 10, no. 283, 2019.
- M. TODD, M. B. SMITH, *The Jews in Jerusalem and Hebron During the Ottoman Era*, in *A History of Jewish-Muslim Relations: From the Origins to the Present Days*, Oxford, Princeton University Press, 2013.
- M. TODOROVA, *The Ottoman Legacy in the Balkans*, in G.G. ÖZDOĞAN and K. SAYBASILI (eds), *Balkans. A Mirror of the New International Order*, Istanbul: Eren, 1995.
- B. TOUCH, *Who Owns The Preah Vihear Temple—A Cambodian Position*, *Journal of East Asia and International Law*, Vol. 2, No. 1, 2009.
- P. TROCH, *The Intertwining of Religion and Nationhood in Interwar Yugoslavia: The School Celebrations of St Sava's Day*, *The Slavonic and East European Review*, Vol. 91, No. 2 (April 2013).
- J. A. TULLY, *The French on the Mekong: A history of the Protectorate in Cambodia (1863–1953)*, University Press of America, Lanham, 2002.
- S. TYLER, *Of Temples and Territory: The ICJ's Preah Vihear Decision and Implications for Regional Dispute Resolution*, *University of District of Columbia Law Review*, Vol. 19, 2016.
- L. VENTURA, *Sovranità: Da Jean Bodin alla Crisi dello Stato Sociale*, Giappichelli, Torino, 2014.
- G. VIZOKA, *Shaping Peace in Kosovo: the Politics of Peacebuilding and Statehood*, *Rethinking Peace and Conflict Studies*, Oliver P. Richmond Series Editor, Springer Nature, Switzerland, 2017.
- D. VOJVODIĆ, D. POPOVIĆ, *Byzantine Heritage and Serbian Art II: Sacral Art of the Serbian Lands in the Middle Ages*, published on the occasion of the 23rd International Congress of Byzantine Studies, Belgrade, 2016; *Prilog poznavanju ikonografije i kulta sv. Stefana u Vizantiji i Srbiji* (Contribution to knowledge of iconography and cult of St. Stefan in Byzantine and Serbia), *Zidno slikarstvo manastira Dečani: građa i studije*, SANU: odeljenje istorijskih nauka, Posebna izdanja 1995.
- L. VON CARLOWITZ, *Crossing the Boundary from the International to the Domestic Legal Realm: UNMIK Lawmaking and Property Rights in Kosovo*, *Global Governance*, Vol. 10, No. 3 2004.
- T. VUKANOVIĆ, *Srbi na Kosovu* [Serbs in Kosovo], Nova Jugoslavija, 1986.
- H. WADE, *The Basis of Legal Sovereignty*, *Cam LJ* 172, 1955.
- N. WALKER, *The Sovereignty Surplus*, *International Journal of Constitutional Law*, Volume 18, Issue 2, July 2020, *I-CONS JOURNAL*.
- A. WARBURG, W. F. MAINLAND, *A Lecture on Serpent Ritual*, *Journal of the Warburg Institute*, Vol. 2, No. 4, 1939.
- M. WEBER, *Religious Rejections of the World and Their Directions*, in Hans Gerth H. & Wright Mills C., from Max Weber, *Essays in Sociology*, Routledge, 1948.
- J. H. H. WEILER, *The political and legal culture of European integration: An exploratory essay*, *International Journal of Constitutional Law*, Volume 9, Issue 3-4, October 2011, *I-CONS JOURNAL*.
- J. R. WELCH, I. LILLEY, *Beyond the Equator (Principles): A forum on Community Benefit Sharing in Relation to Major Land Alteration Projects and Associated Intellectual Property Issues in Cultural Heritage Held at the Meeting of the Society for American Archaeology*, Honolulu, *International Journal of Cultural Property*, Vol. 20/2013.

- P. WILLIAMS, M. SCHARF, J. HOOPER, Resolving Sovereignty-Based Conflicts: the Emerging Approach of Earned Sovereignty, *Denv. JILP*, 31 /349, 2002-2003.
- T. WINTER, L.C-P. OLLIER, Introduction, Cambodia and the Politics of Tradition, Identity and Change, In T. WINTER, L.C-P. OLLIER, *Expressions of Cambodia: The Politics of Tradition, Identity and Change*, Routledge, Oxon, 2006.
- P. WRANGE, Self-Determination, Occupation and the Authority to Exploit Natural Resources: Trajectories from Four European Judgements on Western Sahara, *Israel Law Review (A Journal of Human Rights, Public and International Law)*, Cambridge University Press, Vol. 52, No.1, 2019.
- M. WYNN, *Faith and Place, an Essay in Embodied Religious Epistemology*, Oxford, Oxford University, 2009.
- G.A. YOUNG, *Corps de Droit Ottoman: recueil des codes, lois, règlements, ordonnances et actes les plus importants du droit intérieur, et d'études sur le droit coutumier de l'Empire Ottoman/ Livre II/ Titre XXXIX/ Règlement des Antiquités*, Clarendon Press, Oxford, 1905-1906.
- T. ZEPHIR, *L'Art Khmer, L'Art de l'Asie du Sud-Est*, Citadelles & Mazenod, Paris, 1994, p. 151-250.
- A. ZIMMERMANN, C. STAHN, Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the Current and Future Legal Status of Kosovo, *Nordic Journal of International Law*, Issue 4, Vol. 70, 2001.