

Transboundary European Heritage - a Topic for UNESCO Associated Schools

Cultural Heritage and Human Rights

Prof. Dr. Klaus Hübner, Honorary Chairman of the Committee for UNESCO's Work Berlin e.V.

Dear Colleagues:

Thank you very much for your kind invitation. The suggested topic is a rather difficult one to be dealt with within twenty minutes. It contains legal, educational-pedagogical and political dimensions which, given the time constraints, cannot be fully integrated under the umbrella of "cultural rights as human rights".

In addition, I am confronted with the problem of addressing more or less theoretical issues to be combined with concrete questions and actions which happened or might happen in reality. My presentation must often remain at a rather abstract level although I know that you of the education sector are confronted with the complex task of translating these issues into school practice.

Let me start with some remarks concerning the legal dimensions.

Everyone refers to the **Universal Declaration of Human Rights** adopted by the UN General Assembly on 10 December 1948: Article 27 states in paragraph 1: *"Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits"*. Everyone refers to this Declaration which is, although no convention, generally accepted as customs law.

Cultural rights are, therefore, an integral part of human rights and cannot be separated from human rights. They include the rights of individuals and communities to enjoy and make use of cultural heritage and cultural expressions. Therefore, referring to UNESCO World Heritage sites implies much more than a simple reference to buildings made of stones.

Kamira Bennoune, **UN Special Rapporteur in the Fields of Cultural Rights**, said in her first thematic report which she presented on 27 October 2015 to the UN General Assembly: *"Cultural heritage is significant in the present, both as a message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension"*.

Another declaration has been elaborated and adopted by UNESCO, namely the **Declaration of the Principles of International Cultural Co-operation** (proclaimed by the 14th General Conference of UNESCO on 4 November 1966).

Article I consists of three paragraphs which should be quoted here: *"1. Each culture has a dignity and value which must be respected and preserved.*

2. Every people has the right and the duty to develop its culture.

3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind".

Transboundary European Heritage - a Topic for UNESCO Associated Schools

And this Declaration ends with Article XI, paragraph 2, claiming that *“The principles of this Declaration shall be applied with due regard for human rights and fundamental freedoms”*.

Another UNESCO Declaration concerns the destruction of cultural heritage which reaffirms the commitment to fight against the *intentional destruction* of cultural heritage in any form (**UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage**, adopted on 17 October 2003 by the 32nd General Conference).

I should also mention the **UNESCO 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Protocols thereto**. The Hague Convention requires States Parties to respect cultural property and to refrain from any hostility directed against it.

Also important to note is the **UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property** adopted on 14 November 1970. In November 2020, the 50th anniversary of the Convention will take place in Berlin. This event will offer the opportunity to discuss ways of strengthening the implementation, efficiency and visibility of the Convention.

I could draw your attention to other declarations, conventions and treaties adopted by UNESCO and other international organizations at the global and/or regional level, but I will stop here and move to two other legal instruments dealing with cultural rights which have a legally binding effect once adopted by sovereign states which then become States Parties with legal obligations.

At the UN level, the **International Covenant on Economic, Social and Cultural Rights** of 16 December 1966 which entered into force on 3 January 1976 is such a case. The States Parties must deliver states reports in regular intervals which are discussed in public and accompanied by so-called shadow reports produced by NGOs. In 1993, the **Committee on Economic, Social and Cultural Rights**, which is the responsible treaty body, adopted detailed guidelines for NGOs active in those three fields - local, national and international.

The Covenant says in Article 15, paragraph 1: *“The States Parties to the present Covenant recognize the right of everyone (a) to take part in cultural life”* and *“(c) to enjoy the benefits of scientific progress and its applications”*.

Now I intend to have a closer look into the provisions of the **Convention Concerning the Protection of the World Cultural and Natural Heritage**, in brief: **World Heritage Convention** as adopted by the 17th UNESCO General Conference on 16 November 1972.

Interesting to note is that the text of the Preamble contains right at the beginning a number of some major justifications for the adoption and ratification of the World Heritage Convention. The key notion is actually linked to the issue of protection because the **Preamble** starts as follows: *“Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction”*.

The authors of the Convention distinguished between four types of cases which endanger the survival of cultural heritage goods; to-day we would refer to issues of “sustainability” of cultural heritage –

Transboundary European Heritage - a Topic for UNESCO Associated Schools

a concept which didn't exist at the time of adopting the Convention. Those four kinds mentioned are the following:

- a) The traditional decay over time caused by changing weather and climate conditions; to-day, this is a global problem with increasing difficulties at the national or local level. It is a classical environmental problem confronting all cultural and natural heritage goods around the world;
- b) the damage or destruction caused by social and economic conditions ranging from hunger and poverty to all kinds of so-called modernization activities undertaken under liberalized market conditions without governmental control. This is a problem at the global level closely related to the UN Agenda for Sustainable Development (*"no one should be left behind"*).
- c) the damage or destruction caused by natural disasters such as earthquakes, landslides, climate change, etc. and
- d) the damage, deterioration and destruction caused by human beings such as cultural tourism on the one hand and military conflicts on the other. In the last two cases preventive measures should be envisaged based on joint efforts and international compromises. On the one hand, the situation of Venice is, for instance, a most deplorable case of visible decay. On the other hand, an increase of military conflicts with the involvement of non-state actors at the local and regional level must be observed.

These four types mentioned above must be taken into account when measures will be discussed of how to guarantee the survival of cultural heritage goods in the interest of humankind.

At this stage, it should be mentioned what the authors of the Convention had in mind when talking of heritage sites in danger, namely those *"threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; ...the outbreak or the threat of an armed conflict; ... serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves"* (Article 11, paragraph 4).

We have to keep in mind that the deterioration or disappearance of any item of our cultural heritage also constitutes a harmful loss of the heritage of all the nations of the world. In other words, we have to take for granted that all cultural and natural heritage sites have to be treated as "common goods" or better "global common goods" and that the international community as a whole has the duty to participate in the protection of the UNESCO heritage sites wherever necessary as stated in the Convention.

Allow me to have a look into the legal provisions of the Convention. The following observations can be made:

Article 4 underlines the responsibility of each State Party to recognize *"that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and national heritage....situated on its territory"*. In other words, the State is obliged to do everything possible to this end, *"to the utmost of its own resources"*.

Transboundary European Heritage - a Topic for UNESCO Associated Schools

Also, attention should be paid to Article 27 which underlines the importance of world heritage education and information. The States Parties *“shall endeavour by all appropriate means, in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage...”*.

Finally, let me remind you of recent events when the world community stood by helplessly. Think, for instance, when the Taliban destroyed the Buddhas of Bamiyan, those monumental statues that stood more than 1,500 years in Afghanistan. The world community was also powerless to prevent the “Islamic State” from destroying part of Iraq’s cultural heritage in the city of Nimrud or the 3,000 –year-old Mesopotamian sculptures once held in the Mosul Museum. I also remind you of the brutal demolition of Palmyra and other ancient sites in Syria.

All these cases are examples where non-state actors were involved claiming of being not bound by any legal commitment. In other words, references to the international legislation mentioned above imply that only state actors are responsible after having ratified international conventions.

In the case of non-state actors, action is much more difficult. But I would like to draw your attention to the first prosecution and conviction for acts of destruction of cultural heritage before the **International Criminal Court (ICC)**. Although the crimes were committed against buildings, individuals and communities were harmed by this destruction. The prosecution of the destruction of cultural heritage were influenced by human rights considerations.

The condemnation of nine years in prison of Ahmad Al Faqi Al Madi for the destruction of the Timbuktu mausoleums on 18 September 2015 is an important step in the history of the ICC because it is the first international case with a focus on the destruction of cultural heritage. The ICC ruled that attacks against the historical and religious monuments of Timbuktu amounted to a “war crime” based on Article 8(2)(iv) of the ICC Statute: “ 2. For the purpose of this Statute, “war crimes” means (a) (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.

The Al Mahdi case is, however, a special one which cannot be taken to mean that the destruction of cultural heritage in places such as Syria, Iraq or Yemen will certainly be brought before the ICC. Because (1) evidence was easily solved because videos showing Al Mahdi and others from a jihadist group destroying the mausoleums in Timbuktu were found on the internet. (2) For the first time in the ICC’s history, the defendant made an admission of guilt. And (3) Mali, as a party to the ICC Statute, deferred the situation to the ICC.

In summary, the following points should be made:

- 1) International law in general and the ICC in practice make quite clear that the destruction of cultural heritage can constitute a crime against humanity if it is intentional and widespread or systematic which is often the case.
- 2) This is one of the consequences of the fact that today cultural heritage is a fundamental value – a “common global good” – at all levels, for humankind, States, communities and individuals. Cultural rights are inseparable from human rights.



Transboundary European Heritage - a Topic for UNESCO Associated Schools

- 3) As a consequence, action at the international and national level must be complementary and mutually supportive.
- 4) UNESCO is active to deter looting and smuggling cultural property with the aim of safeguarding the cultural heritage of countries in danger through the establishment of a database of looted artefacts, the training of police forces and customs officers in affected and neighbouring countries.
- 5) UNESCO is not the only international organization involved in the defence of cultural rights as human rights. UN conventions as well as UNESCO ones, the ICC as well as the Security Council should be mentioned in this context at the global level.
- 6) Article 13 of the **International Covenant on Economic, Social and Cultural Rights** which deals with the right of everyone to education mentions that the States Parties *“further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace”*.
- 7) Referring to the **World Heritage Convention** the sustainability of world heritage goods is a complex issue as the mentioning of four different types of potential destruction clearly indicate and demand common action both at the local/national and global level.