

# The Making of Cultural Heritage: Law, Politics, and Conceptual Contestation<sup>1</sup>

Pauno Soirila

When I first began preparing my doctoral dissertation, it was a very different project. One of the first things I set out to explore, which was to be one of the basic building blocks of my research, were studies on how the concept of cultural heritage had been developed in different legal instruments. In other words, the legal and conceptual history of cultural heritage.

To my surprise, I found nothing. What initially appeared to be a personal research challenge gradually became evident as a broader gap in literature. However, the lack of an overarching historical analysis turned out to be a blessing in disguise: it led me to reframe my project and undertake that task myself. To my knowledge, my dissertation is still the only study to examine the history of cultural heritage on an overarching historical scale.

There is much that can be learned from studying the history of a concept, and for cultural heritage, this means understanding the complex political processes that work behind the scenes to shape its development, and the legal and administrative frameworks that are built around the phenomenon.

To begin, let me briefly explain what I mean when speaking of cultural heritage. Although the phrase appears, occasionally, at least as ear-

ly as the 19<sup>th</sup> century, it had no clear or consistent conceptual meaning at that time. The modern understanding, however, is much more concrete. It focuses on outward representations of cultural identity, passed on and safeguarded between generations. The exact definition of cultural heritage today, however, is difficult to pinpoint: it has expanded to cover almost all aspects of human life and its material traces, from environments to everyday objects, from day-to-day life to rare and sacred rituals. This is in sharp contrast to 70 years ago when the term was first coined, when the concept seemed to focus mainly on art treasures and monuments.

Cultural heritage legislation is born specifically out of the desire to protect heritage. Therefore, the legal concept is inevitably tied to the everyday phenomenon it seeks to safeguard, aiming to cover as broad a range of heritage as each instrument's objectives allow. Any omissions in these definitions are, therefore, either practically or politically motivated, and must be analyzed carefully to understand why certain elements were left outside the legal text.

Of course, because a legal definition is fixed in writing at a particular moment, it can also become outdated. This, in turn, may require either amendments to the instrument, or new

<sup>1</sup> This text is the author's *lectio praeursoria* delivered on 28 November 2025 at the public doctoral defence held at the Faculty of Law, University of Helsinki where the author defended his dissertation "Monumental Tradition: UNESCO and the Making of Cultural Heritage in International Law, 1954–2003". The opponent was Professor Lucas Lixinski from the University of New South Wales Sydney, and the custos was University Lecturer Marianne Vasara-Aaltonen from the University of Helsinki. The dissertation is available online at <http://hdl.handle.net/10138/603306>.

legal interpretations. A good example is intangible heritage: within a few years of the adoption of the Intangible Heritage Convention in 2003, some scholars had already observed that its definition had expanded beyond what its drafters had originally intended or envisioned.<sup>2</sup> Similarly, I have discovered that parts of the definition of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict have been almost completely reinterpreted in later application. Here, again, legal history becomes important for understanding where the intended scope and limits of each instrument are.

However, the legal definition also delineates what is officially recognized as cultural heritage and what is not, guiding interpretation in everyday application, as well. While the interplay between the legal and non-legal concept is often difficult to define exactly, law has been a way to anchor new meanings into the broader concept. Here, the role of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has been crucial. UNESCO has often been at the forefront of expanding the scope of heritage protection. This is why a historical analysis focusing specifically on international cultural heritage law is necessary in order to understand what has driven the concept of cultural heritage forward.

In the 50 years covered in my dissertation, cultural heritage underwent a profound transformation. What began as a new and novel concept in the 1950s became by the end of the century a globally recognized phenomenon, embedded in international management systems, widely promoted, and ultimately woven into everyday life. The most significant turning point came in the 1970s when

UNESCO adopted the World Heritage Convention. This convention was an important catalyst for the so-called ‘heritage boom’, where interest in the past – and various ways of engaging with it – proliferated across all levels of society.<sup>3</sup>

During the heritage boom, activities surrounding different expressions of heritage expanded, the preservation of the old became increasingly important, and interest in heritage tourism and museums grew. Equally, heritage became a significant commercial resource – and, increasingly, a political tool. This led to even further legislative and policy frameworks to manage it.

To sum up, heritage now appears on all levels of society. It has become a deeply political and politicized phenomenon but is also ubiquitous in its definition. But how has it come to be so? That is one of the key questions I sought to answer in my dissertation.

I would argue that UNESCO has often set the example that individual states have followed when expanding national laws into new areas of heritage protection. But this also means that the international politics shaping UNESCO’s work seeps into the broader heritage framework. My research, therefore, examines the political and ideological motivations behind UNESCO’s heritage activities. While my research touches on all of UNESCO’s heritage instruments, it focuses on three conventions in particular. They have been at the center of defining the idea of cultural heritage. For these conventions, I examined all available preparatory materials, to understand the debates and agendas that informed how cultural heritage was defined.

The term ‘cultural heritage’ – as well as its

2 Kurin, Richard, *Safeguarding Intangible Cultural Heritage in the 2003 UNESCO Convention: A Critical Appraisal*. *Museum International* 56 (1–2) 2004, p. 66–77, 69.

3 Harrison, Rodney, *Heritage: Critical Approaches*. Routledge 2013.

counterpart, ‘cultural property’ – entered the legal vocabulary seemingly out of nowhere with the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Convention drew on earlier 19<sup>th</sup> century rules of war concerning the protection of significant public property. This background in war also came to affect the way the concept was defined. Seen through a lens of warfare, cultural heritage came to be defined as property of exceptional value, typically monumental in nature. It had to be something irreplaceable on an international scale, so that all nations had a moral obligation to protect it.

After the 1954 Convention had been adopted, UNESCO and its Heritage Sector faced new challenges that began to broaden both the scope and the ambition of their work. I argue that, especially at this point, UNESCO and its heritage activities also became a platform for political maneuvering and for advancing national agendas – yet, simultaneously, a space where countries could cooperate despite tensions in other areas of international politics. A perfect example of this is the International Project to Save the Monuments of Nubia in Egypt between 1960 and 1980, where countries from around the world – some of which were on hostile terms with Egypt after the Suez crisis – joined forces to carry out an enormous international collaboration to protect archaeological sites that were destined to be submerged by the construction of Egypt’s new Aswan Dam. The Nubian Campaign demonstrated a way for UNESCO to remain relevant, set a model for its future heritage initiatives, and helped pave the way for the World Heritage Convention.

The end of the Second World War brought

other major changes as well. The pace of decolonization accelerated, and the number of newly independent nations grew rapidly. In UNESCO – where, only two decades earlier, roughly half of the member states had been European – countries of the Global South could now push through their own agendas with their sheer numbers. By the 1960s, the United States, long a supporter of decolonization efforts, was complaining about what it called the “tyranny of the majority” in international organizations.<sup>4</sup>

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was the result of this political landscape. It was purely the initiative of the Global South, especially former colonies. Many of these countries were in the process of building their national identities, for which cultural heritage is essential. Yet a significant share of their cultural property had already been – and continued to be – removed to collections and museums, largely in the West. Lacking the resources to stop the outflow of cultural objects on their own, these states sought an international solution. Despite strong opposition from major Western economic powers, which benefited both culturally and financially from the trade of cultural objects, the Global South managed to push the Convention through in UNESCO. It took another two to three decades before Western attitudes shifted and most of the initial opponents eventually joined the Convention themselves.

Conceptually, the 1970 Convention nudged the idea of cultural heritage – or, more precisely, cultural property – away from a focus solely on the rare and exceptional, and more towards

4 Singh, J.P., United Nations Educational, Scientific, and Cultural Organization (UNESCO): Creating Norms for a Complex World. Routledge 2011, p. 16.

an idea of heritage as something grounded in people's daily lives. Yet, this broadening was not the result of a deliberate conceptual shift. Rather, it emerged as a pragmatic outcome of the negotiations, where each nation sought to ensure their own brand of heritage to be included. This highlights the limits of shaping a concept through legal means – but also the sometimes organic evolution of ideas, even within a highly structured and political process.

The 1970s were a pivotal decade for heritage in several respects. Beyond the 1970 Convention and the World Heritage Convention – which shaped the direction of cultural heritage for decades – this was also the period when human rights made their breakthrough in international politics.

The role of human rights in heritage is not as tangible as the role of decolonization, but at the end of the century, human rights became embedded in all aspects of heritage. Human rights shifted the aims of heritage protection toward a more community-centered approach but also introduced new obligations. Cultural heritage was now expected to support and advance human rights, and to pay particular attention to groups in vulnerable positions, including Indigenous peoples. At least, this was the principle.

As with the 1970 Convention on illicit trafficking, it was again non-Western countries that championed intangible heritage legislation in UNESCO. And once more, the initiative faced resistance from many of the same Western countries that had opposed the 1970 Convention.

The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage was, in many ways, a direct response to the World Heritage Convention. In its first decades, the World Heritage system had reflected a distinctly

Western understanding of heritage. Many countries in Africa, South America, and Asia, however, saw their most significant cultural expressions as intangible – rooted in oral traditions, performance, and living practices. In much of the West, however, the field of intangible heritage and folklore was seen as largely inconsequential. After decades of slow progress, momentum finally grew in the 1990s. Notably with the contribution of Japan, which had taken up a foreign policy of cultural diplomacy, the Intangible Heritage Convention was given the necessary push to become reality. Japanese officials occupied key positions in UNESCO, and the country's financial contributions to the organization were unparalleled. Championing intangible heritage became an effective way for Japan to gain goodwill among countries of the Global South and to extend its cultural influence internationally.

The Intangible Heritage Convention represented a paradigm shift in several respects. Most visibly, it expanded the concept of heritage from the tangible to the intangible. There was also a significant change in how heritage was defined: instead of relying on technical criteria, the Convention focused on the role that intangible heritage plays in the lives and identities of people and communities. Some have even criticized this as a non-definition. Yet this shift reflected an emerging reality: heritage had expanded so widely that a narrow or precise definition was no longer feasible. The drafting process also involved an unusually large number of non-legal experts, further setting it apart from earlier conventions.

I argue that while the Intangible Heritage Convention aimed to counterbalance the Western-centric foundation of previous heritage legislation, and to empower communities engaged in heritage practices, neither of these goals has been perfectly achieved. Heritage manage-

ment remains largely nation-centric, still relying heavily on lists and structures inspired by the World Heritage model. A significant share of decision-making and interpretation continues to rest with authorities and heritage professionals, reflecting *Laurajane Smith's* concept of the Authorized Heritage Discourse.<sup>5</sup> In some ways, the communities may be constrained by the frameworks designed for their protection. However, the Intangible Heritage Convention has been popular and largely successful, contributing both to the safeguarding of heritage practices and to the rights of the communities involved.

To conclude, the more successful and popular cultural heritage has become, the more political it has also grown. Countries compete to secure places on UNESCO's heritage lists, and many also commercialize their heritage, and use it as a tool for public relations. Heritage can foster a sense of belonging, but it can also be used to exclude or marginalize groups and minorities. The maintenance, alteration, and destruction of cultural heritage can be used to shape how the history and composition of a place or culture are understood. The role of heritage in identity politics highlights how deeply embedded it is in our modern world and in our understanding of the self. It is, therefore, never simply a neutral representation of a shared past.

I argue that since the 1970s, heritage policy in UNESCO has been largely driven by non-Western states. Yet, due to the concept's Eurocentric roots in the 1950s, and the dominant influence of the World Heritage Convention, efforts to fully remove Western bias from the heritage system have been only partially successful. Still, UNESCO's heritage legislation has provided a platform for the Glo-

bal South to challenge Western dominance. While former colonies could not directly confront superpowers in geopolitical terms, UNESCO offered an avenue to contest Western economic and cultural control. Heritage policy opens new opportunities for international collaboration and for countering the legacies of colonialism that continue to shape contemporary societies. It is now a matter of commitment and political desire whether nations are willing to utilize that opportunity.

5 Smith, *Laurajane, Uses of Heritage*. Routledge 2006.