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Translating the concept of "cultural identity" in public policies: Between the international and the national, and the tangible and intangible dimension

Anna Pirri Valentini*

A concept such as that of "cultural identity" seems primarily belonging to the historic-artistic domain, but understanding its meaning is also fundamental for legal scholars dealing with cultural heritage policies and administration. This article examines how that notion has been shaped by legislators at different levels, revealing specific meanings depending on whether we are dealing with international conventions or national norms, and with tangible or intangible cultural heritage. The comparison of international conventions and national legislation highlights the clash between different orientations in the cultural heritage sector, namely between nationalists and internationalists. From a regulatory perspective, this clash of interests is reflected in the opposing concepts of "common heritage of mankind" and "national cultural identity," whose legal implications need to be addressed. These two definitions are examined and challenged in an effort to understand whether they still have a legal meaning or if they have been replaced by a "global" notion of cultural identity. From a more general perspective, through an analysis of three case studies, the article reveals the role played by legal traditions when the same matter is regulated both by national and international legislative interventions enacted in different time periods.

* Postdoctoral researcher of Cultural Heritage Policy and Law, LUISS Guido Carli University, Rome, Italy; Adjunct professor of Art Market Legislation, NABA—Nuova Accademia di Belle Arti, Milan, Italy. Email: apirri@luiss.it.

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Think globally, act locally.

1. Introduction

In public debates, the expressions "cultural identity" and "national cultural heritage" are more and more present. They have often been evoked in support of political ideologies or a state's economic interventions. But what do we exactly mean when we talk about the cultural identity of a given country? And, furthermore, with the rise of global regulations and of supranational policy-making processes, is it still possible to discern a national cultural identity, or have we now replaced this concept with that of the "common heritage of mankind"?

This article aims to investigate how the concept of "cultural identity" has been shaped by public policies and how it has led to legislative interventions, both at the national and at the international level. More specifically, the article notes the growing influence of international legislation on domestic law, as well as the different effects of this law as it is formulated by supranational actors and as it is formalized in conventions and treaties depending. These effects may depend on whether we are dealing with regulations on tangible or intangible cultural heritage. The article will therefore try to highlight the ways in which the concept of "cultural identity," in this process of transposition between the international and national legislative spheres, is susceptible to different interpretations depending on the category of reference. The analysis will start from two fundamental concepts in this field, namely that of "national cultural identity" and "common heritage of mankind," and will ask whether these two definitions have a legal value or, rather, whether they also pertain to extra-legal domains.

The main takeaway in this regard is that, when dealing with "cultural heritage" at the supranational and international level (especially when referring to the concept of "common heritage of mankind"), we are not referring to a category that defines new legal boundaries. Instead, we are dealing with a concept that establishes new managerial standards and sets good practices of protection and valorization. Therefore, we can anticipate that the definition of "cultural heritage" when adopted at the international level assumes an extra-legal value, fulfilling—as just mentioned—other purposes. These conclusions refer first to tangible cultural goods, since the latter are not generally recognized at the international level unless they have first been acknowledged at the domestic level, first through a legislative procedure and, second, through an administrative one.[1] The fact that the legal-normative definition, as far as tangible cultural assets are concerned, takes place primarily at the national

[1] It should be noted that all sites of cultural or environmental importance on the World Heritage List, by virtue of their outstanding value, are already protected as national cultural or natural assets at the national level. *See* Lorenzo Casini, *Cultural Sites Between Nationhood and Mankind*, *in* Community Interests Across International Law 176 (Eyal Benvenisti & George Nolte eds., 2018).
A different kind of analysis should be made regarding the type of recognition of movable or immovable cultural property deriving from the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, in force Aug. 7, 1956, 249 U.N.T.S. 216 [hereinafter the Hague Convention]. The latter, in fact, requires that the contracting states refrain from performing any act that might harm "monuments of architecture, art or history, archaeological sites, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections of all kinds regardless of their origin or ownership" in the event of armed conflicts.

level where international legislation on the subject primarily provides extra-legal (and more managerial) indications is probably due to historical reasons. Most of the legal traditions worldwide, in fact, had already provided for a legislation of acknowledgement and protection of tangible cultural heritage before the adoption of international conventions and treaties on the subject—which were later ratified at the domestic level. The same cannot be said, however, of the category of intangible cultural heritage, whose identification and legal recognition has come about primarily through the adoption of international legislation. In this case, in fact, the concept of "cultural identity" with respect to cultural activities or traditions has been translated by international treaties and conventions into national legislations which, in most cases, did not contain their own existing definition. As we will see, given the (relative) recent recognition of intangible cultural heritage, in various national contexts the legislator has yet to find the correct administrative tools, as well as the most suitable legal definition, to allow for a correct translation of the concept of "cultural identity" linked to intangible assets as originally coined at the supra-state level.

To carry out such an investigation, the article will review three cases of public policies elaborated from the concept of "cultural identity"[2] that reflect the existing entanglement between national and international legislative and legal spheres to highlight the different possibilities of translation of the same concept depending on the specific intervention taken into consideration.

2. The concept of "cultural identity" in public policies

Culture, with its various manifestations, has always played a crucial role in the identification of a community, as well as in the construction and maintenance of a sense of national belonging within a population.[3] Furthermore, the belief that cultural heritage is one of the most important tools that enables us to know the past and to be aware of the historical, political, and natural events that marked our nation is rooted in most societies.[4]

But what is, more precisely, the object at the core of such cultural heritage policies? The dictionary definition of the world "culture" detects at least two main

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While the obligation to "respect … cultural property situated within their own territory as well as within the territory of other States Parties," on the one hand, recognizes the existence of a cultural heritage of all mankind, on the other hand, it imposes an obligation to "refrain from doing" rather than a legal-normative recognition of the cultural asset per se.

2 For an overview of the different needs and reasons underpinning the enactment of cultural heritage policies, and their different functions, see Carole Rosenstein, Understanding Cultural Policy (2018).

3 The United Nations Educational, Scientific and Cultural Organization (UNESCO) highlights this role of cultural heritage, by stating that "[h]eritage constitutes a source of identity and cohesion for communities disrupted by bewildering change and economic instability." U.N. Educ. Sci. & Cultural Org., *Protecting Our Heritage and Fostering Creativity*, https://en.unesco.org/themes/protecting-our-heritage-and-fostering-creativity (last visited Oct. 25, 2021).

4 *Cf.* Antoine Chrysostome Quatremere de Quincy, Considérations morales sur la destination des ouvrages de l'art 2 (Paris, 1815):
Lorsqu'on envisage les arts dans l'exercice habituel qui s'en fait chez une nation, le mot nécessaire exprime cette liaison naturelle qu'ils ont quelquefois avec les principaux besoins des hommes en société, ce qui met la forme d'une société dans une telle dépendance des Arts, que, sans eux, cette forme cesserait d'exister.

meanings: culture as the way of life of a given group of people (e.g. a population); and culture as synonymous of "arts" (such as music, visual art, theatre, literature).[5] It is in this twofold meaning that culture is essential for the identification and the recognition of a community, thanks to both its intangible and tangible expressions. Therefore, the ensemble of cultural property (the material cultural products such as artworks, monuments, etc.) and of intangible cultural heritage expressions (such as the language, popular traditions, etc.) constitute the so-called national cultural heritage. This is something that states generally aim to identify, protect, and valorize through the enactment of specific and targeted public policies and by the daily implementation of the latter by the competent administrative body.

While reflecting on how various pieces of legislation identify and recognize their national cultural heritage, we can form an idea of the different roles that culture has played and still plays in the context of the conception of a national identity. States envisage different ideas about what their own national cultural heritage is, and such differences are reflected in the diverse legislations at stake.

More precisely, this article will conduct the investigation regarding the role that "cultural identity" plays in the design of public policies between the national and the international level by analyzing the following key points:

(i) The concept of cultural identity as applied to tangible cultural heritage is easily translatable from international conventions into national legislation. While, in the former, it assumes the denomination of "common heritage of mankind" and defines those cultural properties which have an outstanding universal value, in the latter, it identifies objects identified as national treasures because of their national importance. The two different definitions reflect the different categories to which they belong, meaning an extra-legal (the international) and a legal one (the national).

(ii) Public policies regulating the management and the valorization of cultural heritage have tackled the concept of "cultural identity" to understand whether this had to be interpreted in a more or less traditional way. In other words, is the cultural identity of a cultural institution (e.g. a museum) referring to the collection exhibited, or to the activities produced, or rather to the person running and in charge of it?

(iii) The concept of "cultural identity" when referring to intangible cultural heritage meets some discrepancies between its definition at the international level (where it was first developed) and its translation into domestic legislations. What administrative tools and remedies can the national legislator and administrator develop to overcome this situation?

In the second half of the twentieth century, the legislative intervention in the cultural heritage sector was particularly prolific. This phenomenon is indicative of an increased awareness of the universal value of cultural property, in addition to archaeological

[5] See *Culture*, *in* Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/culture (last visited Oct. 25, 2021).

and natural sites, and of the function that must be assigned to the cooperation between states to provide adequate legal instruments for their protection and conservation. The autonomy of this set of norms with respect to national legislation has become evident from the use of the expression "international cultural heritage law," adopted by scholars since the first decade of the twenty-first century. Domestic and international legislation on cultural heritage stand on different levels not only in terms of their scope of action (think of the distinction between the two categories of "cultural heritage of mankind" and "national treasures") and the type of intervention, but also in terms of their seniority. In this regard, Janet Blake wrote in 2015 that "[t]he establishment of cultural heritage treaties at the international (global) level is of relatively recent date and the field is still young and evolving, with all the uncertainties that this entails."[6]

Although some attempts to regulate the sector of cultural heritage at the international level, especially in cases of armed conflict, had already been made, from a historical point of view it is possible to state that (modern) international cultural heritage law began to develop in the period immediately following the outbreak of the World War II. It was, in fact, during the postwar period that the states created the United Nations Organization and its specialized agency in the field of education, science, and culture[7] and that the Universal Declaration of Human Rights was adopted.[8] It will not be surprising, therefore, to discover that the first convention in the field of cultural heritage, adopted in this international context, aimed—in line with the mission of the United Nations and the Universal Charter of Human Rights—to protect cultural heritage in contexts of instability and armed conflict. This is the Convention for the Protection of Cultural Property in the Event of Armed Conflict adopted in 1954 in The Hague. The international character of the protection of cultural heritage is very evident in the Preamble to this international treaty:

> The High Contracting Parties… Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world; Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection….

What is important to understand, therefore, is how the intervention of a supranational body such as UNESCO, which recognizes cultural and natural sites of outstanding universal value and protects them for the benefit of all, has been considered essential by its states parties. UNESCO can lay the foundation for an international dialogue and mutual understanding. The principle underpinning this cooperation was that the preservation of the "common heritage of mankind" is a shared responsibility, to be taken at an ultra-state level and to be carried out in collaboration with civil society, local communities, and the private sector. But how was this "simple and

6 *See* Janet Blake, International Cultural Heritage Law (2015).

7 UNESCO was founded on the November 16, 1945.

8 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

revolutionary idea"[9] of the existence of a world heritage, then, applied and put into practice?

The saving of Egypt's archaeological heritage and the dismantling, stone by stone, of the Abu Simbel temples in the early 1960s was the first act to acknowledge the idea of an existing "world heritage."[10]

In 1954, the Egyptian government made the decision to build a huge dam along with a 300-mile reservoir in the Nubian part of the Nile valley south of the city of Aswan, on the border with Sudan. This construction, however, posed a serious cultural dilemma to Egypt and Sudan, since dozens of archaeological artifacts, and particularly the two temples of Abu Simbel, would have risked being submerged under water. As a result, in 1959, the Egyptian and Sudanese governments, aware of the importance of this cultural property and averting its destruction, independently asked the United Nations Educational, Scientific and Cultural Organization (UNESCO) for help to save the endangered monuments. In November of the same year, the fifty-fifth session of the UNESCO Executive Committee adopted a call for international cooperation to assist the two governments and adopted a resolution authorizing the development of studies in preparation for work to safeguard Abu Simbel and the archaeological artefacts to be undertaken as a matter of urgency. One year later, the Director General of UNESCO issued an appeal to its member states to launch an international campaign to safeguard these monuments. The result was the excavation and recording of hundreds of sites, the recovery of thousands of objects, and the salvage and relocation of several important temples to a higher ground, the most famous of which are the temples of Abu Simbel and Philae. Ended on March 10, 1980, the campaign was incredibly successful in terms of the amount of money received and the scientific and technical cooperation between professionals, experts, and scholars from all over the world. All this was possible because of the recognition of what is now an undisputed concept, namely the cultural heritage of humankind.

The concept of "cultural heritage of humankind," later memorialized in the UNESCO 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, was thus established on a legislative level. Its formal reception among all signatory states had relevant repercussions at different levels, both legal and administrative.

I have briefly mentioned the historical origins of what can be defined as the (modern) international cultural heritage law, and have looked at some practical applications of a joint intervention between states that, under the guidance of a supranational body, realized the urgency of safeguarding a culture for its importance to the humankind as a whole. Since 1945, many diverse interventions have been made at the supra-state

[9] "World Heritage is a simple idea, but a revolutionary one." *Cf.* Ana Luiza Massot Thompson-Flores, *The Temples of Ramesse II Belong to All of Mankind*, We: Digital Mag. (Feb. 6, 2019), www.webuildvalue.com/en/infrastructure/the-temples-of-ramesse-ii-belong-to-all-of-mankind.html.

[10] For a report of the case and its historical/legal contextualization, see Youmna Tabet, *Acting in Times of Crises: the Arab States as an Exemplary Case for UNESCO's New Challenges in the Safeguarding of Cultural Heritage*, 21 Art Antiquity & L. 353 (2016).

level in the field of cultural heritage by various international bodies, the most important of which are listed below:

- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970): this is the first international legislative effort meant to fight the illicit trafficking of cultural property.
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995): this is a legal instrument that allows, under certain circumstances, a legitimate owner (a private collector, a public body, or even a state) to regain possession of a cultural property that was stolen or illicitly exported abroad.
- The UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001) recognizes the importance of underwater cultural heritage as essential to the cultural heritage of humanity and to the national identity of populations and nations worldwide.
- The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) aims to promote cultural diversity, understood as traditions or living expressions inherited from our ancestors and transmitted to new generations, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge, and practices regarding nature and the universe or the knowledge and skills to produce traditional crafts.
- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) promotes awareness of the value of cultural diversity in its capacity to convey the identities, values, and meaning of cultural expressions, while reaffirming at all levels the link between culture, development, and dialogue. At the level of individual states, this Convention underscores the sovereign right to determine domestic policies and strategies for the enhancement and protection of cultural expressions, just as at the international level it reaffirms the need to strengthen international cooperation and solidarity with developing countries.
- The Council of Europe Convention on Offences relating to Cultural Property (2017) aims at preventing and combating illicit trafficking and destruction of cultural property. It establishes several criminal offenses, including theft, illegal excavation, illegal importation and exportation, and the acquisition and marketing of the goods thus obtained. It also recognizes as a crime the falsification of documents and the intentional destruction or damage of cultural property.

3. Translating the concept of cultural identity with regard to tangible cultural heritage

The relationship between cultural property, the state, and national identity is a result of different political choices. Cultural heritage policies have been, and still are, driven by social, political, and historical factors and correspond to the ideology of the state at a specific moment, which may include the desire to foster national unity, avoid social division, prove national supremacy over other nations, or foster boost economic incomes.

Notwithstanding the prominence that these policies play at the domestic level, the internationalization of the cultural heritage policy-making process is—as just seen above—an increasing reality. Over the years, we have witnessed a shift from the protection of cultural heritage mostly inside the state to the identification of a common heritage of mankind,[11] presumably, therefore, beyond national borders.

While the scholarly doctrine and soft law mechanisms acknowledge the category of "common heritage of mankind," I will try here to reflect upon the conditions for its recognition from a normative point of view and to understand whether it has a legal or an extra-legal dimension.

The attention to this "new category" of cultural heritage is testified by the very existence of the UNESCO World Heritage List[12] which enumerates the sites of cultural, natural, or mixed heritage which, based on their importance to the humankind, are protected and managed according to the provisions of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage. As recalled by the latter, to be included on the World Heritage List, sites and properties must be of outstanding universal value[13] and should meet at least one of the selection criteria contained and explained in the Operational Guidelines for the Implementation of the World Heritage Convention.

The inclusion of each cultural, natural, or mixed site within the Word Heritage List is accompanied by the reasons explaining not only the site's outstanding universal value, but also how one or more selection criteria are met by that specific site. These explanations and accompanying descriptions reveal more than one starting point for further reflections. First, the dichotomy between the relevance of the property to both a national cultural identity (and thus to its context of origin) and its universal value (to humankind) is highlighted, resulting in a tension between the two meanings of "cultural identity." This tension is not merely related to cultural aspects, but is also reflected at the different administrative and managerial levels corresponding to a domestic regulatory framework and UNESCO provisions.[14] The most representative cultural symbols of a nation end up being, simultaneously, an iconic symbol of the state

[11] *Cf.* Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, in force Dec. 17, 1975, recital 6, 1037 U.N.T.S. 151, https://whc.unesco.org/archive/convention-en.pdf [hereinafter 1972 UNESCO Convention] ("Parts of the cultural and natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole"). *See* Christopher C. Joyner, *Legal Implications of the Concept of the Common Heritage of Mankind*, 35 Int'l & Comp. L. Q. 199 (1986); Vladimir Mikhaĭlovich Postyshev, The Concept of the Common Heritage of Mankind: From New Thinking to New Practice (1990); John Henry Merryman, *Cultural Property Internationalism*, 12 Int'l J. Cult. Property 11 (2005).

[12] *See World Heritage List*, U.N. Educ. Sci. & Cultural Org., https://whc.unesco.org/en/list/ (last visited Oct. 25, 2021).

See Lorenzo Casini, Potere globale, regole e decisioni oltre gli Stati 47 (2018).

[13] *See Operational Guidelines for the Implementation of the World Heritage Convention* art. 49 (last updated July 2019), https://whc.unesco.org/en/guidelines/ ("Outstanding Universal Value means 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").

[14] *See* Casini, *supra* note 12.

(and of the specific community/population) and of humankind,[15] with a twofold cultural identity: a national and a global one.

This relation between a local and a global identity has been pointed out by Lorenzo Casini in his analysis of the role of UNESCO and the nationalistic feelings with reference to historic buildings. Different types of cultural and sentimental attachments to the same site seem to arise:

> On one hand the World Heritage Convention list favours the development of several different cultural nationalism[s], anchored to the identity represented by a given site; on the other hand, the creation of a world heritage requires the existence of a political "supranationalism," in which an international body gains powers over national decision makers.[16]

What is of greatest interest for the purposes of this article is the "nature" of the category of cultural heritage as identified by the 1972 UNESCO Convention, the consequences of this definition, and, therefore, how supranational norms are translated at the domestic level.[17] One way to carry out this investigation could be to ascertain whether to consider the possibility of identifying, from a legal point of view, a cultural asset belonging to humanity while disregarding any reference to the institutional and geographical dimension where the site is located.

To spark a reflection on this issue, let us recall the presence on the UNESCO World Heritage List of three cultural sites attributed to the Palestinian State: the Church of the Nativity and the Pilgrimage Route in Bethlehem, associated with the birthplace of Jesus; the Land of Olives and Vines—Cultural Landscape of Southern Jerusalem in Battir; and the Hebron/Al-Khalil Old Town[18]). The inclusion of these sites on the list is, so far, the unique recognition of Palestine as a state and, consequently, the recognition of those cultural sites as a Palestinian identity landmark. The acknowledgment of Palestine by UNESCO is telling, since the official recognition of a state *de facto* is due to the need to link cultural sites of universal value to a certain institutional dimension. The selection criteria satisfied by the Palestinian sites are meant to highlight their universal value and their relevance to the humanity:

> The outstanding universal value of the Church of the Nativity and the Pilgrimage Route, Bethlehem, lies, in its association with the birthplace of the founder of a great religion….

[15] *Cf.* Yudhishthir Raj Isar, *UNESCO and Heritage: Global Doctrine, Global Practice*, *in* Heritage, Memory & Identity 32, 42 (Helmut Anheier & Yudhishthir Raj Isar eds., 2011):

> The subnational players carry out complex processes of economic and/or political negotiation transaction with their respective governments to obtain international recognition for local cultural goods—a classic procedure of the glocalization process. An oxymoronic aspect of this has been the way nation-states today lay claim to heritage as a national possession, yet also want the same to be shared by all humanity.

[16] Lorenzo Casini, *International Regulation of Historic Buildings and Nationalism: The Role of UNESCO*, 24 Nation & Nationalism 134 (2018).

[17] On the complex relation between supranational and national interests in cultural heritage, see Casini, *supra* note 1; Erik Jayme, *Globalization in Art Law: Clash of Interests and International Tendencies*, 38 Vand. J. Transnat'l L. 927 (2005).

[18] These sites have been included on the List of World Heritage in Danger since their recognition by UNESCO, respectively in 2012, 2014, and 2017.

> The dry-stone architecture represents [an] outstanding example of a landscape that illustrates the development of human settlements near water sources and the adaptation of the land for agriculture.…
>
> This place became a site of pilgrimage for the three monotheistic religions: Judaism, Christianity and Islam.[19]

It is necessary to tie any cultural or natural site to a specific national territory, as it is impossible to disregard the socio-cultural context in which the site is embedded. Of course, the specific case of Palestinian sites raises more complex questions related to the dispute over the territory between the State of Israel and the Palestinian population, an unresolved political and identity conflict that has deep repercussions both to a cultural and an administrative level.

The concepts of a global cultural identity and of outstanding cultural value overlap with the concept of national cultural identity, which, in this case, cannot find a direct application in the absence of a recognized state in the international geopolitical and institutional sphere, but which is nevertheless necessary for including the cultural sites on the World Heritage List. We can therefore see how such a choice, although politically and strategically difficult (notably, following the recognition of these three sites as Palestinian, the State of Israel decided to formally leave UNESCO), was necessary, because it was not possible to classify a cultural heritage site outside a specific national context.

In addition to these territorial and institutional requirements, maybe it is the very legal existence of items classified as national treasures or objects of cultural interest that could represent an obstacle to the development of an official category of "common heritage of humankind." The identification of national treasures involves a selection of items that are so iconic and representative of their country of origin that the national context is integral to their heritage status. This specific relationship between a local and a global dimension is nowadays emblematic of many ethical and legal issues surrounding the acknowledgment and the protection of cultural heritage. "Think globally, act locally," says the epigraph to this article, which aptly captures the relationship between the two concepts of "cultural identity": the national cultural identity and the cultural identity of humanity. Any archaeological or natural site that is included on the UNESCO World Heritage List, and therefore recognized as worthy of protection by an international organization (by virtue of the site's outstanding value), must then be protected and safeguarded by the national legislator and the competent local administrative body. This dual protection mechanism reflects the growing reality of supranational standards and fora which collectively discuss and analyze the different values of cultural heritage (starting with taking into consideration the national cultural identity of the cultural/natural site and then "raising" its relevance on a larger scale[20]).

[19] For a description of the three Palestinian cultural sites, see *About World Heritage: Palestine*, U.N. Educ. Sci. & Cultural Org., at https://whc.unesco.org/en/statesparties/ps (last visited Oct. 25, 2021).

[20] The international fora devoted to culture and cultural heritage specifically must now include the G20 Culture Ministers' Meeting, which became permanent after the formal adoption of the Rome Declaration of the G20 Ministers of Culture on July 30, 2021, www.g20.org/wp-content/uploads/2021/07/Final-Declaration.pdf.

The above example was intended to highlight the ways in which the concept of cultural identity is translated and transmitted from the international to the national context when dealing with material cultural heritage. It has been mentioned earlier that most of the legal traditions worldwide had their own means to acknowledge and protect their tangible cultural heritage, so that their recognition at the supra-state level was not an absolute novelty. What I would like to highlight here, therefore, is the ease with which nation-states have implemented conventions and supranational treaties on the protection of material cultural heritage, such as the 1972 UNESCO Convention, albeit with the introduction of a new concept, such as that of common heritage of humankind. It was noted that this last category does not take a hostile or alternative position to that of national cultural heritage or national cultural identity; if anything, it overlaps with the latter. It thus constitutes a mechanism and a system of double protection, in which the site identified for its cultural or natural interest enjoys—necessarily—a double recognition. The case of cultural sites recognized as belonging to the Palestinian State is emblematic of the impossibility of providing a single level of recognition and protection—the international one—since protection cannot exist in the absence of a specific reference to the context of origin and, consequently, to the state of belonging.

The concept of "cultural identity" applied at the international level is similar to the one existing in various domestic laws, which will then—in turn—ideally have a greater ease in re-transposing and re-acknowledging the same concept, when this is present in supranational conventions and treaties.

Once this double level of recognition and protection has been established, the nature of the concept—as coined by the international legislator, that is of "common heritage of humankind"—needs to be ascertained; in other words, can we claim that it is a new legal category or is it an extra-legal value?

If we look at the system of recognition and protection of cultural heritage adopted at the national level, we will realize that these pieces of legislation have different implications and consequences which are certainly of normative value. The peculiar relationship between objects of cultural interest and their nation of belonging is reflected in the legal bonds established between the state, the cultural property identified as part of its heritage, and its administrative regulation.

A 2018 study by Marie Cornu and Noé Wagener places the interconnection between cultural heritage, the state and legislation on the frontlines:

> Cultural heritage is placed in a subtle ambiguity: it oscillates between a political justification (the metaphor of collective heritage to justify the new constraints that the State is weighing on private owners) and a real legal explanation (the fact that the State guarantees collective

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> We, the Ministers of Culture of the G20, will submit this Ministerial Declaration to the G20 Leaders' 2021 Summit and advocate the introduction of Culture in the G20 workstream, given its strong economic and social impact at the national and global level.

Id. art. 32.

ownership to cultural properties against the abuse of private ownership), without it ever being possible to determine what the register actually selected.[21]

The purpose of state protection, with regards to cultural heritage, in most legislative systems determines specific controls, whether the cultural property is publicly or privately owned.[22] These controls take different forms and are implemented through two administrative techniques: the eminent domain and administrative easements.[23] Most legal systems, under civil and common law alike, consider cultural property as goods of public enjoyment, since their importance is such that the state should guarantee their protection, preservation, and allow them to be available to the public. This is possible, as mentioned, in two different ways, depending on whether the property is public or private.

Publicly owned assets are generally inalienable and cannot be subjected to any rights in favor of third parties; their legal configuration is automatic, and it is up to the administrative authority in charge of cultural heritage to protect them.[24] Public ownership generally, by definition, includes the collections of museums, art galleries, national and regional libraries, and state archives, plus the movable and immovable goods belonging to the state,[25] which are of particular interest because of their relevance to the history, military, literature, art, science, technology, industry, and culture in general, or as evidence of the identity and history of public, collective, or religious institutions.[26]

Cultural property belonging to private owners can also be subject to administrative easements which set limits on the usually unrestricted right of property. The state control exercised over cultural property is justified and accepted, because of the great role that the latter plays in the identity of the nation. The protection and control of cultural property is so relevant that even the right of property, recognized as a human right,[27] is conditioned by the state's limitations.

Turning, however, to the level of acknowledgment and protection of tangible cultural heritage as established at the international level, and more specifically by the 1972 UNESCO Convention, we realize that the recognition of a cultural, natural, or mixed-heritage site as of outstanding universal value does not entail normative consequences; rather, it calls for managerial and financial assistance. Article 4 of the 1972 UNESCO Convention specifies this principle by stating that:

[21] *Cf.* Marie Cornu & Noé Wagener, *L'objet patrimoine: Une construction juridique et politique?*, 137 Vingtième Siècle: Revue d'histoire 33, 36 (2018) (translation by author).

[22] In most legal systems of civil law, the ownership of cultural properties, although referred to a private individual, is subject to some limitations. This is possible since cultural properties are considered goods of public enjoyments. For a more detailed analysis, see Giuseppe Palma, Beni di interesse pubblico e contenuto della proprietà 89, (1971).

[23] *Cf.* Cornu & Wagener, *supra* note 21, at 39.

[24] *See* Mauro Renna, La regolazione amministrativa dei beni a destinazione pubblica (2004).

[25] *Cf.* Codice civile [C.C.], art. 822 (It.).

[26] *Cf.* Codice dei Beni Culturali e del paesaggio [CBC] [Code for Cultural Heritage and Landscape], art. 10.2 (It.).

[27] *Cf.* the Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol), art. 1, Mar. 20, 1952, ETS No. 9 ("Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law").

> Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 22 specifies what forms the assistance can be granted by dint of belonging to the World Heritage List. These are as follows: (a) the examination of the artistic, scientific, and technical problems raised by the protection, conservation, presentation, and rehabilitation of the cultural and natural heritage; (b) the provision of experts, technicians, and skilled labor to ensure that the approved work is correctly carried out; (c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation, and rehabilitation of the cultural and natural heritage; (d) the supply of equipment which the state concerned does not possess or is not in a position to acquire; (e) low-interest or interest-free loans which might be repayable on a long-term basis; and (f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

To summarize, as far as tangible cultural heritage is concerned, the relationship between the national and the international legislative spheres creates a subsidiarity, based on which the function of recognition, and therefore also the legal and administrative relationship to which the asset will be subjected, remains within the competence of the national legislator, who will identify the asset or site on the basis of its identity and cultural value to the nation. The eventual recognition of the site's outstanding universal value, such as that corresponding to the World Heritage List, will primarily impact the extra-legal recognition in the form of technical, scientific, economic, reputational, and training assistance.

The second (international) level of recognition, therefore, cannot take place in the absence of the first; while the first remains independent of the second. Consequently, the concept of cultural identity in national public policies easily translates and assimilates the concept of cultural identity adopted in international conventions, because it is a concept already known and easy to transpose.

4. The management of national cultural heritage

The tension between the national and international legislative levels in the cultural heritage sector is discernible not only in the context of its acknowledgment and protection, but also in terms of its management. In fact, cultural policies are fundamental not only to the identification of the national heritage, but also to its management and valorization. For example, it is of paramount importance to establish who should oversee the cultural guidelines of a state museum or a cultural institution, and using what legal and administrative instruments. This issue has been examined by Italian administrative courts which analyzed the possibility for a foreign director to be in charge of a national Italian museum.

Can a non-citizen of the state where the national cultural institution is located efficiently run and manage that institution? Is having a given nationality a necessary prerequisite to designing the cultural programming of a national museum? Once cultural policies are drafted by the Ministry of Culture and approved by the Parliament in the interest of the nation, in what way can a certain nationality influence the implementation and execution of these policies?

In 2014, the Italian Parliament, in the context of a general reform of the Ministry of Cultural Heritage, Activities and Tourism, introduced a set of "Urgent measures for the protection of the cultural heritage, for the development of culture and for the strengthening of tourism."[28] A reorganization of the museum policies was addressed, and, in an effort to align Italy with the international standards and promote cultural development, some museums considered of national interest were granted a special degree of managerial and financial autonomy. A public search was tailored to select directors of those institutions; and candidates were required to have extensive professional experience in the management and valorization of cultural heritage and running cultural institutions.

According to the public job description, a director would have been responsible for the general management of a museum and for the development of its cultural and scientific mission. Specifically, the museum director's tasks included programming, coordinating, and monitoring all management activities of the museum, including the organization of exhibitions; the coordination of the cultural projects hosted by the museum; and the development of the institution in general. Following the 2014 general reform of the Ministry of Cultural Heritage, Activities and Tourism, the Italian museums for the first time became autonomous institutions and, consequently, the figure of their directors acquired great stature.

The legislator was motivated by the desire to guarantee that the top figures in the profession would be at the head of national museums, so that the only requirements in the public call were indicators of past professional, academic, and managerial experience, regardless of the nationality of the candidate.

In May 2017, the regional administrative Court of Lazio delivered two judgements which annulled the appointments of five of the directors, selected through the public call for applications and nominated in 2015.[29] These directors (appointed respectively as heads of the Palazzo Ducale and Galleria Estense in Modena; the Paestum archaeological area; and three archaeological museums of Taranto, Reggio Calabria, and Naples) were all foreigners, and their lack of Italian citizenship was the principal legal challenge of their appointments. The regional administrative court ruled that "under current legislation, non-Italian citizens are not allowed to participate in the selection process for the assignment of a position of managerial functions in an administrative structure fulfilling a national interest in our country."[30] At this stage, we should ask the following question: Does the director of a national museum perform job functions that are in the national interest?

[28] *See* Decreto-legge. 31 maggio 2014, n. 83 convertito nella legge 29 luglio 2014, n. 104.

[29] T.A.R. Lazio, Sez. II quater, 24 maggio 2017, n° 6170 and 6171(It).

[30] T.A.R. Lazio, Sez. II quater, 24 maggio 2017, n° 6171, page 6 (translation by author).

The Ministry of Cultural Heritage, Activities and Tourism appealed these decisions, and the Council of State, gathered in plenary session,[31] reversed the previous judgments.[32] The Plenary Session of the Council of State confirmed the applicability of article 37(1)–(2) of the legislative decree no. 29 of February 3, 1993, according to which "Citizens of the Member States of the European Union may have access to jobs in public administrations that do not involve the direct or indirect exercise of public authority, or do not relate to the protection of national interests."[33] Furthermore, this interpretation was in line with the jurisprudential orientation consolidated at the Community level, according to which member states can reserve some positions in the public administration to their citizens only for employments "that are related to specific activities of the public administration as charged with the exercise of public powers and responsible for the protection of the general interests of the State."[34]

The Council of State, with particular reference to the position of director in a national museum, has held that the specific situations provided for by the abovementioned legislation (and, in particular, the "exercise of public authority, related to the protection of national interests") is not relevant to the present case. In fact, the functions assigned to the director of a national museum essentially take the form of "activities mainly aimed at the economic and technical management of the institution," as well as "activities essentially aimed at ensuring a better use, in the perspective of the valorization, of public goods."[35]

In this scenario, it seems interesting to focus on the argument by the regional administrative Court of Lazio, which stressed the differences between the (necessarily international) standards with which the museum policies had to comply and the (arguably non-international) procedure of the selection of the directors. International standards might have qualitatively and quantitatively improved the performance of Italian museums by adapting them to analogous services and offers of the most

[31] *See* Consiglio di Stato, adunanza plenaria, 25 giugno 2018, n.9.

[32] On the possibility of conferring a position as director of a museum or archaeological area to experts devoid of Italian citizenship (and therefore on the relationship between state management and foreign citizens), see Vincenzo Luciani, *La nomina di cittadini "comunitari" alla direzione di musei italiani: Il dialogo intermittente tra giurisprudenza amministrativa e giurisprudenza comunitaria*, 1 Diritto delle relazioni industriali 294, 305 (2018); Matteo Gnes, *Il superamento del requisito di cittadinanza dei dirigenti pubblici*, 5 Giornale di diritto amministrativo 609, 616 (2018); Giulia Massari, *La selezione dei dirigenti nei "supermusei": Nuove riflessioni sugli atti interni contrari al diritto Ue*, 5 Giornale di diritto amministrativo 616, 629 (2018). The case was then brought before the Italian Council of State (Consiglio di Stato, adunanza plenaria, 25 giugno 2018, n. 9) in favor of the "non-Italian" directors (and therefore in favor of the ministry that had appointed them). On this judgement, see Silvia Amorosino, *La conclusione della "telenovela" giurisdizionale sui direttori stranieri dei musei*, 2 Urbanistica e Appalti 441, 443 (2018).

[33] See Decreto legislativo, 3 febbraio 1993, n. 29, "Razionalizzazione dell organizzazione delle amministrazioni pubbliche e revisione della disciplina in materia di pubblico impiego, a norma dell'articolo 2 della legge 23 ottobre 1992, n. 421."

[34] Case 149/79, Commission of the European Communities v. Kingdom of Belgium, ECLI:EU:C:1980:297, Dec. 17, 1980; Case 4/91, Bleis v. Ministère de l'Éducation nationale, ECLI:EU:C:1991:448, Nov. 27, 1991; Case 290/94, Commission v. Greece, ECLI:EU:C:1996:265, July 2, 1996.

[35] With this statement, the Italian Council of State resembles a similar judgement (regarding the director of the archaeological park of the Colosseum in Rome). *See* Consiglio di Stato, sez. VI, 24/07/2017, n. 3666 (translation by author).

efficient foreign cultural institutions. Likewise, a candidate's professional experience acquired abroad might have been positively evaluated, as specified in the public call. Considering this, it sounded contradictory that, on the one hand, Italian museums were expected to follow the example of foreign institutions and to abide by international standards, while on the other hand they entrusted their management exclusively to Italian citizens.

Cultural policies play a key role in defining the management guidelines of public museums and other cultural institutions by identifying the best organizational and administrative models to promote national interests. Once the basis of the national cultural policy is established, who oversees the implementation of those policies should be determined only according to criteria based on merit, since the nationality of the individual is not a factor that, per se, would threaten the national interest or the national identity of a given country.

We have seen, therefore, how the concept of "cultural identity" can strongly influence public policies aimed at regulating the management and enhancement of national cultural heritage. In the case analyzed above, there were doubts about the possibility of delegating to a "foreigner" the management of institutions such as national museums, which, more than any other in the country, have the task of representing and keeping alive the cultural identity of the nation. This deadlock in Italy has been resolved by administrative jurisprudence, essentially highlighting two fundamental elements. First, it is the responsibility of public policies, and therefore of the national Parliament and of the Government, to shape the cultural identity of a nation. Those who implement the policies are not responsible for shaping the nation's cultural identity. Those latter (i.e. here, the directors of national museums) figure as the executors of an already defined political will, and are put in charge of primarily managerial and enhancement activities, and thus do not influence the national interests. Second, these activities of management and valorization of the national cultural heritage can also be carried out by an individual whose nationality does not coincide with the cultural identity of the institution s/he represents or of the heritage s/he manages.

5. The transposition of international regulations when dealing with intangible cultural heritage: Lost in translation?

In its decision no. 5864 of May 2021, the Regional Administrative Court of Lazio states: "If they are not already listed as cultural assets, the manifestations of material culture and diversity of cultural expressions of UNESCO Conventions are not subject to the Italian Code of Cultural Heritage and Landscape."[36]

Article 4(1) of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions defines "cultural diversity" as follows:

[36] Tribunale Amministrativo Regionale Lazio, sez. II *quater*, 19 maggio 2021, n. 5864, ¶ 1 (translation by author).

> Cultural diversity refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

The first quotation is excerpted from a ruling delivered by an Italian administrative court, which, as one of the very first in Italy, analyzes how the relevant administration implemented a recently introduced concept, namely the "expression of collective cultural identity."[37] The second quotation reproduces one of the definitions contained in the 2005 UNESCO Convention evoked in the Italian ruling. Before engaging in further analysis of the case and examining its implications in terms of the relationship between the national and international legislative spheres, the discrepancy between the two definitions is immediately apparent. While the former definition makes explicit reference to "cultural expressions" which—necessarily—must find their representation in the material cultural asset to be recognized and protected, the latter does not evoke the materiality of the cultural asset. We will now take a closer look at the possible reasons for such a difference, which already at first glance is of great importance, and its consequences.

The case at hand involves an appeal to annul decree no. 50 issued by the Italian Ministry of Cultural Heritage, Activities and Tourism ("the Ministry") on July 13, 2018, whereby a Rome restaurant, called "Il vero Alfredo," was declared to be of particular interest in view of article 10(3)(d),[38] and in consideration of the principles set forth in article 7-bis,[39] of the Italian Code for Cultural Heritage and Landscape. The decree named the restaurant "Il vero Alfredo," to be of cultural interest both by virtue of the works of art and the elements of furniture preserved, and for the type of traditional activity that was conducted there. More precisely, the Ministry had decided to

[37] The concept of expression of collective cultural identity has been introduced in the Codice dei Beni Culturali e del paesaggio [CBC] [Code for Cultural Heritage and Landscape], art. 7-bis, as directly derived from the definitions provided in the UNESCO Convention for the Safeguarding of the Immaterial Cultural Heritage, Oct. 17, 2003, 2368 U.N.T.S. 3 and the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions, Oct. 20, 2005, 2440 U.N.T.S. 3.

[38] Codice dei Beni Culturali e del paesaggio [CBC] [Code for Cultural Heritage and Landscape], art. 10(3)(d) states:

> The following are cultural property: the immovable and movable things, whoever they belong to, which are of particular interest because of their reference to the political history, military, literature, art, science, technology, industry and culture in general, or as evidence of identity and history of public institutions, collective or religious. If the goods also have a testimonial value or express a connection of identity or civic exceptional distinctive significance, the measure referred to in Article 13 may include, even at the request of one or more municipalities or the Region, the declaration of a national monument.

(Translation by author.)

[39] *Id.* art. 7-bis states:

> The expressions of collective cultural identity contemplated by the UNESCO Conventions for the Safeguarding of the Intangible Cultural Heritage and for the Protection and Promotion of Cultural Diversity, adopted in Paris, respectively, on 3 November 2003 and 20 October 2005, are subject to the provisions of this Code if they are represented by material evidence and if the conditions and requirements for the applicability of Article 10 exist.

(Translation by author.)

list the property in such a way as to "ensure the preservation, in addition to the architectural and decorative aspects, also to ensure the continuity of the activity, which embedded aspects related to the cultural tradition of conviviality of the restaurant."[40]

Following the enactment of this decree, the owner of the property appealed to the administrative court to have it annulled, arguing that it was impossible to subject activities carried out in a building of historic value to a constraint; which, from the point of view of the administration, meant an imposition of continuity of the restaurant business, with the impossibility of changing its managers. In order to decide the question, the administrative Court then retraced the interpretative and normative system, as defined in Italy with the introduction of article 7-bis into the Code of Cultural Heritage. The judgement illustrates that the system was designed such as to regulate the "new intangible cultural heritage" according to a binary protection model. On the one hand, in fact, the system provided for the implementation of classic binding measures of protection of cultural assets, i.e. of the property where the activities take place, through the legal notion of preservation. On the other hand, the traditional craft or commercial activities performed therein are protected through incentives and policies for their valorization because they are recognized as having cultural value as expressions of collective identity.

To return to the case in question, the importance of the Administrative Court's reasoning lies in the opportunity to annul, or not, the decree of constraint issued by the Ministry regarding the premises of the restaurant "Il Vero Alfredo." This is one of the first decisions in which Italian administrative judges dealt with the concept of intangible cultural heritage, as established by art. 7-bis of the Italian Code of Cultural Heritage and Landscape. The relevance of this judgment, in addition to the significant contribution to the interpretation of a recent legislation, lies in the practical indications given by the judges to the national administration on how it should apply the legislation on intangible cultural heritage, as derived from the transposition of the supranational legislation. What is highlighted, in fact, is the lack, on the part of national administrative offices, of suitable tools to apply the concept of intangible cultural heritage at the local level, as the term is coined by international norms and Conventions.

Article 7-bis, "Expressions of collective cultural identity," introduced into the Italian Code for Cultural Heritage and Landscape by article 1(1)(c) of the Legislative Decree no. 62/2008, provides that "expressions of collective cultural identity" must be safeguarded as part of the national cultural heritage if, and only if, they are represented by material evidence and there are the conditions for the applicability of article 10. This means that traditional activities which can constitute "expressions of collective cultural identity" must translate into a material entity which should have a historical-artistic-archaeological-ethnological etc. interest, or at least a testimonial interest covered by article 10.

[40] *See* Decreto adottato dal Ministero dei beni e delle attività culturali e del turismo [MIBACT] Rep. Decreti 13/07/2018 n. 50 (translation by author).

However, as the judgment under examination highlights, not all artisan or traditional activities can be covered by article 7-bis of the Italian Code for Cultural Heritage and Landscape, but only those that constitute "expressions of collective cultural identity." These are, therefore, cases in which the cultural recognition results from the participation of those same communities which attribute to it that identity value that is the cause of the public intervention that ensures its protection, according to a "bottom-up" process. Nevertheless, if for the purposes of the UNESCO Conventions, the constitutive element of intangible cultural assets is their "collective identity," this rationale, according to the Italian national legislation, is insufficient. Rather, national legislation requires that the condition of materiality be satisfied in order for these assets to be something which can, per se, be considered as a cultural asset (pursuant to article 10 of the Cultural Heritage Code).

This difference between the national and the international legislative levels must be underlined, as it generates further consequences, such as the procedure for the identification of the intangible cultural heritage to be protected. The Regional Administrative Court of Lazio's reasoning further underlines how the "ontological" diversity of the cultural activity protected at the national level (identified through a top-down procedure) and the one protected at the supranational level (acknowledged through a bottom-up procedure) also correspond to the diversity of the tools implemented for the protection of this activity. In fact, the administrative functions provided at a national level in Italy to safeguard "cultural goods" are not adequate to safeguard "cultural activities," and, by extension, intangible cultural assets. We witness here the difficulty faced by the Italian legislator to recognize the full reception of international normative instruments on intangible cultural heritage, as the conservative attitude towards cultural heritage as a material "asset," rooted in the Italian legal tradition, is still too strong.

We have seen in the foregoing discussion that the difficulty encountered in adopting a supranational regulation on cultural heritage is absent in the case of tangible cultural goods, whose definition had existed at the national level well before its codification in international conventions and treaties (through the concept of the common cultural heritage of humankind). On the contrary, the concept of intangible cultural heritage, formulated at the international level and, until recently, extraneous to the national regulatory framework, has clashed with a very strong legal tradition that has always seen the "materiality" of cultural goods as a fundamental constitutive element.

In the Italian case, the notion of cultural identity has also proved to be fundamental, revealing the complexity of a concept that changes and must adapt to new requests that come, more and more often, from international players and institutions.

In cases of conflict between traditional systems of value at two legislative levels (such as the presence or absence of the criterion of materiality as a prerequisite to the recognition and protection of cultural heritage), something is "lost in translation" and we can notice how the two normative spheres are no longer able to speak the same language. This is why, with respect to the protection of intangible cultural heritage, it is necessary to forge new legislative definitions and new administrative tools capable

of correctly translating the concept of cultural interest to encompass immaterial assets, as understood by the international legislator.

6. Conclusion: Toward a global definition of "cultural identity"?

The aim of this article has been to allow us to appreciate the important role that culture—in the form of its tangible and intangible manifestations—has played in the construction of state identity and in the maintenance of a sense of national belonging. While some aspects of cultural influence pertain, above all, to social and artistic issues (the decision of what types of items we consider as part of the national cultural heritage, for example), other choices have a great impact on the economic system of a given country (such as the development of cultural tourism).

At the root of all these different choices and possibilities are policies concerning different factors, such as the political goal of the legislator, the availability of cultural property in the country, and the eventual ratification of supranational treaties and conventions.

Finally, given the different examples analyzed, the closing question might be: What is the role of the concept of "cultural identity" in the process of public policymaking affecting the cultural sector? And, perhaps more importantly, does this concept still refer to a *national* cultural identity? Or are we rather faced with a global definition of cultural identity?

Cultural issues are becoming increasingly important and ever more trans-national, so that the attention they receive is always more global, rather than purely domestic. Examples of this global attention and trans-national intervention in the protection of cultural heritage are the USD 835m donated from around the word in just ten days after the terrible fire that heavily damaged the Cathedral of Notre-Dame in Paris on April 15, 2019. As the *Guardian* reported in its edition of August 8, 2019, the French Heritage Society, in its call for donations for the restoration the cathedral, stated that "[w]e cannot imagine a world without Paris, and we cannot imagine a Paris without Notre-Dame."[41] The real-time broadcast of the fire devastating the Paris cathedral generated such a universal pathos that the responsibility for the reconstruction went beyond the national confines.

Global care for the preservation of cultural property and cultural sites worldwide leads national governments to cede part of their sovereignty to supranational institutions and organizations, such as UNESCO, the European Parliament, or the Council of Europe. Pursuant to the adhesion to, or the ratification of, treaties and conventions enacted by such supranational bodies, member states undertake to return

[41] *See* Pauline Bock, *Why Have Americans Given so Much Money to Restore Notre-Dame?*, The Guardian (Aug. 8, 2019), www.theguardian.com/lifeandstyle/2019/aug/08/notre-dame-paris-why-have-americans-given-so-much-money-to-restore.

objects of artistic interest which are unlawfully located on their soil to their state of origin[42] or to pursue criminal offences against the damages to cultural property.[43]

These considerations might lead us to question what competencies there are, at this stage, left to the domestic legislator and what choices remain available at the supranational level. And, going further still, we should investigate if this political and legislative balance between the national and international is still adequate for our times or not.

To address the latter issue, we should first reflect on the purpose of cultural heritage policies. One might be tempted to believe that the national legislator is the actor best placed to draft and enact policies aimed at establishing a sense of national belonging and at fostering the cultural identity of a given country. However, not all cultural heritage policies are targeted for such purposes; there are others that focus on the management of cultural institutions, and which can well derive from an international legislative body.

Whatever their source may be, cultural heritage policies should be elaborated on the basis of complex considerations which are at the intersection of a number of disciplines. The dialogue between the humanities, law, and economics has not always been an easy one, but cultural dilemmas need to be addressed by adopting an interdisciplinary perspective that draws attention to the issue at stake rather than to the methodology implemented.[44]

Finally, we have observed how the concept of cultural identity might receive a dual definition in national and international legislation, such as in the case of tangible cultural assets (present both in the legal tradition of individual countries and in international conventions). Tangible cultural assets are identified thanks to the concept of national cultural identity, and then also recognized at the international level (where methods and standards of protection, management, and valorization are defined) through the concept of "common heritage of humankind" by virtue of their outstanding universal value. When dealing with intangible cultural assets, identified primarily at the supranational level (and often alien to national legal traditions), it is possible to see how the concept of cultural identity is no longer split between the national and the international, but has become unified. The analysis of the Italian case has shown how—in a context in which the definition of intangible cultural heritage represents a novelty—neither the legislature nor the public administration has been able to adopt the concept of cultural activity and intangible cultural heritage as understood by the UNESCO conventions of 2003 and 2005. The tendency, in fact, is to fold these concepts into a more familiar definition, such as the materiality of cultural property. As a result, when faced with intangible cultural heritage, we are left

[42] *See* UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, No. 11806, 823 U.N.T.S 231; Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State, 2014, O.J. (L 159) 1.

[43] *See* Council of Europe Convention on Offences relating to Cultural Property, May 3, 2017, ETS no. 221.

[44] *Cf.* Sabino Cassese, *Il sorriso del gatto, ovvero dei metodi nello studio del diritto pubblico*, 3 Rivista trimestrale di diritto pubblico 597, 612 (2006).

only with the national interpretation of cultural identity, since the international one is not yet able to be fully implemented (and we can clearly see this by looking at the procedures implemented to identify the intangible cultural activity which, in Italy, follow a top-down approach instead of a bottom-up procedure, as suggested by the international conventions). Both the doctrine and the jurisprudence thus still need to define legal and regulatory instruments so that the national and international legislative levels can converge on the issue of intangible cultural assets, and overcome any "translation" problems.