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## The idea of protecting cultural heritage for the benefit of future generations in international cultural heritage law

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### Abstract

Much of today's academic scholarship of international cultural heritage law circles around cultural heritage's protection for the benefit of future generations. Despite this, the efforts to systematically examine the concept in more detail are scarcer. This paper seeks to fill this gap by taking a closer look at the ways in which the notion of future generations features in the body of international cultural heritage law. This contribution firstly illustrates how central the idea of protecting cultural heritage for the benefit of future generations is in international cultural heritage law. Despite this centrality, evidenced by an extensive analysis of international and regional hard and soft law, national law, case law, and policy options, its precisely contours the second argument of this paper, is that they remain elusive. Finally, skepticism is voiced over the concept's potential ambivalent use with respect to the protection of cultural heritage.

**Keywords:** future generations; protection of cultural heritage; intergenerational justice; ambivalence; chilling effect; misappropriation risk; present generations; heritage's slave

### Introduction

For whom is cultural heritage to be protected? Images of safeguarding cultural heritage “for our children” or “for the generations to come” usually come to mind.<sup>1</sup> Future generations are a key concern for international cultural heritage law. The idea of protecting cultural heritage to bequeath it to future generations probably counts as the most commonly cited rationale upon which legal regulation is justified.<sup>2</sup> References to succeeding generations appear in the protection of cultural heritage during armed conflicts.<sup>3</sup> Still, they are equally common in relation to restitution claims of colonial loot<sup>4</sup> and the digitization of cultural heritage.<sup>5</sup>

<sup>1</sup> Spennemann 2007.

<sup>2</sup> Prott and O'Keefe 1992, 309; Forrest 2010, 3; Roodt 2013, 287; Lixinski 2014, 211; Woodhead 2023, 3.

<sup>3</sup> “Ukraine: UNESCO Statement Following the Adoption of the UN General Assembly Resolution,” <https://whc.unesco.org/en/news/2411> (accessed July 25 2024)

<sup>4</sup> Recital 2 of the Preamble of the Joint Declaration on the Return of Benin Bronzes and Bilateral Museum Cooperation Between Germany and Nigeria (01 July 2022).

<sup>5</sup> Recital 5 of the Preamble and Article 1 of the 2003 UNESCO Charter on the Preservation of Digital Heritage.

Intergenerational equity's classic formulation derives from the work of the 1987 United Nations World Commission on Environment and Development, in common parlance known as the "1987 Brundtland Report" (henceforth: "1987 Brundtland Report"). "Sustainable Development" is defined as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>6</sup> Two years later, Edith Brown Weiss attempted to set more precise contours in her seminal work, *In Fairness to Future Generations*. She considers the pursuit of intergenerational equity encompasses three major elements: 1) the principle of "conservation of options," 2) the principle of "conservation of quality," and 3) the principle of "conservation of access."<sup>7</sup>

In this paradigm, future generations demand similar obligations from international cultural heritage law. Each generation is firstly responsible for ensuring the conservation of the diverse cultural heritage. Such diversity shall not be passed on in a worse condition than the previous generations enjoyed. Finally, cultural heritage must remain accessible to future generations.<sup>8</sup> Intergenerational concerns have not remained confined to international environmental and international cultural heritage law but have migrated to other fields of studies, including heritage studies,<sup>9</sup> cultural economics,<sup>10</sup> museum studies,<sup>11</sup> archaeology,<sup>12</sup> and anthropology<sup>13</sup> taking on sizable portions of the discourse. Despite routine encounters with the term in international cultural heritage law, a more systematic exploration of the concept itself, with notable exceptions, is largely missing from today's debates.

This contribution proceeds as follows. It commences with a short overview portraying the terminological shifts. "The Language of Future Generations in International Cultural Heritage Law" (Part II) tracks how the concept of future generations morphs into its full spectrum navigating through the relevant conventions as well as soft law. "Future Generations on the Domestic Map" and "Case Law" are analyzed next. Such an extensive listing from a methodological point of view becomes necessary since this analytical framework lays down the foundations upon which this article's next two main parts are built. Operating at a policy level, the part that follows, with the title "Giving Future Generations a Voice in Respect to the Legal Protection of Cultural Heritage" (Part III), explores how intergenerational equity came to be integrated or incorporated into the protection of cultural heritage. Critically reflecting on all the previous parts, the three overarching theoretical arguments of this paper in relation to the discourse's nature become visible to the reader only after this consideration. Collectively introduced as the "The Ambivalent Nature of the Rhetoric of Future Generations in the Protection of Cultural Heritage" (Part IV), they indicate that the language of future generations comes with a certain ambivalence within the discourse of international cultural heritage law and policy. Concluding remarks (Part V) confirm that, notwithstanding the centrality of future generations in international cultural heritage law, their precise contours remain elusive.

### The language of future generations in international cultural heritage law

This section examines the integration of the language of future generations in international cultural heritage law. The international regulatory regime is divided into five layers of

<sup>6</sup> WCED 1987, para. 27.

<sup>7</sup> Brown Weiss 1989, 38–45; Brown Weiss 1992, 22–23.

<sup>8</sup> Brown Weiss 1989, n. 7; Claros 2019, 196.

<sup>9</sup> Lowenthal 2006; Taylor 2013; Holtorf and Högberg 2014; Holtorf and Högberg 2015; Högberg et al. 2017; Harrison et al. 2020; Holtorf and Högberg 2021.

<sup>10</sup> Throsby 1995; Throsby and Petetskaya 2016.

<sup>11</sup> Merriman 2008; Besterman 2011.

<sup>12</sup> Karl 2018.

<sup>13</sup> Ingold 2019.

analysis. Dividing the regulatory framework makes it easier to capture future generations in all their legal manifestations. The first section examines the gradual inclination(s) of terminology towards that of “cultural heritage.” What follows next is an analysis of the relevant treaty law and soft law instruments, which extends to future generations at the national as well as case law levels. A reflective piece follows almost every section. Taken as a whole, this discussion sets the foundations for the article’s next two main parts.

### Shift(s) in terminology

During the early days of the formulation of international cultural heritage law, its *raison d’être* was described in two main ways. International instruments, on the one hand, employed a phraseology that enumerated precisely the objects that enjoyed safeguards. Common terms included inter alia “works of art.”<sup>14</sup> On the other hand, they imbued legal protection to such objects by distinguishing them into certain categories. Monuments that were devoted to religion constitute an indicative example.<sup>15</sup> With time, a gradual yet steady sea change in terminology occurred. “Cultural property” replaced the frequently used terminologies employed before by bringing them together under its umbrella.<sup>16</sup>

In the last half-century or so, another shift in international vocabulary took place, evincing a preference towards the terminology of “cultural heritage.” This switch has largely been promulgated by the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (henceforth: 1972 UNESCO Convention), despite the first embryonic appearance of the term in the 1933 International Museum Office Draft International Convention on the Repatriation of Objects of Artistic, Historical or Scientific Interest, Which Have Been Lost or Stolen or Unlawfully Alienated or Exported and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.<sup>17</sup> The term (“cultural heritage”) from then onwards has been confirmed in the conventional work of UNESCO. The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage,<sup>18</sup> the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (henceforth: 2003 UNESCO Convention),<sup>19</sup> and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (henceforth: 2005 UNESCO Convention),<sup>20</sup> all of which, without exception, refer to cultural heritage. This movement in terminology is not confined to the international level, however. National legal frameworks increasingly employ this wording, as analyzed below, recognizing cultural heritage’s intergenerational appeal. The frequent appearance of “cultural heritage” does not improve clarity, however. Its legal definition belongs to the “eternal questions that haunt” international cultural heritage law.<sup>21</sup>

This shift in legal vernacular is more than a semantic coincidence. It carries an ideological change. “Cultural heritage” is generally associated with a much broader breadth than “cultural property.”<sup>22</sup> Aside from the fact that it encompasses tangible and intangible elements, “cultural heritage” conveys “a form of inheritance to be kept in safekeeping

<sup>14</sup> Article 53 of the 1880 Oxford Manual on the Laws of War on Land.

<sup>15</sup> Article 56 of the 1907 Hague Convention Respecting the Laws and Customs of War on Land (IV).

<sup>16</sup> 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

<sup>17</sup> Recital 2 of the Preamble of the 1933 International Museum Office Draft International Convention on the Repatriation of Objects of Artistic, Historical or Scientific Interest That Have Been Stolen or Unlawfully Alienated or Exported; Recital 2 and 3 of the Preamble and Article 1 (a) of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

<sup>18</sup> 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.

<sup>19</sup> 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

<sup>20</sup> 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>21</sup> Vrdoljak and Francioni 2020, 2.

<sup>22</sup> Blake 2015, 7.

and handed down to future generations.”<sup>23</sup> The very term “heritage,” from an etymological point of view according to the Oxford English Dictionary, entails something “which has been or may be inherited.”<sup>24</sup> Variants, for instance in French (“patrimoine culturel”), Italian (“patrimonio artistico, storico o archeologico”), Spanish (“patrimonio artístico, histórico o arqueológico”), Portuguese (“património nacional de valor artístico, histórico ou arqueológico”), and Greek (“πολιτιστική κληρονομιά”) elucidate well that element of transmission. Several reports confirm this transgenerational emphasis. For example, Farida Shaheed, former Special Rapporteur in the Field of Cultural Rights suggests that “[c]ultural heritage links the past, the present and the future ... that individuals and communities want to transmit ... to future generations.”<sup>25</sup>

Although ontologically inseparable various manifestations of cultural heritage, tangible or intangible or movable or immovable, might come with different intergenerational legal implications. For instance, historic buildings, artworks, and antiquities might need a separate way of protection and transmission to future generations than oral traditions, customs, and traditions require.<sup>26</sup> Unlike tangible cultural heritage, intangible qualities of cultural heritage might not necessarily be able to be protected and transmitted to the generations to come by simply cataloging them within a museum. The same differences hold true when it comes to the distinction between movable and immovable cultural heritage. Being a fixed property, a historic building might be protected and passed down to future generations differently from the way in which a movable artwork is.

### *The conventional framework*

Even though the initial seeds for the protection of cultural heritage for the benefit of succeeding generations were sowed centuries ago, the contemporary international regulatory framework only flowered in the aftermath of the ashy soil that World War II left behind. It was around that time when the International Museum Office confirmed for the first time that “any injury to these treasures ... constitutes a loss ... to the present and to future generations.”<sup>27</sup> The terminology of future generations is employed in the 1972 UNESCO Convention. More specifically, Article 4 calls on state parties to ensure “the identification, protection, conservation, presentation, and transmission to future generations of the cultural and natural heritage.”<sup>28</sup> However, the meaning and content of the terms employed are unclear. For instance, what exactly do transmission and future generations refer to?<sup>29</sup> The Convention elaborates further on the concept of intergenerational equity in its latest 2023 Operational Guidelines. For the assessment and evaluation of the outstanding universal value of cultural and/or natural heritage, “cultural and/or natural significance” denotes something “which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.”<sup>30</sup>

Concerns about cultural heritage’s inheritance to the generations to come are equally important in the 2003 UNESCO Convention, 31 years later. That is already evident from the

<sup>23</sup> Blake 2000, 83–84.

<sup>24</sup> Heritage, 2024.

<sup>25</sup> United Nations Special Rapporteur in the Field of Cultural Rights, Human Rights Council, Doc. No. A/HRC/17/38, 21 March 2011, para. 5.

<sup>26</sup> Throsby 2010, 114.

<sup>27</sup> Anon 1940, 345.

<sup>28</sup> Article 4 of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage.

<sup>29</sup> Högberg et al. 2017, n. 9, 640.

<sup>30</sup> UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention, UNESCO Doc. No. WHC.23/01 (24 September 2023), para. 49.

very definition of intangible cultural heritage. Article 2 (1) of the Convention perceives such heritage as “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.”<sup>31</sup> Opposed to the 1972 UNESCO Convention, the Convention’s 2022 Operational Directives offer some hints about the meaning of the transmission of intangible cultural heritage. The establishment of community centers and associations are seen as viable platforms that might contribute to the intergenerational passing of traditional knowledge and skills to the generations to come.<sup>32</sup> The most recent 2005 UNESCO Convention codifies intergenerational interests. Sustainable development constitutes one of its guiding principles. Article 2 (6) explicitly acknowledges that cultural diversity is “an essential requirement for sustainable development for the benefit of present and future generations.”<sup>33</sup>

Preoccupations with intergenerationality also occur on a regional scale. Reference to future generations in Europe is a common thread running through several Council of Europe instruments, predominantly as objectives and/or definitions. The 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society (henceforth: 2005 Faro Convention) for instance, explains that “heritage community” constitutes those “people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations.”<sup>34</sup> In addition, the 1969 European Convention on the Protection of Archaeological Heritage,<sup>35</sup> the 1985 Convention for the Protection of the Architectural Heritage of Europe,<sup>36</sup> the 1992 Revisited European Convention on the Protection of the Archaeological Heritage,<sup>37</sup> and the 2001 European Convention for the Protection of the Audiovisual Heritage<sup>38</sup> all incorporate *pro futuro* references. In the Americas, the Preamble to the 1976 Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations expresses that it is the state parties’ duty “to transmit to coming generations the legacy of their cultural heritage.”<sup>39</sup> Other multilateral agreements, such as the Agreement concerning the Titanic between the United States of America, the United Kingdom, France, and Canada, indicate that safeguarding the wreck is warranted for the benefit of present and future generations.<sup>40</sup>

### Soft Law

Soon after the emergence of the 1987 Brundtland Report, analogous initiatives were undertaken in the realm of culture. One year later, the 1988 Goa Guidelines on Intergenerational

<sup>31</sup> Article 2 (1) of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

<sup>32</sup> UNESCO, Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO Doc. No. WHC.21/01 (05-07 July 2022), para. 108 (b).

<sup>33</sup> Article 2 (6) of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>34</sup> Article 2 (b) of the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

<sup>35</sup> Article 2 (b) of the 1969 European Convention on the Protection of Archaeological Heritage.

<sup>36</sup> Recital 7 of the Preamble and Article 15 (1) of the 1985 Convention for the Protection of the Architectural Heritage of Europe.

<sup>37</sup> Article 2 (ii) of the 1992 Revisited European Convention on the Protection of the Archaeological Heritage.

<sup>38</sup> Recital 5 of the Preamble of the 2001 European Convention for the Protection of the Audiovisual Heritage.

<sup>39</sup> Recital 3 of the Preamble of the 1976 Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations.

<sup>40</sup> Recital 7 of the Preamble of the 2003 Agreement Concerning the Shipwrecked Vessel RMS Titanic.

Equity were adopted. The Guidelines acknowledge, among other things, the need for conserving natural and cultural heritage for the benefit of coming generations. Such heritage shall not be “passed on to future generations in a worse condition than it was received from past generations,” further complementing “conservation of cultural diversity is as important as the conservation of environmental diversity to ensure options for future generations.”<sup>41</sup> As a result of these developments, the early 1990s witnessed the establishment of the World Commission on Culture and Development.<sup>42</sup> In 1995, that move led to a report called “Our Creative Diversity;”<sup>43</sup> although the report attempted to raise sensitivity on culture and sustainable development as well as exert comparable influence; as its forebearer, its effects have been rather modest.<sup>44</sup> The following years saw other similar efforts with equivalent outcomes.<sup>45</sup>

Future generations’ interests ever since have found expression in several other instruments. The 1997 UNESCO Declaration on the Responsibilities of Present Generations Towards the Future Generations made, until recently, the most detailed reference concerning future generations’ concerns. Its Article 2 foresees succeeding generations’ freedom of choice, including that of cultural and religious diversity.<sup>46</sup> More information is given in Article 7, which elaborates solely on cultural diversity and cultural heritage. Today’s generations, it reads, “have the responsibility to identify, protect and safeguard the tangible and intangible cultural heritage and to transmit this common heritage to future generations.”<sup>47</sup> This is not to say that current generations are prevented from enjoying cultural heritage. That is permissible in as much as future generations’ interests are not compromised irreversibly.<sup>48</sup> That the Declaration lacks engagement with the past and is solely concerned with the present and the future is to be noted.<sup>49</sup>

Despite the failure of earlier reports to have an analogous influence with respect to cultural sustainability, they nevertheless set in motion attempts that eventually led to the 2001 UNESCO Universal Declaration on Cultural Diversity.<sup>50</sup> Article 1 considers cultural diversity meaningful for present and future generations alike.<sup>51</sup> For that reason, Article 7 moves on to explain in more detail that “heritage in all its forms must be preserved, enhanced and handed on to future generations.”<sup>52</sup>

In the aftermath of the destruction of Afghanistan’s Bamiyan Buddhas in 2001 by the Taliban, UNESCO adopted the 2003 Declaration Concerning the Intentional Destruction of Cultural Heritage. Condemning its destruction, the latter stipulates that doing so “reaffirms ... that such cultural heritage may be transmitted to the succeeding generations.”<sup>53</sup> Other UNESCO recommendations and declarations referencing future generations include the 1972 Recommendation Concerning the Protection, at the National Level, of the Cultural and

<sup>41</sup> 1988 Goa Guidelines on Intergenerational Equity.

<sup>42</sup> Throsby 2005, 2.

<sup>43</sup> WCCD 1995.

<sup>44</sup> Throsby 2005, n. 42, 2.

<sup>45</sup> Throsby 2017, 135.

<sup>46</sup> Article 2 of the 1997 UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations.

<sup>47</sup> Article 7 of the 1997 UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations.

<sup>48</sup> Article 8 of the 1997 UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations.

<sup>49</sup> Lixinski 2019, 110–111.

<sup>50</sup> Throsby 2017, n. 45, 136.

<sup>51</sup> Article 1 of the 2001 UNESCO Universal Declaration on Cultural Diversity.

<sup>52</sup> Article 7 of the 2001 UNESCO Universal Declaration on Cultural Diversity.

<sup>53</sup> Article I of the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage.



Natural Heritage,<sup>54</sup> the 1980 Recommendation for the Safeguarding and Preservation of Moving Images,<sup>55</sup> the 2003 Charter on the Preservation of Digital Heritage,<sup>56</sup> the 2007 Fribourg Declaration on Cultural Rights,<sup>57</sup> the 2013 Hangzhou Declaration of Placing Culture at the Heart of Sustainable Development Policies,<sup>58</sup> the 2015 Recommendation Concerning the Protection and Promotion of Museums and Collections, Their Diversity and Their Role in Society,<sup>59</sup> the 2018 Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage,<sup>60</sup> and the 2022 Mexico City Declaration World Conference on Cultural Policies and Sustainable Development – MONDIACULT 2022.<sup>61</sup> In almost all of those cases, generations of tomorrow appear once again either as an objective and/or as a definition.

The most recent 2023 Maastricht Principles on the Human Rights of Future Generations (henceforth: 2023 Maastricht Principles), adopted to “clarify the present state of international law as it applies to the human rights of future generations,” constitute a noticeable exception.<sup>62</sup> Establishing 36 principles, including the protection of cultural heritage, the Principles define “future generations” as “those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and Peoples.”<sup>63</sup> Most notably, Principle 8(b) explicitly acknowledges each generation’s duty “to protect and sustain the Earth’s natural and cultural heritage for future generations,” and the Principles further underline the importance of a precautionary approach concerning the “cultural heritage of mankind.”<sup>64</sup> Potential interference the 2023 Maastricht Principles add to “the voluntary perpetuation of a community or peoples’ cultural legacy to future generations” as well as a state’s failure to guarantee “at the very least, the ... essential levels of ... cultural rights ... and to take measures that enable future generations to ensure these levels for themselves,” count among the violations of a state’s obligations to respect and fulfil future generations’ human rights.<sup>65</sup>

Further developments might be expected in September 2024 when the United Nations Summit of the Future will discuss the potential adoption of the United Nations Declaration on Future Generations. An early draft covers inter alia cultural rights.<sup>66</sup> In addition, the protection of cultural heritage is explicitly found only in Sustainable Development Goal (SDG) No. 11 (4).<sup>67</sup> Ironically enough, when the first resolution of the United Nations General Assembly on Culture and Sustainable Development was published, no reference was made to

<sup>54</sup> Recital 5 of the Preamble of the 1972 UNESCO Recommendation Concerning the Protection, at the National Level, of the Cultural and Natural Heritage.

<sup>55</sup> Recital 9 of the Preamble and Article 3 of the 1980 UNESCO Recommendation for the Safeguarding and Preservation of Moving Images.

<sup>56</sup> Recital 5 of the Preamble and Article 1 of the 2003 UNESCO Charter on the Preservation of Digital Heritage.

<sup>57</sup> Article 3 (c) of the 2007 Fribourg Declaration on Cultural Rights.

<sup>58</sup> The 2013 Hangzhou UNESCO Declaration of Placing Culture at the Heart of Sustainable Development Policies p. 3 and 5.

<sup>59</sup> Article 6 and 24 of the 2015 UNESCO Recommendation Concerning the Protection and Promotion of Museums and Collections, Their Diversity and Their Role in Society.

<sup>60</sup> Article 9 of the 2018 UNESCO Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage.

<sup>61</sup> Article 9 and 17 of the 2022 Mexico City Declaration UNESCO World Conference on Cultural Policies and Sustainable Development – MONDIACULT 2022.

<sup>62</sup> Introduction of the 2023 Maastricht Principles on the Human Rights of Future Generations.

<sup>63</sup> Principle 1 of the 2023 Maastricht Principles on the Human Rights of Future Generations.

<sup>64</sup> Principle 8 (b) and 9 (b) of the 2023 Maastricht Principles on the Human Rights of Future Generations.

<sup>65</sup> Principle 17 (j) and 21 (e) of the 2023 Maastricht Principles on the Human Rights of Future Generations.

<sup>66</sup> Zero Draft of the Declaration on Future Generations (2024) paras. 4, 12 and 21, [https://www.un.org/sites/un2.un.org/files/co-facilitators\\_zero\\_draft\\_of\\_the\\_declaration\\_on\\_future\\_generations\\_26\\_march\\_2024\\_final\\_pdf](https://www.un.org/sites/un2.un.org/files/co-facilitators_zero_draft_of_the_declaration_on_future_generations_26_march_2024_final_pdf) (accessed 25 July 2024).

<sup>67</sup> United Nations General Assembly, Transforming Our World: The 2030 Agenda for Sustainable Development, Resolution 70/1, Doc. No. A/RES/70/1, 25 September 2015, Sustainable Development Goal (SDG) No. 11 (4).

the interests of future generations in protecting cultural heritage.<sup>68</sup> That trend seems to have discontinued since 2019 onwards. Yet the 2019 resolution only touches on the effects of climate change on cultural heritage and the interests of succeeding generations.<sup>69</sup> The most recent resolution yields no different picture.<sup>70</sup> Intergenerational elements appear in international codes of ethics concerning museums as well.<sup>71</sup>

Expanding the reader's gaze over Indigenous Peoples' rights, the 2007 United Nations Declaration on the Rights of Indigenous Peoples maintains ample intergenerational references. Article 13 (1) expressly guarantees Indigenous Peoples' right "to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures."<sup>72</sup> Article 25 supplements this by affirming that their territories shall be protected and passed down to succeeding generations.<sup>73</sup> Earlier confirmation is to be found *inter alia* in the 1993 Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples.<sup>74</sup> This cultural dialogue between generations has also been reaffirmed at a regional level. The ASEAN Declaration on Cultural Heritage (2000) sets a "duty of each ASEAN Member Country to identify, delineate, protect, conserve, promote, develop and transmit to future generations the significant cultural heritage within its territory."<sup>75</sup> Analogous imprints are to be found in the Americas<sup>76</sup> as well as Africa,<sup>77</sup> and certain bilateral declarations.<sup>78</sup>

### *Some Reflections on Conventional and Soft Law*

The terminology of future generations is well-established in international cultural heritage law both in its hard and soft facet. Most of the times the term is employed either as setting an objective or a definition. Discrepancy between references and content however is to be identified. It seems challenging to determine the identity or the content of future generations for whom cultural heritage supposedly is to be protected. Contrastingly it fails most of the times to provide any more details. Sporadic hints are provided in respect to the means of transmission. Yet these for the time being remain rather limited. The recently adopted 2023 Maastricht Principles constitute a notable exception. The next section is dedicated to the appearance of future generations at a domestic level.

### *Future generations on the domestic map*

Future generations' terminology appears to be equally well-established in national legislative instruments. The perception that cultural heritage is to be transmitted to succeeding generations underlines several general domestic legislative instruments. As of 25 July 2024, at least 56 states

<sup>68</sup> United Nations General Assembly, Culture and Sustainable Development, Doc. No. A/RES/68/223, 20 December 2013.

<sup>69</sup> United Nations General Assembly, Culture and Sustainable Development, Doc. No. A/RES/74/230, 19 December 2019, para. 16 (i).

<sup>70</sup> United Nations Generations Assembly, Culture and Sustainable Development, Doc. No. A/RES/78/161, 19 December 2023, para. 17 (i).

<sup>71</sup> Recital 1 of the Preamble of the 1964 ICOMOS International Charter for the Conservation and Restoration of Monuments and Sites (The Venice Charter 1964); Article 2.18 of the ICOM Code of Ethics for Museums (2004).

<sup>72</sup> Article 13 (1) of the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

<sup>73</sup> Article 25 of the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

<sup>74</sup> Article 2 (5) of the 1993 Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples.

<sup>75</sup> Article 1 of the 2000 ASEAN Declaration on Cultural Heritage.

<sup>76</sup> Article XIII (1), XIV (1), XXV (1) and XXVIII (1) of the 2016 American Declaration on the Rights of Indigenous Peoples.

<sup>77</sup> Article 6 of the 2006 Charter for African Cultural Renaissance.

<sup>78</sup> Recital 2 of the Preamble of the Joint Declaration on the Return of Benin Bronzes and Bilateral Museum Cooperation Between Germany and Nigeria (01 July 2022).



endorsed the principle.<sup>79</sup> Through author's research at the UNESCO Database of National Cultural Heritage Laws, the WIPO Lex Database, the FAOLEX Database, the UNODC Database of Legislation, and the Constitute Project, three different groups of states emerged. Classification was made based on how the terminology was employed. These are: 1) the protection of cultural heritage for the benefit of future generations as an objective, 2) the protection of cultural heritage for the benefit of future generations as terminology, and lastly 3) future generations make their appearance in various provisions. A presentation of each group of states follows below.

### *Protection of cultural heritage for the benefit of future generations as an objective*

The first paradigm ties together national instruments that protect cultural heritage, with the aim of transmission to the generations to come. One of the most explicit paradigms of incorporation of future generations in constitutional clauses can be found in the Tunisian example. Tunisia's Constitution notes that "[t]he state shall protect cultural heritage and guarantee it for future generations."<sup>80</sup> This sentiment is mirrored in the Hungarian,<sup>81</sup> Polish,<sup>82</sup> and Luxembourgish Constitutions.<sup>83</sup>

Beyond national constitutions, an analogous goal is explicit in domestic legislative pieces. Article 44 of the relevant legislation of the Dominican Republic reads that "[t]he State ... shall promote the protection, conservation, rehabilitation and dissemination of the cultural heritage of the Nation ... both in the present and for future generations."<sup>84</sup> Other states that acknowledge the transmission of cultural heritage to the succeeding ones as an end by itself are Croatia,<sup>85</sup> Mauretania,<sup>86</sup> Spain,<sup>87</sup> New Zealand,<sup>88</sup> Greece,<sup>89</sup> Algeria,<sup>90</sup> Iceland,<sup>91</sup> Bolivia,<sup>92</sup> Monaco,<sup>93</sup> Nauru,<sup>94</sup> Philippines,<sup>95</sup> Malta,<sup>96</sup> Kuwait,<sup>97</sup> Honduras,<sup>98</sup> Russia,<sup>99</sup> Mozambique,<sup>100</sup>

<sup>79</sup> This paper consciously chooses not to employ the wording of comparative legal approach having in mind the growing literature on the methodology of comparative law – Michaels 2019.

<sup>80</sup> Article 42 of Tunisia's Constitution of 2014.

<sup>81</sup> Article P of Hungary's Constitution of 2011.

<sup>82</sup> Recital 9 of the Preamble of Poland's Constitution of 1997.

<sup>83</sup> Article 11bis of Luxembourg's Constitution of 1868.

<sup>84</sup> Article 44 of the Law No. 41-00 on the Creation of the Secretary of State for Culture (2000).

<sup>85</sup> Article 5 of the Act No. 01-081-99-1280/2 on the Protection and Preservation of Cultural Objects (1999).

<sup>86</sup> Article 1 of the Law No. 2005-046 on the Protection of Tangible Cultural Heritage (2005).

<sup>87</sup> Article 1 (1) of the Law No. 16/1985 on the Spanish Historical Heritage (1985).

<sup>88</sup> Section 4 (b) (iii) of the Heritage New Zealand Pouhere Taonga Act No. 26 (2014).

<sup>89</sup> Article 1 (1) of the Law No. 3028/2002 on the Protection of Antiquities and Cultural Heritage in General.

<sup>90</sup> Article 68 of the Law No. 98-04 on the Protection of Cultural Heritage (1998).

<sup>91</sup> Article 1 of the Cultural Heritage Act No. 80 (2012).

<sup>92</sup> Article 3 and 13 (1) of the Law No. 530 on Bolivian Cultural Heritage (2014).

<sup>93</sup> Article 1 (1) of the Law No. 1.446 on the Preservation of National Heritage (2017).

<sup>94</sup> Article 4 (e) of the National Heritage Act No. 23 (2017).

<sup>95</sup> Section 2 of Act No. 10066 on the Protection and Conservation of the National Cultural Heritage, Strengthening the National Commission for Culture and the Arts (NCCA) and Its Affiliated Cultural Agencies, and for Other Purposes (2009).

<sup>96</sup> Article 4 (5) of the Chapter No. 445 Cultural Heritage Act (2002).

<sup>97</sup> Article 10 of the Princely Decree No. 11 on the Antiquities Law (1960).

<sup>98</sup> Article 1 of the Law No. 220-97 for the Protection of the Cultural Heritage of the Nation.

<sup>99</sup> Recital 3 of the Preamble and Article 7 (1) of the Federal Law No. 73-FZ on Objects of Cultural Heritage of the Peoples of the Russian Federation (2002).

<sup>100</sup> Recital 3 of the Preamble of the Law No. 10/88 on the Protection of Cultural Heritage.

Latvia,<sup>101</sup> Lesotho,<sup>102</sup> Norway,<sup>103</sup> Ethiopia,<sup>104</sup> Marshall Islands,<sup>105</sup> Sweden,<sup>106</sup> Liberia,<sup>107</sup> Myanmar,<sup>108</sup> and Belarus.<sup>109</sup>

### *Protection of cultural heritage for the benefit of future generations as terminology*

The second paradigm refers to future generations when attempting to define the meaning of cultural heritage. An indicative example is Albania. Its recent legislation conceives cultural heritage as “the totality of cultural assets, material and non-material, of an individual, group or society inherited from the past and preserved in the present, to be transmitted to future generations.”<sup>110</sup> Intergenerational preoccupations with respect to the definition of cultural heritage appear also in the legislation of Rwanda,<sup>111</sup> Lithuania,<sup>112</sup> Zambia,<sup>113</sup> the Netherlands,<sup>114</sup> Kazakhstan,<sup>115</sup> Andorra,<sup>116</sup> Laos,<sup>117</sup> Australia,<sup>118</sup> and Vietnam.<sup>119</sup> These national examples in addition to a number that follows below over the appearance of future generations in various provisions of the protection of cultural heritage shall be seen as complementary to the section previously analyzed about cultural heritage’s intergenerational appeal witnessed at an international level.

### *Various provisions for the protection of cultural heritage for the benefit of future generations*

Mediating between the previous paradigms lies the third paradigm of legislation. It includes those states whose national instruments contain references to future generations in various provisions, including as an objective and/or terminology. One instance is the Montegrin legislation, whose goal is the preservation and advancement of cultural property and its passing to generations to come, yet at the same time it acknowledges the educational importance of cultural heritage for the “current and future generations.”<sup>120</sup> Comparable cases include those of Eritrea,<sup>121</sup> North Macedonia,<sup>122</sup> South Africa,<sup>123</sup>

<sup>101</sup> Section 1 of the Law on Protection of Cultural Monuments (1992).

<sup>102</sup> Section 3 (2) (j) of the Environment Act No. 10 (2008).

<sup>103</sup> Section 1 of the Act No. 50 Concerning the Cultural Heritage (1978).

<sup>104</sup> Recital 5 of the Preamble and Article 4 (1) of the Research and Conservation of Cultural Heritage Proclamation No. 209/2000 (2000).

<sup>105</sup> Section 202 (1) (b) and 202 (3) of the Historic Preservation Act (1991).

<sup>106</sup> Section 1 of the Historic Environment Act (1988).

<sup>107</sup> Section 4 (2) (e) of the Environmental Protection and Management Law of Liberia (2002).

<sup>108</sup> Article 3 (c) of the Environmental Conservation Law No. 9/2012 (2012).

<sup>109</sup> Recital 2 of the Preamble and Article 42 of the Law No. 1940-XII of the Republic of Belarus on the Protection of Historical and Cultural Heritage and Decree of the Supreme Soviet of the Republic of Belarus about its Implementation (1992).

<sup>110</sup> Article 5 (59) of the Law No. 27/2018 on Cultural Heritage and Museums.

<sup>111</sup> Article 2 (11), 11 (4) and 19 of the Law No. 28/2016 on the Preservation of Cultural Heritage and Traditional Knowledge.

<sup>112</sup> Article 2 (5) of the Law No. X-1682 on Protection of Movable Cultural Property (2008).

<sup>113</sup> Article 2 of the Chapter No. 173 National Heritage Conservation Commission Act (1989).

<sup>114</sup> Section 1.1 of Act Relating to the Combining and Amendment of Rules Regarding Cultural Heritage (Heritage Act) (2016).

<sup>115</sup> Article 2 (5) of the Law No. 207 on Culture (2006).

<sup>116</sup> Recital 1 of the Preamble of the Law No. 9/2003 of the Cultural Heritage of Andorra.

<sup>117</sup> Article 3 (1), (13), (15), 9 and 12 of the Law No. 08/NA on National Heritage (2005).

<sup>118</sup> Section 4 (1) and (1A) of the Australian Heritage Commission Act No. 57 (1975).

<sup>119</sup> Article 1 of the Law No. 28/2001/QH10 on Cultural Heritage (2001).

<sup>120</sup> Article 4 (1) and 76 (1) of the Protection of Cultural Property Act (2010).

<sup>121</sup> Recital 3 of the Preamble and Article 2 (n) and 3 (a) of the Cultural and Natural Heritage Proclamation No. 177/2015.

<sup>122</sup> Article 4 (3), 31 and 113 (1) (1) of the Law No. 20 on Protection of Cultural Heritage (2004).

<sup>123</sup> Recital 1 of the Preamble and Section 3 (1), 5 (1) (b) and 5 (7) (e) of the National Heritage Resources Act No. 25 (1999).

Ukraine,<sup>124</sup> Belize,<sup>125</sup> Maldives,<sup>126</sup> Fiji,<sup>127</sup> the United States of America,<sup>128</sup> Kenya,<sup>129</sup> Estonia,<sup>130</sup> Bhutan,<sup>131</sup> Cuba,<sup>132</sup> Mongolia,<sup>133</sup> Uganda,<sup>134</sup> and France.<sup>135</sup>

### *Some reflections on domestic legislation*

The survey of those states' legislation demonstrates that, today, more and more states are attracted by the discourse of future generations in their domestic language on the legal protection of cultural heritage. That is evident in instances of national legislation and even in constitutional provisions. At the same time, a look at the national instruments reveals that 18 of the 56 states' legal codifications count less than a decade of life with 6 of them adopted in the last 5 years. A rather comparable terminology is also being utilized in different languages. Indicative examples include the English variant "future generations," the French "générations futures," the Spanish "generaciones futuras," the Portuguese "gerações futuras," and the Greek "μελλοντικές γενεές."

The relation between the protection of cultural heritage and the interests of future generations is acknowledged in examples from every continent. The most represented region appears to be Europe with 23 states; Africa follows with 13. The least represented continent is Oceania with 5 states. The routine reference to future generations does not shed light on their actual content. In reality, none of those legislative pieces designates the precise identity of future generations, nor do they determine their rights and obligations. When such obligations do arise for present generations and most of the time vehicles for the transmission of cultural heritage to the generations to come remain unknown. The following paragraphs in this section examine judicial proceedings in which future generations make their appearance with respect to the legal protection of cultural heritage.

### *Case law*

This section identifies two different categories of lawsuits that reached the courts, illustrating how intergenerational arguments have been invoked during judicial proceedings. Classification is made based on how the terminology of future generations is deployed. The first one refers to the potential impact of safeguarding cultural heritage, or the lack thereof, on future generations' interests, whereas the second one acknowledges the protection of cultural heritage for the benefit of future generations as a state's obligation. An analysis of each category of cases follows below.

<sup>124</sup> Recital 1 of the Preamble and Article 1 of the Law No. 1805-III on the Protection of Cultural Heritage (2000).

<sup>125</sup> Section 2 and 4 (1) of the National Cultural Heritage Preservation Act No. 40 (2017).

<sup>126</sup> Article 2 and 10 of the Cultural Heritage Protection Act (No. 12/2019).

<sup>127</sup> Section 2 and 7 (a) of the Heritage Bill No. 3 (2021).

<sup>128</sup> Recital c of the Preamble of the National Historic Preservation Act No. 89-665 (1966).

<sup>129</sup> Section 2 and 3 (1) (c) of the Heritage and Museums Bill (2023).

<sup>130</sup> Section 3 (2) and 5 (1) of the Heritage Conservation Act (2019).

<sup>131</sup> Recital 4 of the Preamble and Article 3, 255 and 283 of the Cultural Heritage Bill of Bhutan (2016).

<sup>132</sup> Article 6 (f) and (g), 9 and 105 of the General Law No. 155/2022 of the Protection of Cultural Heritage and Natural Heritage.

<sup>133</sup> Article 3 (1) (8) and 34 (2) (1) of the Law on the Protection of Cultural Heritage (2014).

<sup>134</sup> Section 5 (2) (b) and 68 (1) of the National Environment Act (2019).

<sup>135</sup> Article R621-18 (2), R621-63 (2), R622-18 (1) and R622-40 (1) of the Heritage Code (2004).

**Possible impact on the interests of future generations from the safeguarding or the lack of thereof of cultural heritage**

The first case where the argument that the protection of cultural heritage benefits or better articulated its destruction harms the interests of future generations is to be found in the now-celebrated *Al-Mahdi case (2016)* before the International Criminal Court (henceforth: ICC). The case concerned the intentional destruction in 2012 of 10 religious monuments – 9 amongst them inscribed as World Heritage sites – in Timbuktu by the jihadist organization Ansar Dine. For the first time, the Court punished Ahmad Al Faqi Al Mahdi, sentencing him to nine years of imprisonment for the sole allegation of intentional destruction of cultural heritage.<sup>136</sup>

The Reparation Order came a year later. The ICC, in awarding reparations, confirmed that cultural heritage captures “the resources enabling cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations.”<sup>137</sup> By adopting a rather anthropocentric perspective, it went further to underline the unique and sentimental character of cultural heritage, adding that its destruction “renders humanity unable to transmit its values and knowledge to future generations.”<sup>138</sup> Such an attachment, the ICC continued, became even more intense for the “descendants of the saints” who “have a different kind of emotional connection to the destroyed sites” in comparison with the rest of Timbuktu’s population.<sup>139</sup>

Succeeding generations’ interests are equally explicit in *Ahunbay and Others v. Turkey (2019)*.<sup>140</sup> Litigated before the European Court of Human Rights, the case dealt with the scheduled construction of the Ilisu Hydroelectric Dam on the banks of the River Tigris in Turkey. For its completion, an archaeological site called Hasankeyf, with historical and cultural treasures going back in time at least 10,000 years, was under threat of flooding. The case had originally been brought by five private individuals against Turkey, Austria, and Germany to halt the completion of the project. Yet the Court found only the claim against Turkey admissible.<sup>141</sup> The litigants alleged that the site constitutes the “common heritage of both present and future generations of Europe, and its destruction would breach the right to understand, maintain, and access cultural heritage.”<sup>142</sup> They contended that Article 2, which guarantees the right to life, shall not remain limited to the physical sphere but shall expand to include the cultural survival of human beings and the need to protect these values and “pass them on to future generations.”<sup>143</sup> The alternative line of argument was that the potential flooding of Hasankeyf would be detrimental to the educational rights of present and future generations.<sup>144</sup> Siding with Turkey, the Court considered the case inadmissible since no consensus existed amongst the members of the European Union or those of the Council of Europe over an individual’s right to protect cultural heritage.<sup>145</sup> The Court thus opted for a restrictive approach in respect of individuals’ rights to cultural heritage,

<sup>136</sup> International Criminal Court, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, 27 September 2016, para. 109.

<sup>137</sup> International Criminal Court, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, para. 15.

<sup>138</sup> *Ibid.*, para. 22.

<sup>139</sup> *Ibid.*, para. 89.

<sup>140</sup> European Court of Human Rights, *Ahunbay and Others v. Turkey*, Application No. 6080/06, Decision of 29 January 2019.

<sup>141</sup> European Court of Human Rights, *Ahunbay and Others v. Turkey*, Austria and Germany, Application No. 6080/06, Decision of 21 June 2016, para. 94.

<sup>142</sup> Aykan 2018, 27.

<sup>143</sup> European Court of Human Rights, *Ahunbay and Others v. Turkey*, Austria and Germany, n. 141, para. 88.

<sup>144</sup> European Court of Human Rights, *Ahunbay and Others v. Turkey*, n. 140, para. 16.

<sup>145</sup> *Ibid.*, para. 25.

remaining completely silent on the argument of future generations' interests over the protection of cultural heritage.

A similarly unsuccessful case comes from Australia. In *Anderson v. Director-General of the Department of Environmental and Climate Change & Anor (2008)*,<sup>146</sup> the New South Wales Court of Appeal was asked to decide about a construction project threatening to destroy, deface, or damage objects of Numbahjin origin. The litigants raised the argument that no proper emphasis had been given to intergenerational considerations, as Section 6 (2) of the New South Wales Protection of the Environment Administration Act (1990) dictates by the commissioned expert's report.<sup>147</sup> Examining the merits of the case, the Court denied the contention and suggested that intergenerational equity is a matter of consideration and not of a result. It was sufficient for this parameter to be taken into consideration but there was no obligation to reach a particular outcome.<sup>148</sup> A rather indirect reference to the interests of future generations comes from the Belgian courts. Concerned with the possible modifications taking place at the historic site of the Battle of Waterloo (1815), Belgium's Council of State noted that in instances of the cultural heritage of exceptional importance like Waterloo, this "can no longer ... be the 'exclusive thing' of any legal entity under public law, even the owner of the premises, nor a specific community, nor even of the present generation, or neighbors or people in the neighborhood."<sup>149</sup> Deviating from proclaiming *actio popularis*, the Court clarified that spending time for its preservation, study, and profession constitute factors that are taken into account in assessing whether one maintains a legal interest in the protection of cultural heritage.<sup>150</sup>

Indigenous Peoples' land claims in the Americas have recognized more expressly the possible impact on their cultural heritage's transmission to future generations. In the infamous case of *Awes Tingni v. Nicaragua (2001)*, the Inter-American Court of Human Rights underscored that land for Indigenous Peoples is not just a territory "but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations."<sup>151</sup> The denial of such rights, the same Court noted in another ruling, runs "the risk of losing or suffering irreparable harm to their life and identity and to the cultural heritage to be passed on to future generations."<sup>152</sup>

### **Protection of cultural heritage for the benefit of future generations as a state's obligation**

A second strand of cases where future generations are mentioned constitute rulings where the protection of cultural heritage is perceived as a state's obligation for the interests of the generations to come. An illustrative example is the Colombian *Quimbaya Treasure case (2017)*.<sup>153</sup> The case revolved around the donation of a collection of 122 gold cultural objects of Quimbayan origin by the Colombian President Carlos Holguín to the then Queen of Spain, Maria Christina de Habsburgo-Lorena. The objects traveled to Madrid in 1892 on the occasion of the Historical American Exhibition, commemorating the 400<sup>th</sup> anniversary of

<sup>146</sup> *Anderson on Behalf of the Numbahjin Clan within the Bundjalung Nation v. Director-General of the Department of Environmental and Climate Change & Anor* [2008] NSWCA 337.

<sup>147</sup> *Ibid.*, para. 6.

<sup>148</sup> *Ibid.*, para. 86.

<sup>149</sup> Council of State, Case Brassine-Vandergeeten, No. 165.965, 15 December 2006, and No. 185.638, 08 August 2008, p. 15 (text of the ruling and translation kindly provided by Stefano D'Aloia).

<sup>150</sup> *Ibid.*, pp. 14–15.

<sup>151</sup> Inter-American Court of Human Rights, *The Mayagna (Sumo) Awes Tingni Community v. Nicaragua* (Merits, Reparations and Costs), Judgement of 31 August 2001, para. 149.

<sup>152</sup> Inter-American Court of Human Rights, *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (Merits, Reparations and Costs), Judgement of 24 August 2010, para. 321.

<sup>153</sup> Colombian Constitutional Court, Plenary Chamber, Judgement SU649/17, 19 October 2017.

the “discovery” of the Americas. The following year the collection was donated to Spain where it resides in Madrid’s *Museo de América*.<sup>154</sup>

Instead of initiating a claim before Spanish courts, proceedings were filed in Colombia. The Colombian Constitutional Court, shortly after reviewing the relevant instruments, acknowledged the intergenerational character of cultural heritage, which guarantees “future generations the knowledge of their past.”<sup>155</sup> The Court went further to confirm the government’s responsibility, according to a combination of constitutional provisions, to work on behalf of the Quimbaya for the return of the collection from Spain to ensure that their right to transmit their cultural heritage to succeeding generations is materialized.<sup>156</sup>

Similarly, in the more recent case of *Billy v. Australia (2022)*,<sup>157</sup> the United Nations Human Rights Committee found the Australian Government responsible for violating the rights of eight Indigenous Torres Straits Islanders and their six children due to its failure to take the necessary mitigation and adaptation measures against the impacts of climate change. Australia’s failure to adopt adequate and timely measures violated inter alia its positive duties to protect their “ability to maintain their traditional way of life” and “to transmit to their children and future generations their culture and traditions” under Article 27 of the International Covenant on Civil and Political Rights (ICCPR).<sup>158</sup>

### Some reflections on case law

Looking back at the judicial proceedings, one can see how the discourse of future generations and the protection of cultural heritage manifests itself in a range of disputes, from the intentional destruction of cultural heritage to development projects affecting cultural heritage. The transgenerational character of cultural heritage has been acknowledged in virtually all cases. Case law concerning Indigenous Peoples’ land rights originating from the Americas and Australia are central to intergenerational concerns over their cultural heritage’s transmission to future generations. Only recently, that connection became somewhat clearer with the *Al-Mahdi* case in a non-Indigenous Peoples’ context. The second paradigm of cases simultaneously confirms how the interests of future generations have been considered by drawing on states’ constitutional and international commitments to the protection of cultural heritage.

Judicial proceedings have not generated unanimous outcomes. This is especially the case of the *Ahunbay* case, litigated before the European Court of Human Rights where interests of the future generations in the protection of cultural heritage have not even been considered. The necessity of considering intergenerational interests under legislative procedures does not guarantee a particular outcome, as *Anderson* proves. In the absence of any international or constitutional provisions, such as in *Billy and Quimbaya* cases, doubts might also be raised as to whether the failure to account intergenerationally over the protection of cultural heritage is in itself legally actionable or whether it must be invoked on other legal grounds. To date, none of the cases highlighted here was brought solely in the name of future generations. Rather, this has been accompanied invariably from present generations’ concerns. No question has reached the courts to define the notion of future generations in relation to the protection of cultural heritage, nor to engage in a sustained way with the question of whether the claimants were entitled to represent future generations in the first

<sup>154</sup> Mejía-Lemos 2019, 123.

<sup>155</sup> Colombian Constitutional Court, Plenary Chamber, Judgement SU649/17, 19 October 2017, n. 153, para. 5.5.b.

<sup>156</sup> *Ibid.*, para. 10.4.5.

<sup>157</sup> Human Rights Committee, Daniel Billy et al v. Australia, Communication No. 3624/2019, Doc. No. CCPR/C/135/D/3624/2019, 22 September 2022.

<sup>158</sup> *Ibid.*, para. 8.14.



place. A more sophisticated line of thinking and argumentation by contrast is well under way in the other fields of law, such as international climate change law and litigation in light of the global warming crisis.<sup>159</sup> The section that follows now turns to discuss how future generations have come to be integrated or could be adopted within international cultural heritage policy.

### Giving future generations a voice in respect to the legal protection of cultural heritage

Drawing on the increasing recognition of the terminology of future generations in the protection of cultural heritage in international, regional, national instruments, and case law, this section asks how their interests have already been incorporated or could be taken into consideration in international cultural heritage policy. Repeated reference to future generations in *abstracto* might tempt the reader to express some doubts. Succeeding generations' concerns over the protection of cultural heritage have, to the contrary, been incorporated or could be considered in at least five pathways. Classification is based once more on the nature of each policy choice. These are: 1) the guardianship paradigm, 2) the representation paradigm, 3) the public interest paradigm, 4) the participation paradigm, and 5) the cultural heritage impact assessment paradigm. An analysis of each category of policy options follows below.

#### The guardianship paradigm

One way to consider the interests of future generations over the protection of cultural heritage is via the guardianship paradigm. This can be achieved through the establishment of an Ombudsman for Future Generations, a Commissioner for the Environment, or a Heritage Council. A representative example appears to be the experience of Hungary, which established an Ombudsman for Future Generations in 2007, mandated to ensure the preservation and protection of cultural heritage for the generations ahead.<sup>160</sup> Section 3 (1) of the relevant legislation defines the broad authority of the Ombudsman: 1) to provide information regarding the enforcement of future generations' interests; 2) in the face of a danger to their interests, to make a proposal to the Commissioner for Fundamental Rights to lodge proceedings *ex officio* or a legal action before the Constitutional Court; 3) to participate into an inquiry of the Commissioner for Fundamental Rights; 4) to monitor the implementation of the strategy on sustainable development; 5) to recommend the adoption or revision of relevant legislation and to promote succeeding generations' interests.<sup>161</sup> The most recent report notes that cultural heritage protection was among the considerations in eight joint reports published in 2021.<sup>162</sup>

The example of New Zealand is similar. The creation of its Parliamentary Commissioner for the Environment was not driven only by environmental considerations but to safeguard cultural heritage for the benefit of succeeding generations.<sup>163</sup> The Commissioner is authorized to review and report governmental work, investigate at its discretion the effectiveness of governmental work, take remedial action, and provide advice on legislative

<sup>159</sup> Wewerinke-Singh, Garg, and Agarwalla 2023.

<sup>160</sup> Act No. CXI on the Commissioner for Fundamental Rights (2011).

<sup>161</sup> Section 3 (1) (a - h) of the Act No. CXI on the Commissioner for Fundamental Rights (2011).

<sup>162</sup> Office of the Commissioner for Fundamental Rights, "Report on the Activities of the Commissioner for Fundamental Rights of Hungary and His Deputies – 2021" (2022) p. 31, <https://www.ajbh.hu/documents/14315/7431420/Report+on+the+Activities+of+the+Commissioner+for+Fundamental+Rights+of+Hungary+and+his+Deputies+2021.pdf/784cbb13-4de0-cef0-55a5-6a7a3bd1089d?version=1.1&t=1667999055035> (accessed 25 July 2024).

<sup>163</sup> Section 17 (b) and (c) of the Environment Act No. 127 (1986).

instruments.<sup>164</sup> Such an approach does not seem to be far from the experience of the Monegasque Heritage Council.<sup>165</sup> In all three national cases, the role of those bodies remains merely an advisory one, limiting their practical effectiveness in promoting future generations' interests in the protection of cultural heritage.

### *The representation paradigm*

Another viable avenue is the representation paradigm via non-governmental organizations (henceforth: NGOs). The 2005 Faro Convention at the European Council's level echoes such an understanding in Article 11(e), which urges NGOs aiming at the protection of cultural heritage to promote public interest.<sup>166</sup> The recent Resolution 01/2022 of the International Law Association's Committee on the Participation in Global Cultural Heritage Governance underscores the need for greater acknowledgment of non-state actors, including NGOs in global cultural heritage governance.<sup>167</sup> At a national level, some additional examples are to be found. Laos is an illustrative case. Article 4 of the Law on National Heritage (2005) indicates that "[t]he State promotes and creates the conditions for ... organisations within the country and abroad to participate in the protection, conservation, restoration and rehabilitation of the national heritage in a sustainable manner."<sup>168</sup> Comparable legislative provisions originate from Vietnam,<sup>169</sup> Mozambique,<sup>170</sup> and North Macedonia.<sup>171</sup>

### *The public interest paradigm*

Closely associated with this idea is the growing trend to recognize the public interest in respect of the protection of cultural heritage via the notion of *actio popularis*. The latter entails that an individual is capable of initiating legal proceedings in respect of an issue of public interest, including that of safeguarding cultural heritage. The Brazilian Constitution, for example, indicates that "any citizen has standing to bring a popular action to annul an act injurious to ... historic and cultural patrimony."<sup>172</sup> That is not alien to other Lusophone countries such as Portugal,<sup>173</sup> Mozambique,<sup>174</sup> and Angola<sup>175</sup> – and also for Burkina Faso,<sup>176</sup> Paraguay,<sup>177</sup> Colombia,<sup>178</sup> and Peru.<sup>179</sup> Caution is needed, however. Widening access to justice does not necessarily mean that the interests of future generations over the protection of cultural heritage will actually be realized in certain outcomes. It simply makes it

<sup>164</sup> Section 16 of the Environment Act No. 127 (1986).

<sup>165</sup> Article 3 of the Law No. 1.446 on the Preservation of National Heritage (2017).

<sup>166</sup> Article 11 (e) of the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

<sup>167</sup> International Law Commission, Committee on Participation in Global Cultural Heritage Governance, Resolution 01/2022 (Lisbon, 19-24 June 2022) 1.

<sup>168</sup> Article 4 of the Law No. 08/NA on National Heritage (2005).

<sup>169</sup> Article 57 of the Law No. 28/2001/QH10 on Cultural Heritage (2001).

<sup>170</sup> Recital 5 of the Preamble of the Law No. 10/88 on the Protection of Cultural Heritage.

<sup>171</sup> Article 6 (1) (8) of the Law No. 20 on Protection of Cultural Heritage (2004).

<sup>172</sup> Article 5 (LXXIII) of the Brazilian Constitution of 1988.

<sup>173</sup> Article 52 (3) (a) of the Portuguese Constitution of 1976.

<sup>174</sup> Article 81 (2) (b) of the 2004 Constitution of the Republic of Mozambique.

<sup>175</sup> Article 74 of Angola's Constitution of 2010.

<sup>176</sup> Article 30 of Burkina Faso's Constitution of 1991.

<sup>177</sup> Article 38 of Paraguay's Constitution of 1992.

<sup>178</sup> Article 4 (f) of the Popular Action Law No. 472/1998.

<sup>179</sup> Article 82 of the Code of Civil Procedure No. 768 (1993).

easier for such considerations to be heard. Taking such concerns into account and reaching a particular outcome are two distinct things, as *Anderson* shows. In addition, Belgian courts, even though implicitly acknowledging the interests of generations to cultural heritage other than the present ones, were reluctant to grant *actio popularis*. Another layer of complexity is added if private international law issues – for example, possible recognition and enforcement of judgments – surface as in the *Quimbaya case*.<sup>180</sup>

### *The participation and consultation paradigm*

Increasing public participation and consultation in contemporary decision-making over the protection of cultural heritage might be an alternative solution to defend not only present generations but also future generations' interests. South Africa is an interesting example of community involvement. Section 5(4) of the National Heritage Resources Act (1999) sets amongst its general principles that “affected communities” need to be consulted and participate in the management of their cultural resources.<sup>181</sup> Similar sentiments can be traced to cases involving the Dominican Republic,<sup>182</sup> Bolivia,<sup>183</sup> and Belize,<sup>184</sup> and on a regional scale at the 2016 American Declaration on the Rights of Indigenous Peoples.<sup>185</sup> Again, one must proceed with care. To be meaningful, any participation and consultation procedure needs to be conducted with the communities' consent and it must be truly effective, not merely a symbolic.

### *The cultural heritage impact assessment paradigm*

Enhancing further cultural heritage impact assessments might finally promote succeeding generations' interests over cultural heritage from a macro-perspective. At a national level, the example of New Zealand expressly recognizes the nexus between the interests of future generations and the protection of cultural heritage. The relevant legislation notes that during such assessments, “any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations” is to be considered.<sup>186</sup> The same concern, as expressed earlier relating to the case originating from Australia, is also pertinent here with respect to the consideration of such interests and their material translation into a particular outcome. In addition, it rests on the often-shaky assumption that a cultural heritage impact assessment proceeds in a fair, transparent, and not procedural manner, as well as taking all the necessary information into account.

### *Some reflections on policy paradigms*

Assembling the pieces of the five paradigms, it is evident that they illustrate that future generations' interests in the safeguarding of cultural heritage have indeed been or could be considered in international cultural heritage policy. A variety of choices exists ranging from the establishment of an Ombudsman for Future Generations to cultural heritage impact assessment procedures. These paradigms are not flawless. One objection that finds

<sup>180</sup> Roodt 2015.

<sup>181</sup> Section 5 (4) of the National Heritage Resources Act No. 25 (1999).

<sup>182</sup> Article 54 and 55 of Law No. 41-00 on the Creation of the Secretary of State for Culture (2000).

<sup>183</sup> Article 3 of the Law No. 530 on Bolivian Cultural Heritage (2014).

<sup>184</sup> Section 4 (2) (q) of the National Cultural Heritage Preservation Act No. 40 (2017).

<sup>185</sup> Article XXVIII (3) of the 2016 American Declaration on the Rights of Indigenous Peoples.

<sup>186</sup> Schedule 4 - Section 7 (1) (d) of the Resource Management Act No. 69 (1991).

application in all the presented paradigms is that the representation of future generations' interests in global cultural heritage governance must be legitimate. What this means is set out next. The advisory character of most of the mechanisms raises also doubts with respect to the enforceability of such interests. Far from enjoying what heritage scholars name veto rights, these mechanisms are almost never compulsory.<sup>187</sup> All policy options are further limited at the national rather than the international or regional level. The remainder of this paper discusses some of the problematic aspects of the appearance of future generations in international cultural heritage law and policy making their nature rather ambivalent.

### **The ambivalent nature of the rhetoric of future generations in the protection of cultural heritage**

Safeguarding cultural heritage might be described as what “good ancestors” strive to do “for future generations.”<sup>188</sup> Lured by the siren song of the language of future generations nonetheless raises some valid concerns about the use and/or misuse of the discourse in the protection of cultural heritage. Three lines of critique assert themselves, explained in greater detail below: 1) the chilling effect of the discourse of future generations on cultural heritage, 2) the misappropriation risk of the language of future generations, and 3) the neglect of intra-generational concerns.

#### ***The chilling effect of the discourse of future generations on cultural heritage***

Laurajane Smith introduces the notion of “Authorized Heritage Discourse” in *Uses of Heritage*. The latter “focuses attention on aesthetically pleasing material objects, sites, places and/or landscapes that current generations ‘must’ care for, protect and revere so that they may be passed to nebulous future generations for their ‘education,’ and to forge a sense of common identity based on the past.”<sup>189</sup> Claims for representation in cultural heritage governance only portray part of that picture Authorized Heritage Discourse argues. Contrastingly, they tend to legitimize certain voices at the cost of leaving others unrepresented.<sup>190</sup> That danger is omnipresent in almost all the identified policy paradigms. Those paradigms hold the potential to metamorphose states and/or experts as the ones that are solely entitled to speak on behalf of future generations on a top-down basis with respect to the protection of cultural heritage. Local communities and Indigenous Peoples are too often neglected.

Making decisions for tomorrow's generations from a legitimacy point of view hinges on assumptions that might be equally problematic. Attempting to predict the tastes and priorities of future generations in cultural heritage is not an easy enterprise. The danger of imposing a majoritarian take on contemporary tastes in a rather paternalistic and neocolonial way is ever-present since taste in cultural heritage is not the linear process that conservationist thinking envisions it to be.<sup>191</sup> One needs to look no further than all the case law and policy options considered where there is no genuine discussion about whether current generations are entitled to do so in the first place. Exerting a chilling effect on cultural heritage, the latter denotes any acts, practices, or even silences that freeze or otherwise cool once lively cultural heritage offering a fragment of it, frozen in time for a never-arriving posterity. Conserved in the future generations' refrigerator, the chilling effect does not allow a single piece of cultural heritage to perish, supposedly keeping it safe

<sup>187</sup> Holtorf and Bolin 2022, 257.

<sup>188</sup> Agnew 2006, 1.

<sup>189</sup> Smith 2006, 29.

<sup>190</sup> Ibid.

<sup>191</sup> Lelyveld and Taylor 2021, 3.

from the heat of daily decay. Once there, defreezing is seldom an option. Always frozen in custody, death occurs in another sense, nonetheless. By rendering cultural heritage resistant to change, reinterpretation, or even loss the latter loses many if not all of its local meanings and intangible dimensions.<sup>192</sup>

Critical heritage scholars and cultural economists assert that heritage is not something that remains frozen, able to be bequeathed to the generations to come, however. Heritage is, rather, the outcome of constant disruption, negotiation, and evolution.<sup>193</sup> Protection on the contrary entails that certain choices need to be made.<sup>194</sup> What future generations will value might be similar to what contemporary ones admire. But their taste might well be different from today's or even tomorrow's. What was once considered cultural heritage might not qualify anymore. And what was not valued as heritage, by contrast, might amount to cultural heritage at some point in the future. Or that may only partially change and transform.<sup>195</sup>

### *The misappropriation risk of the discourse of future generations*

The discourse of future generations in international cultural heritage law runs the danger of being blamed for its misappropriation risk. The restitution of colonial cultural objects is an illustrative example. Dismissals of restitution claims of colonial loot more often than not are grounded on arguments that promote “Encyclopedic” and/or “Universal Museums.”<sup>196</sup> Characterizing cultural heritage that has been acquired under questionable means with the pretext that it needs to be preserved for future generations is a comfortable veil for the circumstances under which such objects had originally been removed, incorporated into a new museological context, and a further reason why the status quo shall be retained. For example, Cuno's futurist stewardship defense can be summarized as saying yes, we are aware of the dubious circumstances under which certain objects ended up in our collection but still we hold them for the benefit of future generations.<sup>197</sup> Such museums occasionally employ this discourse to defend their collections. For example, the responsibility of the British Museum's trustees to safeguard “and care of the collection for current and future generations” is a vivid example.<sup>198</sup>

Fortunately, the potential indeterminant use of the language of future generations has explicitly been recognized from, at least, the 2021 Guidelines for German Museums: Care of Collections from Colonial Contexts. The Guidelines emphasize the relationship between the invocation of the discourse of future generations and colonial looting. They underline in particular that “[c]olonial ownership appeared to be a necessity and a duty to future generations.”<sup>199</sup> Appropriation of cultural heritage from overseas territories was considered to equate to the benefit of future generations. While retaining their supposed anonymity, the notion of future generations has been instrumentalized in a manner such as to legitimize the colonial exploitation of “Other's” cultural heritage. Masquerading as innocent, universal, and homogenous, the language of future generations was none of these. Displaying a universalist aura future generations' discourse has been deployed to serve the colonial

<sup>192</sup> Smith 2007, 164.

<sup>193</sup> Loulanski 2006, 216.

<sup>194</sup> Harrison 2013, 202; Peacock 1995, 209–210.

<sup>195</sup> For Holtorf and Högberg this uncertainty can be tackled by constantly revising and getting prepared for different and divergent future scenarios – Holtorf and Högberg 2015, n. 9, 520.

<sup>196</sup> Cuno 2011.

<sup>197</sup> Cuno 2001, 195.

<sup>198</sup> Principle 2 of the British Museum, Governance Principles & Procedures, June 2022, [https://www.britishmuseum.org/sites/default/files/2022-07/The\\_British\\_Museum\\_Governance\\_Principles\\_Procedures\\_June\\_2022.pdf](https://www.britishmuseum.org/sites/default/files/2022-07/The_British_Museum_Governance_Principles_Procedures_June_2022.pdf) (accessed 25 July 2024).

<sup>199</sup> Deutsches Museums Bund 2021, 99.

present and colonial particularistic. By remaining rather amorphous, the terminology could be bent and twisted each time based on European colonial powers' desires. Not accidentally though (the purported benefit for), these generations "happened" to be synonymous with a small circle of European White Christian "civilized" ones.

To name but one example, consider the case of the Congress of Vienna (1815). Intervening against the potential retention of Napoleonic loot by France, Lord Viscount Castlereagh (1769-1822) advanced the argument that keeping plundered cultural treasures would cause intergenerational harm.<sup>200</sup> Although acknowledging cultural heritage loss, intergenerational character sensitivities like these were not equally present for the looting occurring outside Europe. Egypt's loss of the Rosetta Stone illustrates the point well. When referring to the harm inflicted on future generations from the loss of cultural heritage voices within the circles of the Congress of Vienna, they did not refer to Egyptians. As a solely European trait, intergenerational harm stopped at the borders of "civilized" Europe. Supposedly unable to be harmed intergenerationally from the loss of their cultural heritage, like the Europeans return of the Rosetta Stone to Egypt, did not follow.<sup>201</sup> Rather, Europe's future generations became the rest of the world's future generations. Today's denial of intergenerational responsibility by former colonial powers to return colonial loot continues ostensibly long-gone colonial patterns. This was not always the case. An interesting counter-hegemonic use in the aftermath of World War II coming from the then-Belgian Congo offers a glimpse of the discourse's potential to be employed in the opposite direction. A letter from the Governor General of the Belgian Congo, addressed to the Minister of Colonies in 1945, opposes the removal of cultural objects from the colony in the name of future generations' interests, stating, "the Government's duty towards future generations is to prohibit the export of unique pieces. They are part of the Colony's heritage and we are responsible for them as guardians."<sup>202</sup> Yet, that line of argument could lose much of its critical edge since it is the interests of the colonial powers that are being protected, not necessarily those of the local inhabitants. Newly independent nations following the colonial era (counter)employed the language of future generations in the protection of cultural heritage as well. Consider El Salvador's legislation of 1870, having as its aim to keep alive the nation's cultural treasures from Lethe's forces, not only for the people of today but equally for those of tomorrow. In establishing a national library, El Salvador's legislation proclaimed that "all the productions of human ingenuity in letters are preserved for the service of the public, and published for the service of the following [generations]."<sup>203</sup>

### *The neglect of intra-generational concerns*

A final concern closely related to the chilling effect of the discourse has to do with intra-generational concerns. In pursuing the "forest," the safeguard of cultural heritage for the interests of future generations, we may lose sight of the "tree" and the interests of present generations.<sup>204</sup> A desire to preserve cultural heritage for the benefit of future generations at any cost in its most extreme manifestation might lead us to become nothing less but a heritage's slave. Enslaving the mind the discourse of future generations might distract us from posing difficult yet necessary questions of today related inter alia to politics, (in)equality, race, gender, class, and social justice.

<sup>200</sup> Stahn 2023, 457.

<sup>201</sup> Ibid., 26.

<sup>202</sup> Sanger 2022, 142–143.

<sup>203</sup> Recital of the Preamble of the Executive Decree on the Foundation of the National Library of El Salvador (1870).

<sup>204</sup> Ndlovu 2019, 295–296.



Future generations' language does not question, for instance, what was left to present generations from the colonial past to pass on to future generations.<sup>205</sup> Consider the example of the 11 Ethiopian tabots now housed in the British Museum. Looted during the 1868 Abyssinian Expedition, these religious objects representing the Ark of the Covenant, made of wood and stone, ended in the possession of the British Museum. So sacred are they considered to be that they are stored down in the heart of the museum, supposedly wrapped up in cloth. No one but Ethiopian Orthodox priests are entitled to access, have a look at, and interact with them.<sup>206</sup> Besides their physical, yet at the time invisible, presence in the British Museum, the 11 Ethiopian tabots serve no specific function since they are unsuitable for display, access, and study.<sup>207</sup> That led certain legal voices to suggest that the 11 Ethiopian tabots would neatly fall against the presumption of deaccession under the exceptions of Section 5 (1) (c) of the 1963 British Museum Act as "unfit to be retained" as well as Sections 15 and 16 of the new 2022 Charities Act that ultimately did not enter into force.<sup>208</sup>

A rather different picture emerges from Ethiopia, however. Tabots are not destined to spend their lives within museums' quarters. Conversely, churches maintain a sacred character because of the tabots' presence. In 2019 the Ethiopian Government inscribed Timket, or the Ethiopian Epiphany, on the Representative List of the Intangible Cultural Heritage of Humanity. Taking place on the 19<sup>th</sup> of January of each year, this ceremony counts amongst the rare occasions in which tabots leave the church still wrapped in colorful cloth, and transferred on Ethiopian Orthodox priests' heads to rivers or pools in commemoration of Jesus' baptism by John, accompanied by religious hymns and dances. The ceremony lasts the whole night and ends with the return of the tabot to its church the day after.<sup>209</sup> The British Museum's trustees have rejected the latest request for their restitution discussing nothing else but a loan. Yet holding these sacred objects of a living faith in a storeroom for the Ethiopian side can be perceived as the equivalent of "keeping living bodies in graveyards."<sup>210</sup> Seen in this light, it is perhaps time to pause for a moment and (re)think whose generations' interests the British Museum's trustees really serve. Is the British Museum or other self-proclaimed Olympian institutions best placed to determine what is best for future generations?

## Conclusion

This article has sought to shed light on how the discourse of future generations in the context of international cultural heritage law is unfurled. In doing so, this article intervenes in the existing literature in a threefold way. Firstly, it demonstrated how the concept of future generations is one of the most powerful ideas in the lexicon of international cultural heritage law. Claims for the protection of cultural heritage during armed conflict, restitution of colonial cultural objects, and Indigenous Peoples' cultural rights go hand-in-hand with arguments about the protection of cultural heritage for the benefit of future generations. That has been made evident by scrutinizing closely the shifts in terminology as well as the content of relevant treaty law and soft law. The comprehensive exposition of domestic law at the same time reveals that gradually, yet steadily, future generations language gains

<sup>205</sup> Labadi 2013, 100.

<sup>206</sup> Heavens 2023, 239.

<sup>207</sup> House of Lords, "British Museum: Ethiopian Sacred Altar Tablets," Volume 820, 30 March 2022, Columns 1603–1604.

<sup>208</sup> Herman 2022, 215.

<sup>209</sup> Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Decision 14.COM 10. b.11 (14<sup>th</sup> Session, LHE/19/14.COM/Decisions, 09–14 December 2019).

<sup>210</sup> Woldeyes 2020.

currency within domestic legislation. Judicial proceedings, by contrast, come with varying shades of success. The ways in which such interests have been considered, or could be taken into account within international cultural heritage policy have been sketched out, spanning from the representation paradigm through an Ombudsman for Future Generations to the liberalization of locus standi and cultural heritage impact assessment procedures.

At a second level, three principal concerns have been identified and reviewed that contribute to the rather ambivalent nature of the discourse of future generations in international cultural heritage law and policy. These twist around the discourse's chilling effect on cultural heritage, its misappropriation risk, as well as the potential neglect for intra-generational interests with respect to the protection of cultural heritage. Finally, when certain queries are put on the table about the definition and content of the protection of cultural heritage for the benefit of future generations, no wealthy harvest arises. International cultural heritage's legal response has not yet reached the level to address certain questions in a more crystallized manner. Uncertainty surrounds future generations' exact contours. Rather, this uncertainty leads to the conclusion that international cultural heritage law remains steps away from providing a clear definition as well as content to the term of future generations. Implementation is more easily pronounced than done in practice most of the time. This is, however, not to downplay their significance nor to suggest that they are devoid of legal importance. The 2023 Maastricht Principles might prove otherwise: being a work very much in progress, further developments might be expected in the future.

To sum up, this article started with a question. The conclusion ends in the same way. Terminologically familiar yet in substance lesser known, universalist but at the same time prone to national and local interests, mostly vague but at times more specific the precise definition and contours for which future generations cultural heritage is to be protected and how this will effectively be accomplished remains still elusive for international cultural heritage law. It is hoped, nonetheless, that this paper has made a humble intellectual endeavor toward discourse's better understanding.

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## Bibliography

- Agnew, Neville. 2006. "Introduction." In *Of the Past, for the Future: Integrating Archaeology and Conservation*, edited by N. Agnew and J. Bridgland, 1–4. Los Angeles: Getty Conservation Institute.
- Anon. 1940. "Comparative Legislation and International Law in the Field of Art and Archaeology" *Bulletin of Intellectual Co-operation* 7–8: 345.
- Aykan, Bahar. 2018. "Saving Hasankeyf: Limits and Possibilities of International Human Rights Law." *International Journal of Cultural Property* 25, no. 1: 11–34.
- Besterman, Tristram. 2011. "Cultural Equity in the Sustainable Museum." In *The Routledge Companion to Museum Ethics*, edited by J. Marstine, 239–55. Abingdon-New York: Routledge.
- Blake, Janet. 2000. "On Defining the Cultural Heritage." *International & Comparative Law Quarterly* 49, no. 1: 61–85.
- . 2015. *International Cultural Heritage Law*. Oxford: Oxford University Press.
- Brown Weiss, Edith. 1989. *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*. New York: Transnational Publishers, Inc.
- . 1992. "In Fairness to Future Generations and Sustainable Development." *American University Journal of International Law and Policy* 8, no. 1: 19–26.
- Claros, Roberto. 2019. "Striking a Balance Between the Protection of Foreign Investment and the Safeguard of Cultural Heritage in International Investment Agreements: Can General Exceptions Make a Difference?." In

- Intergenerational Equity: Environmental and Cultural Concerns*, edited by T. Cottier, S. Lalani and C. Siziba, 192–207. Leiden-Boston: Brill Nijhoff.
- Cuno, James. 2001. "US Art Museums and Cultural Property." *Connecticut Journal of International Law* 16, no. 2: 189–196.
- . 2011. *Museums Matter: In Praise of the Encyclopedic Museum*. Chicago: University of Chicago Press.
- Deutsches Museums Bund. 2021. Guidelines for German Museums: Care of Collections from Colonial Contexts. 3 ed. Berlin: German Museums Association. <https://www.museumbund.de/wp-content/uploads/2021/03/mb-leitfa-den-en-web.pdf> (accessed 25 July 2024).
- Forrest, Craig. 2010. *International Law and the Protection of Cultural Heritage*. Abingdon-New York: Routledge.
- Harrison, Rodney. 2013. *Heritage: Critical Approaches*. Abingdon-New York: Routledge.
- Harrison, Rodney, Caitlin DeSilvey, Cornelius Holtorf, Sharon Macdonald, Nadia Bartolini, Esther Breithoff, Harald Fredheim, Antony Lyons, Sarah May, Jennie Morgan, Sefryn Penrose, Anders Högborg, and Gustav Wollentz. 2020. *Heritage Futures: Comparative Approaches to Natural and Cultural Heritage Practices*. London: UCL Press.
- Heavens, Andrew. 2023. *The Prince and the Plunder: How Britain Took One Small Boy and Hundreds of Treasures from Ethiopia*. Cheltenham: The History Press.
- "Heritage." The Oxford English Dictionary (OED) Online, Oxford University Press, [https://www.oed.com/dictionary/heritage\\_n?tab=meaning\\_and\\_use&tl=true](https://www.oed.com/dictionary/heritage_n?tab=meaning_and_use&tl=true) (accessed 25 July 2024).
- Herman, Alexander. 2022. "Museums, Restitution and the New Charities Act." *Art Antiquity and Law* 27, no. 3: 193–216.
- Högborg, Anders, Cornelius Holtorf, Sarah May, Gustav Wollentz. 2017. "No Future in Archaeological Heritage Management?." *World Archaeology* 49, no. 5: 639–647.
- Holtorf, Cornelius, and Anders Högborg. 2014. "Communicating with Future Generations: What are the Benefits of Preserving for Future Generations? Nuclear Power and Beyond." *The European Journal of Post-Classical Archaeologies* 4: 315–330.
- . 2015. "Contemporary Heritage and the Future." In *The Palgrave Handbook of Contemporary Heritage Research*, edited by E. Waterton and S. Watson, 509–523. London: Palgrave Macmillan.
- . eds. 2021. *Cultural Heritage and the Future*. Abingdon-New York: Routledge.
- Holtorf, Cornelius, and Annalisa Bolin. 2022. "Heritage Futures: A Conversation." *Journal of Cultural Heritage Management and Sustainable Development* 14, no. 2: 252–265.
- Ingold, Tim. 2019. "Art and Anthropology for a Sustainable World." *Journal of the Royal Anthropological Institute* 25, no. 4: 659–675.
- Karl, Raimund. 2018. "Against Retention In Situ: How to Best Preserve Archaeology for 'Future Generations'?" *Archäologische Denkmalpflege* 21–51.
- Labadi, Sophia. 2013. *UNESCO, Cultural Heritage, and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions*. United States of America: AltaMira Press.
- Lelyveld, MaryJo, and Joel Taylor. 2021. "What Do We Talk About When We Talk About 'Future Generations'." In *Transcending Boundaries: Integrated Approaches to Conservation. ICOM-CC 19<sup>th</sup> Triennial Conference Preprints, Beijing, 17-21 May 2021*, edited by J. Bridgland, 1–10. Paris: International Council of Museums.
- Lixinski, Lucas. 2014. "Heritage for Whom? Individuals' and Communities' Roles in International Cultural Heritage Law." In *International Law for Common Goods: Normative Perspectives on Human Rights, Culture and Nature*, edited by F. Lenzerini and A. F. Vrdoljak, 193–213. Oxford: Hart Publishing.
- . 2019. *International Heritage Law for Communities: Exclusion and Re-Imagination*. Oxford: Oxford University Press.
- Loulanski, Tolina. 2006. "Revising the Concept for Cultural Heritage: The Argument for a Functional Approach." *International Journal of Cultural Property* 13, no. 2: 207–233.
- Lowenthal, David. 2006. "Stewarding the Future." *Norwegian Journal of Geography* 60, no. 1: 15–23.
- Mejía-Lemos, Diego. 2019. "The 'Quimbaya Treasure,' Judgment SU-649/17." *American Journal of International Law* 113, no. 1: 122–130.
- Merriman, Nick. 2008. "Museum Collections and Sustainability." *Cultural Trends* 17, no. 1: 3–21.
- Michaels, Ralf. 2019. "The Functional Method of Comparative Law." In *The Oxford Handbook of Comparative Law*. 2 ed, edited by M. Reimann and R. Zimmermann, 345–389. Oxford: Oxford University Press.
- Ndlovu, Ndrukuyakhe. 2019. "Debating Access to Internationally Acclaimed Rock Art Sites: Has the 'Future Generation' Been Born?" *Conservation and Management of Archaeological Sites* 21, no. 5–6: 293–309.
- Peacock, Alan. 1995. "The Political Economy of Heritage." *Proceedings of the British Academy* 87: 189–243.
- Prott, Lyndel V., and Patrick J. O'Keefe. 1992. "'Cultural Heritage' or 'Cultural Property'?" *International Journal of Cultural Property* 1, no. 2: 307–320.
- Roodt, Christa. 2013. "Restitution of Art and Cultural Objects and Its Limits." *Comparative and International Law Journal of Southern Africa* 46, no. 3: 286–307.
- . 2015. *Private International Law, Art and Cultural Heritage*. Cheltenham: Edward Elgar Publishing.

- Sanger, Placide Mumbembe. 2022. "A Long-Term Perspective on the Issue of the Return of Congolese Cultural Objects: Entangled Relations Between Kinshasa and Tervuren (1930-80)." In *Contested Holdings: Museum Collections in Political, Epistemic and Artistic Processes of Return*, edited by F. Bodenstern, D. Otoiu and E. M. Troelenberg, 139–162. New York: Berghahn Books.
- Smith, Laurajane. 2006. *Uses of Heritage*. London: Routledge.
- . 2007. "Empty Gestures? Heritage and the Politics of Recognition." In *Cultural Heritage and Human Rights*, edited by H. Silverman and D. F. Ruggles, 159–171. New York: Springer.
- Spennemann, Dirk H. R. 2007. "The Futurist Stance of Historical Societies: An Analysis of Position Statements." *International Journal of Arts Management* 9, no. 2: 4–15.
- Stahn, Carsten. 2023. *Confronting Colonial Objects: Histories, Legacies, and Access to Culture*. Oxford: Oxford University Press.
- Taylor, Joel. 2013. "Intergenerational Justice: A Useful Perspective for Heritage Conservation." *Conservation, Exposition, Restauration d'Objets d'Art (CeROArt)* (Online), <https://journals.openedition.org/ceroart/3510> (accessed 25 July 2024).
- Throsby, David. 1995. "Culture, Economics and Sustainability." *Journal of Cultural Economics* 19: 199–206.
- . 2005. "On the Sustainability of Cultural Capital." *Macquarie University Department of Economics Research Paper No. 10/2005*, Sydney.
- . 2010. *The Economics of Cultural Policy*. Cambridge: Cambridge University Press.
- Throsby, David, and Ekaterina Petetskaya. 2016. "Sustainability Concepts in Indigenous and Non-Indigenous Cultures." *International Journal of Cultural Property* 23, no. 2: 119–140.
- Throsby, David. 2017. "Culturally Sustainable Development: Theoretical Concept or Practical Policy Instrument?." *International Journal of Cultural Policy* 23, no. 2: 133–147.
- Vrdoljak, Ana Filipa, and Francesco Francioni. 2020. "Introduction." In *The Oxford Handbook of International Cultural Heritage Law*, edited by F. Francioni and A. F. Vrdoljak, 1–10. Oxford: Oxford University Press.
- Wewerinke-Singh, Margaretha, Ayan Garg, and Shubhangi Agarwalla. 2023. "In Defence of Future Generations: A Reply to Stephen Humphreys." *European Journal of International Law* 20, no. 20, 1–17.
- Woldeyes, Yirga Gelaw. 2020. "Holding Living Bodies in Graveyards": The Violence of Keeping Ethiopian Manuscripts in Western Institutions." *Media/Culture Journal* 23, no. 2: 1–14.
- Woodhead, Charlotte. 2023. *Caring for Cultural Heritage: An Integrated Approach to Legal and Ethical Initiatives in the United Kingdom*. Cambridge: Cambridge University Press.
- World Commission on Culture and Development (WCCD). 1995. *Our Creative Diversity: Report of the World Commission on Culture and Development*. Paris: UNESCO.
- World Commission on Environment and Development (WCED). 1987. *Our Common Future: Report of the World Commission on Environment and Development*. Oxford: Oxford University Press.

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