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**Intangible Religious Heritage:
UNESCO's Nomination Processes, Uncharted Sides and Legal Issues ***

ABSTRACT: The current article analyzes the inextricable and instrumental link between intangible religious heritage and tangible religious heritage. More specifically, UNESCO's nomination processes are examined in order to investigate the evolution and the approach of national and global institutions to intangible religious heritage. Rituals, architectural techniques of constructions and several UNESCO's nomination dossiers of religious towns are used to shed a light on problematic aspects. Among them, we should wonder if intangible religious heritage underwent a process of political "instrumentalization", "scientificization" and "objectivization": which are the consequences of this institutional activity?

SUMMARY: 1. Introduction - 2. Intangible Heritage and Legal Framework - 3. The National Dimension of UNESCO's Nomination Processes - 4. The Global Dimension of UNESCO's Nomination Processes - 5. Intangible Religious Heritage and Criticalities: Is There a Political Instrumentality? - 6. Architectural Techniques of Construction: Uncharted Aspects and Legal Issues - 7. Architectural Techniques of Construction and UNESCO - 8. Rituals: Uncharted Aspects and Legal Issues - 9. Rituals and UNESCO - 10. Conclusions.

1 - Introduction

Beliefs¹, practices, rituals², mythology³, iconography⁴, music⁵, dance⁶, folklore⁷, and architectural techniques of construction⁸: these are among

* Peer reviewed paper - Contributo sottoposto a valutazione.

¹ T. TSIVOLAS, *Law and Religious Cultural Heritage in Europe*, Springer, NY, 2014.

² C. BROSIUS, K.M. POLIT, *Ritual Heritage and Identity: The Politics of Culture and Performance in a Globalized World*, Routledge, New York, 2020.

³ J. PUHVEL, *Comparative Mythology*, The John Hopkins University Press, Baltimore and London, 1987; W.F. HANSEN, *Classical Mythology: A Guide to the Mythical World of the Greeks and Romans*, Oxford University Press, New York, 2005.



the main manifestations of the religious and cultural spheres of peoples. Throughout the centuries, this immaterial dimension contributed to create exquisite artefacts, objects and monuments that are the tangible prolongment of the sacred value of cultural heritage⁹. Indeed, religiosity and cultural heritage are the engine of this analysis, whose primary aim is to shed a light on the legal and cultural connection between tangible and intangible heritage through the lenses of UNESCO's nomination processes.

Starting from this premise, it is clear that this peculiar branch cannot be understood without considering the cultural context from which both such tangible and intangible inheritances originate¹⁰. On the light of this consideration, it is also clear that the quest should dig more into depth on the relationship between tangible and intangible realities: is it possible to detect profiles of instrumentality between these two legal fields? More specifically, is intangible heritage functional to determine the cultural and political identity of tangible sites in UNESCO's nomination processes? From this point of view, it is essential to consider the path, which is far from immediate, that has led to the development of a legal framework in the field of Intangible Cultural Heritage (ICH) on a national, international and global level.

⁴ **M. JONES-FRANK**, *Iconography and Liturgy*, Chicago, LTP, 1994.

⁵ **O. ANDREICA**, *Music as Cultural Heritage and Novelty*, Cham, Springer, 2022.

⁶ **A. SABIESCU, R.K. CISNEROS, S. WHATLEY**, *Digital Echoes: Spaces for Intangible and Performance-based Cultural Heritage*, London, Springer, 2018.

⁷ **M.D. FOSTER, L. GILMAN**, *UNESCO on the Ground: Local Perspectives on Intangible Cultural Heritage*, Indiana University Press, Bloomington and Indianapolis, 2015.

⁸ **A. WARBURG, W.F. MAINLAND**, *A Lecture on Serpent Ritual*, Journal of the Warburg Institute, Vol. 2, No. 4, 1939, pp. 277-292; **P. CHATZIGRIGORIOU, V. NIKOLAKOPOULOU, T. VAKKAS, S. VOSINAKIS, P. KOUTSABASIS**, *Is Architecture Connected with Intangible Cultural Heritage? Reflections from Architectural Digital Documentation and Interactive Application Design in Three Aegean Islands*, *Heritage*, n. 4, 2021, pp. 664-689 (<https://doi.org/10.3390/heritage4020038>).

⁹ **ICCROM**, *Conservation Studies, Conservation of Living Religious Heritage, Papers from the ICCROM 2003 Forum on Living Religious Heritage: Conserving the Sacred*, 2005.

¹⁰ **F. LANZERINI**, *Intangible Cultural Heritage: The Living Culture of Peoples*, *European Journal of International Law*, Vol. 22, No. 1, 2011, pp. 101-120; **ICCROM**, *Conservation Studies, Conservation of Living Religious Heritage, Papers from the ICCROM 2003 Forum on Living Religious Heritage: Conserving the Sacred*, 2005, p. 94.



2 - Intangible Heritage and Legal Framework

What legal solutions and instruments have been developed throughout the years for the safeguard of immaterial and religious heritage? What is the continuity between the text adopted by international institutions?

At first, religious values found a legal recognition with the adoption of the *Universal Declaration of Human Rights* (1948)¹¹ by the UN General Assembly, whose general scope is the enshrinement of the rights and freedoms of all human beings. The document was a precursor to the debate that, since the '50s, would have raised a conflict of (public) interests related to what would subsequently have fallen into the legal field of intangible cultural heritage. In many countries, these considerations led to reflections on particularly controversial political and cultural issues, and the need to adopt legal instruments in this regard became essential. In particular, all that was part of the debate on religious freedom necessarily entailed important assessments regarding problematic concepts, such as traditional culture and folklore, relationships between inter-ethnic groups, religious groups, minorities, indigenous groups and cultural identities. Indeed, the main purpose of the debate was not only to guarantee autonomous protection to such contexts and cultural forms, but also to eradicate the negative aura that accompanied the approach to *folklore*. The latter was understood at the time as a *subculture of poverty* or as a *popular culture of the lower classes*¹². On the one side, throughout the '60s and '70s, the public interests of Governments in developing countries had been elusive in the field of the protection of folk cultures¹³. On the other side,

¹¹Article 18, Universal Declaration of Human Rights, UNGA, Paris, 1948; G.A. Res. 217a, 71 UN GAOR., 3rd Session, 1st plenary meeting., U.N. Doc. A/810 (December 12, 1948); S. TONOLO, *Religious Values and Conflict of Laws: old problems and new perspectives*, in *Tui Memores: La Dimension culturelle du droit international privé*, I. PRETELLI, G.P. ROMANO, T. ROSSI (éds), Actes de la Journée en l'honneur de Tito Ballarino du 13 juin 2014 à Lausanne et Essais recueillis par ses amis et élèves, Schulthess, Éditions Romandes, 2017, pp. 187-212.

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

¹³ The Author explains that on the one hand, the influence of economic theories of development rejected culture and ethnicity as an important issue for cultural



the position of UNESCO was in support of an anthropological perspective¹⁴, and awareness of the intrinsic values of folklore, historic cultures, religions and identities took hold. This awareness was related to those considerations made by experts, who were aware that cultural heritage could not be limited to the mere protection of its material and tangible attributes¹⁵. Indeed, the fundamental object of the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage*¹⁶ is the conservation of cultural sites, cultural and natural landscapes. The problem was that many elements not falling within the categories designated by the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage* had long been excluded from the UNESCO representative lists and from any legal safeguard. This was the context where a metamorphosis of UNESCO's policy-making processes originated: manifestations of folklore, that can easily include religious manifestations of folklore and traditional religious cultures, were about to obtain a differentiated legal protection with respect to those elements that were not part of the *qui tangi possunt*. It is no coincidence that a major impetus on these topics was launched by developing countries and Far Eastern countries: they have limited tangible inheritances, but they are rich in popular traditions, rituals, folklore, music, dances, and traditions¹⁷.

development and generally supported policies of acculturation, as it was for the case of Latin American countries. On the other hand, the difference of national or ethnic cultures at that time had become consistent part of national liberations movements. In Africa this led to Julius Nyerere's policies of support of African's cultures and languages, or Leopold Senghor's, Aimé Césaire and others' engagement with negritude as an international culture's movement. Yet another phenomenon of cultural politics was the use of the argument of respect of cultures by the white Afrikaans governors in South Africa as the ideological underpinning for their policies of apartheid, L. ARIZPE, *The Cultural Politics*, cit.; J. BLAKE, *Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention: Honeymoon Period or the Seven-Year Itch*, *International Journal of Cultural Property*, No. 21, 2014.

¹⁴ The position held by UNESCO was in opposition with the idea of the liberal economic models of development, that supported the idea that cultures had to give way to modernisation, in terms of technological advancement and mobility of labour.

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

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

¹⁷ In this connection, the position taken by the Bolivian Government immediately after the adoption of the 1972 Convention is relevant. It filed a request for the enactment of an internationally binding legal instrument intended to safeguard folklore and which should



For these reasons, UNESCO adopted the *Recommendation on the Safeguarding of Traditional Culture and Folklore* (1989)¹⁸. This act opens the way to the global legal safeguard of what would be later classified as intangible heritage. More specifically, the relevance of folklore is enclosed in the following formula, describing it as:

“The totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its *cultural and social identity*; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, *language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts*”¹⁹.

First, the text certainly represents the first specific global legal instrument on folklore and traditional culture adopted by the General Conference of UNESCO: it is indeed an effort to safeguard the immaterial portion of culture. Second, the *Recommendation on the Safeguarding of Traditional Culture and Folklore* establishes a set of principles and guidelines for the identification, conservation, preservation, dissemination, and protection of folklore: in this sense, it is an embryonic effort to formalize those institutional mechanisms related to the protection of the immaterial culture.

A further and ultimate step for the safeguard of immaterial heritage is represented by the enactment of the *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003)²⁰, whose main scope is to i) safeguarding the intangible cultural heritage; ii) ensuring the respect for the intangible cultural heritage of the communities, groups and individuals concerned; iii) raising awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual

have been added in the form of a Protocol to the Universal Copyright Convention of 1952, **C.A. d’ALESSANDRO**, *Il Patrimonio Culturale Immateriale e la Convenzione UNESCO del 2003: uno Studio di Diritto Comparato*, CEDAM, Milano, 2021, p. 7; **J. BLAKE**, *Elaboration d’un nouvel instrument pour la sauvegarde du patrimoine culturel immatériel. Elements de réflexion*, UNESCO, 2001, p. 21.

¹⁸ UNESCO, *Recommendation on the Safeguarding of Traditional Culture and Folklore*, 15 November, Paris, 1989.

¹⁹ UNESCO, *Records of the General Conference*, 25th session, Paris, 17 October to 16 November 1989, v. 1: *Recommendation on the Safeguarding of Traditional Culture and Folklore*, (A. Definition of Folklore), 15 November 1989.

²⁰ UNESCO, *Convention for the Safeguarding of Intangible Cultural Heritage*, Paris, 17 October 2003.



appreciation thereof; iv) providing for international cooperation and assistance²¹. The Convention entered into force in 2006 and it is still the most successful instrument in terms of ratifying States within the international community²². It immediately becomes clear that the spirit of the Convention was to create an inclusive and exhaustive definition of Intangible Cultural Heritage interdependent on the notion of cultural and natural heritage. It is also noted that the aim of UNESCO's law-making bodies was to extend as far as possible the legal framework dedicated to the protection of those aspects of cultural heritage that, although not endowed with corporality as much as monuments, buildings or natural sites, stand out as the main factor of cultural diversity and are placed to guarantee sustainable development²³.

Hence, what is intangible heritage in the current global legal framework?

According to Article 2 of the 2003 Convention immaterial heritage consists, *inter alia*, of:

“the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage is transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights

²¹ Article 1, UNESCO, *Convention for the Safeguarding of Intangible Cultural Heritage*, Paris, 17 October 2003.

²² L. LIXINSKI, *Selecting Heritage: the Interplay of Art, Politics and Identity*, *The European Journal of International Law*, pp. 81-100; J. BLAKE, *On Developing a New International Convention for Safeguarding Intangible Cultural Heritage*, *Art Antiquity and Law*, Vol. 8, No. 4, 2003, pp. 381-412; L. ARIZPE, *The Cultural Politics*, cit., pp. 361-388; J. BLAKE, *Introduction to the Draft Preliminary Study on the Advisability of Developing a Standard-Setting Instrument for the Protection of Intangible Cultural Heritage*, *Intangible Cultural Heritage, Working Definitions*, UNESCO, International Round Table, Piedmont, Italy, 14 to 17 March 2001.

²³ Preamble to the Convention for the Safeguarding of the Intangible Cultural Heritage, 2003; P.L. PETRILLO, *The Legal Protection of the Intangible Cultural Heritage: A Comparative Perspective*, Springer, Switzerland, 2019; D. FAIRCHILD RUGGLES, H. SILVERMANN, *Intangible Heritage Embodied*, Springer, New York, 2009.



instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development”²⁴.

Most importantly and differently from the 1989 *Recommendation on the Safeguarding of Traditional Culture and Folklore*, Oral traditions and expressions, language as a vehicle of the intangible cultural heritage, performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe and traditional craftsmanship are the main domain where the intangible cultural heritage manifest²⁵.

After describing the content of those definitions dealing with the evolution from folklore to intangible heritage, it is appropriate to raise some questions.

What is the line of continuity between the 1989 *Recommendation on the Safeguarding of Traditional Culture and Folklore* and the 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage*? More into depth, since folklore and intangible religious heritage should be analysed in a broader context, what is the connection between folklore, intangible religious heritage and tangible religious heritage?

In order to answer these questions, it is useful to clarify some aspects that diversify and connect the 1989 *Recommendation on the Safeguarding of Traditional Culture and Folklore* and the 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage*.

First, the forms of manifestation of folklore and traditional culture are amended in 2003. With the enactment of the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage* they are deeply revisited in content and terminology: folklore and traditional culture are re-named to Intangible Cultural Heritage. On the flip side, the scope of the 1989 Recommendation was said to have its constraints, because the definition of folklore was more restrictive than that of intangible cultural heritage introduced by the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage*. The terminological and conceptual reform implies that folklore, traditional and popular cultures are replaced and brought back under the nomenclature of intangible cultural heritage. It follows that the protection of expressions such as architectural construction techniques, literature, music, dance, games, mythology, and customs must be indirectly

²⁴ Article 2, UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris, 2003.

²⁵ Article 2.2, UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris, 2003.



extracted from the current legislative formula. The latter includes oral traditions and expressions (language), performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe and traditional craftsmanship as the main domain where the intangible cultural heritage manifest. This means that the legal protection introduced by the 2003 text does not include all the elements expressly mentioned in the 1989 Recommendation. Hence, although folklore is implicitly part of the domain of intangible heritage, the concept introduced by the 2003 Convention is of a slightly different nature, since folklore and its religious manifestations are not *per se* protected as it was the case of the 1989 Recommendation. These elements are currently protected inasmuch as they are part of those practices, representations, expressions, knowledge, and skills used by communities and groups to create their own distinctive heritage. This was one critical issue of the 2003 Convention, and mainly, the idea that immaterial heritage refers not to the cultural objects itself, whether religious or secular, but rather to the social and cultural processes throughout which these objects become material products.

Second, to a deductive analysis, the connection between folklore, intangible religious heritage and tangible religious heritage can be indirectly extracted both from the 1989 Recommendation and the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage* and it certainly constitutes a necessary premise of the whole reasoning. The correlation between folklore and intangible religious heritage is at an embryonic stage in terms of legal safeguard and framework in the 1989 Convention. Folklore was identified as tradition-based creations expressed through literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts. In 2003, intangible heritage is qualified as oral traditions and expressions (language), performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe and traditional craftsmanship. In order to answer the question on the connection between folklore, intangible religious heritage and tangible religious heritage, it is appropriate to consider that all these immaterial manifestations can have an *intrinsic religious nature*, and this is what precisely establishes a connection between folklore, intangible religious heritage and tangible religious heritage: the intrinsic religious value of these immaterial manifestations is the line of continuity and the common ground. Indeed, the range of possible contexts where immaterial manifestations are related to religious heritage or sacred spaces is almost all-encompassing. It might include complexes of buildings, single edifices, sites of archaeological or historical significance combined with their



religious meaning, objects which have a religious relevance in religious celebrations, ancient works of art, ethnographic items, landscapes and topographical features, natural features endowed with a special cultural, artistic and/or architectural significance. As previously stated, the core of the connection between folklore, intangible religious heritage and tangible religious heritage is precisely the attribute of the *religiosity* of the immaterial manifestations. This distinctive and precious quality that raises cultural and political sensitivity, is indeed easily found in a wide variety of religious contexts, such as churches, monasteries, shrines, sanctuaries, mosques, synagogues, temples, sacred landscapes, sacred groves, and other landscape features. As a consequence, all these places are contexts where literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts manifest as intangible heritage, while shaping the vitality of tangible heritage and crystallizing on it throughout the centuries²⁶.

Third, an institutionalized safeguard to immaterial elements, distinct from the field of tangible heritage, was perceived as necessary. For this reason, the content of the Recommendation was still limited in scope. Indeed, the 1989 Recommendation was a guideline for States, and had no binding legal force: it was a soft law piece, intended to encourage research and study of these cultural forms, emphasizing their protection as aspects of intellectual property, rather than as intangible rights with their own autonomy²⁷. In this sense, the shift from folklore to intangible heritage witnesses the institutionalization of the safeguard offered to immaterial heritage, with political implications for the introduction of this new system of knowledge and safeguard²⁸.

²⁶ The General Conference of UNESCO, meeting in Paris from 17 October to 16 November 1989, adopted the Recommendation on the Safeguarding of Traditional Culture and Folklore, considering that folklore forms part of the universal heritage of humanity, and that it is a powerful mean to assert peoples' cultural identity, stressing on its relevance from the economic, cultural and political point of view; UNESCO, Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989, v. 1: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989; T. TSIVOLAS, *Law and Religious Cultural Heritage*, cit.; T. TSIVOLAS, *The Legal Foundations of Religious Cultural Heritage*, Religions, Vol. 10, no. 283, 2019.

²⁷ B. UBERTAZZI, *Intangible Cultural Heritage, Sustainable Development and Intellectual Property*, Munich Studies on Innovation and Competition, Vol. 18, 2022.

²⁸ J. BLAKE, *From Traditional Culture and Folklore to Intangible Cultural Heritage: the Evolution of a Treaty*, Santander Art and Culture Law Review, no. 2/3, 2017.



The following paragraphs deal with the explanation of this process. It is relevant to clarify that such an institutional decisional-making procedure has a national and a global dimension: the mechanisms created by UNESCO culminate in the nomination of the most *representative* pieces of intangible cultural heritage. Since the content of these decisions has a vulnerable and tender core represented by *religiosity* and immaterial elements, they inevitably end up shaking the political, cultural and religious sensitivity of institutions and people.

3 - The National Dimension of UNESCO's Nomination Processes

The process of recognition of representative values of a country starts from the national level: in this regard, the administrative mechanisms and tools of recognition and listing of intangible heritage are the key issues to be considered.

UNESCO has indeed replicated the World Heritage List and the List of the World Heritage in Danger's nomination mechanisms²⁹. The instruments created for intangible heritage are indeed providing a sense of identity, that is based for its nature on subjective values selected by Governments. At the same time, they are classified as tools to promote cultural diversity in a universal perspective. On their definitional aspects, the first list focuses on the visibility of heritage as a vehicle to strengthen safeguarding mechanisms for present and future generations; the second list focuses on those intangible elements that are on the way to disappearance, with a stronger focus on providing resources for their safeguarding³⁰.

As it happens for those subjective values pertaining to tangible religious heritage with an Outstanding Universal Value and to their nomination processes, it is primarily up to the States Parties to the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage* to identify, select and define the various elements of the intangible cultural heritage. This process encompasses two main elements: territoriality and participation of communities, groups and stakeholders. This procedure is

²⁹ Article 3 (*Relationship to other international instruments*), UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, 2003.

³⁰ L. LIXINSKI, *Heritage Listing as a Tool for Advocacy: The Possibilities for Dissent, Contestation, and Emancipation in International Law through International Cultural Heritage*, *Asian Journal of International Law*, Vol. 5, No. 2, 2015, p. 394.



again a choice of selection of subjective and sensitive immaterial values. It is carried out on the basis of standardized mechanisms set forth by global institutions through the adoption of the *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage*³¹. In this perspective, the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage* reproduces the system of the 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage*, thus setting forth a national level for the identification and protection of cultural heritage, and a global level of protection, with global institutions (General Assembly, Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Advisory Bodies, and Secretariat) playing a key role throughout the listing process.

From the technical point of view, these choices are taken on the basis of the procedure laid down in the latest version of the *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage* (2022). The document illustrates how State Parties undertake the nomination process once they have selected the ICH present in their territories³². Indeed, speaking of the role attributed to State Parties, it is up to National Governments to take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory. Simultaneously States should enact measures aiming at identifying and defining the various elements with the participation of communities, groups or individuals (that create, maintain and transmit such heritage, and to involve them actively in its management)³³, and relevant non-governmental organizations³⁴. More specifically, the selection of specific practices and manifestations rather than others, or the involvement of

³¹ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended by the General Assembly of the States Parties to the Convention at its ninth session (UNESCO Headquarters, Paris, 5 to 7 July 2022).

³² J. BLAKE, *Seven Years*, cit., pp. 291-304.

³³ Art. 15 (Participation of Communities, Groups and Individuals), UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, 2003; Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the General Assembly of the States Parties to the Convention at its ninth session (UNESCO Headquarters, Paris, 5 to 7 July 2022).

³⁴ Art. 11 (Role of State Parties), UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, 2003.



minority or aboriginal groups are the result of choices involving religious, cultural, and political issues³⁵. This is again a political choice.

As a way of example, in the case of Italy and since 2011, the implementation of the 2003 Convention is performed by the *Consiglio Direttivo della Commissione Nazionale Italiana per l'UNESCO*. This specific body has established a national procedure for the submission of intangible cultural heritage nominations in accordance with the models for inscriptions available to Governments to propose nominations. However, it is only in 2017 that a national law to safeguard and enhance the Italian intangible cultural heritage has been adopted. This is an ordinary case where no public conflicts between states exists and yet, it reveals a very late and difficult implementation of global rules devoted to intangible heritage. Additionally, this late implementation took place in a context of long tradition in the field of cultural heritage law³⁶. Moreover, other aspects to be considered are the diverse goals and needs addressed through national policy-making strategies, where the interaction among multiple objectives might make this implementation process more challenging. As a way of example, in Armenia the policy is oriented to the needs of religious minorities (Yezidi, Jewish, Kurdish, Orthodox)³⁷, while Cyprus and Hungary include the immaterial culture of the Cypriot and Hungarian diasporas³⁸. Latin American countries, such as Mexico, Peru and Guatemala want to put in place national policies aiming at promoting

³⁵ F. FRANCONI, M. SCHEININ, *Indigenous Peoples' Cultural Rights and the Controversy over Commercial Use of Their Traditional Knowledge*, Cultural Human Rights, Leiden, pp. 119-149; P. KURUK, *Cultural Heritage, Traditional Knowledge and Indigenous Rights: An Analysis of the Convention for the Safeguarding of the Intangible Cultural Heritage*, Macquaire Journal of International and Comparative Law, No. 1, 2004, pp. 111-134.

³⁶ Law n. 44, March the 8th, 2017, that amends Law n. 77, February the 20th, 2006, Gazzetta Ufficiale della Repubblica Italiana; C. BORTOLOTTI, *Les inventaires du patrimoine immatériel en Italie: Etat, Regions et Associations*, p. 27, in Atti del Colloquio Politiques Publiques du Patrimoine Immatériel en Europe du Sud: Parcours, réalisations et perspectives, Patrimoine Culturel, Lisbonne, Direcção-Geral do Património Cultural, 2001, p. 3; A. GUALDANI, *Primi passi verso una disciplina di settore dei beni immateriali: Il caso del disegno di legge sulle manifestazioni, rievocazioni, e giochi storici*, Aedon, No. 3, 2017.

³⁷ 2019 Report on International Religious Freedom: Armenia, US Department of State, Office of International Religious Freedom, 10 June 2020; L. KHARATYAN, A. UMUDOV, G. BOBGHIASHVILI, *The Cultural Heritage of National Minorities in Armenia, Azerbaijan, and Georgia*, Journal of Conflict Transformation, Caucasus Edition, 2019, (<https://caucasusedition.net/policies-on-cultural-heritage-of-national-minorities-in-armenia-azerbaijan-and-georgia/>); J. BLAKE, *Seven Years*, cit.

³⁸ J. BLAKE, *Seven Years*, cit..



the intercultural dialogue, ethnic and cultural diversity, including the heritage of indigenous people³⁹. In other countries, such as Cambodia, Cote d'Ivoire and Burkina Faso, intangible heritage is a tool to prevent conflict or post-conflict resolution⁴⁰.

All these examples demonstrate that the diversity among national policies tells a lot on the way Member States perceive and select intangible heritage: the process of enhancement and preservation of the immaterial culture is indeed a political and a legal choice. This choice is based on the relevance that national institutions confer to subjective values, that are the core content of intangible heritage. This represents a problematic aspect, since such sensitive values are then incapsulated in a standardized and objective procedure that incorporates the political issues existing in the national ground.

4 - The Global Dimension of UNESCO's Nomination Processes

The relevant factor is that intangible heritage underwent a process of canonization similar to the one used to identify and measure the Outstanding Universal Value (known with the acronym of OUV) in natural and cultural heritage sites. Indeed, *subjective* intangible elements selected by Governments for inscription on the Representative List, must be in conformity with *objective, universal and standardized* criteria set forth by UNESCO. In particular, in nomination files, submitting State Parties are requested to demonstrate that an element proposed for inscription on the *Representative List of the Intangible Cultural Heritage of Humanity* satisfies all of the criteria for inscription⁴¹.

Indeed, criteria for the evaluation and inclusion of intangible heritage (*Representative List of the Intangible Heritage of Humanity - List of Intangible Heritage in Need for Urgent Safeguarding*), were first introduced in 2008⁴². These standards have been updated in the 2022 *Operational*

³⁹ UNESCO and Indigenous People: Partnership to Promote Cultural Diversity, CLT.2004/WS/5 REV. (Eng/Spa), CLT.2007/WS/01 (Eng/Fre), 2006; UNESCO World Report: Investing in Cultural Diversity and Intercultural Dialogue, UNESCO Publishing, Paris, 2009.

⁴⁰ J. BLAKE, *Seven Years*, cit..

⁴¹ These criteria are the result of the Report of the Expert Meeting on Criteria for Inscription on the Lists Established by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 5-6 December, 2005, p. 3.

⁴² Operational Directives for the Implementation of the Convention for the



*Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage*⁴³. Through the establishment of the lists, the same logic used for the inscription of tangible cultural and natural heritage is re-created.

More specifically, *prerequisites for nomination* of intangible cultural heritage, *qualifying criteria* and *procedural requirements* for nomination of intangible cultural heritage can be extracted on the basis of these standards and demanded both to national and global institutions. Experts agreed that domains, cultural landscapes, human rights, sustainable developments and misappropriation are among those prerequisites for nomination⁴⁴. Qualifying criteria have been interpreted by experts as: recognition, identity and continuity; transmission; representativeness; authenticity and Outstanding Universal Value; distinctiveness; community involvement; individuals. Lastly, procedural criteria are connected to cultural diversity; summary justification; tentative or national representative list; safeguarding plan; legal protection; sunset clause; limitation of inscription⁴⁵.

Additionally, the set of provisions contained in the 2022 *Operational Guidelines* also elaborates standards of eligibility and selection criteria of international assistance requests, submission of multi-national files, guidelines for the use of the Intangible Cultural Heritage Fund, and participations of communities, groups, individuals and experts.

The national and global mechanisms dealing with the nomination of intangible cultural heritage are being illustrated and described. It is now appropriate to keep in mind that the national level of nomination is the context where political and sensitive choices as to which subjective immaterial values should be proposed to UNESCO for nomination. The

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

⁴³ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the General Assembly of the States Parties to the Convention at its ninth session (UNESCO Headquarters, Paris, 5 to 7 July 2022).

⁴⁴ UNESCO, *Report of the Expert Meeting on Criteria for Inscription on the Lists Established by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris, 5-6 December, 2005, p. 5.

⁴⁵ UNESCO, *Report of the Expert Meeting on Criteria for Inscription on the Lists Established by the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris, 5-6 December, 2005, p. 4.



global stage of the nomination process is the context where these sensitive and political choices taken by States are transposed, with UNESCO approving or refusing their political approaches.

Several issues are going to be analysed in the following paragraph. First, is the process of objectivization of subjective values guaranteeing the lack of inner contradictions? Second, are the rules of UNESCO used neutrally, thus allowing a real safeguard of immaterial elements? Third, are the architectural techniques of construction and rituals subject to political manipulations?

5 - Intangible Religious Heritage and Criticalities: Is There a Political Instrumentality?

The process of institutionalization and the political choices made by national and global institutions in the field of intangible heritage imply some further critical considerations. These argumentations aim to shed a light on those problematic aspects and risks that the nominations mechanisms dealing with subjective and sensitive topics raise.

i) The first problematic aspect is of a conceptual nature and it is related to the emergence of intangible cultural heritage as a legally separated field from tangible heritage. So far, immaterial heritage has been defined in two different ways. On the one hand, as a concept *dependent* on tangible cultural heritage, it acts as the underlying culture to any given expression, encompassing the processes, skills, and beliefs leading to the creation of tangible works. In a way, it is the relationship of a people with its tangible cultural heritage. The qualities, rituals, symbolism and imagery attributed to such sacralised spaces and sacred centres are transferred to and reflected in the architecture, iconography and status of the man-made religious buildings (sanctuaries, shrines, temples and so on), palaces and cities associated with sacred places. On the other hand, as an *independent* type of heritage, it also involves story-telling, songs, dances, among other forms of expression which cannot be ordinarily fixated in material means⁴⁶.

This implies two considerations. For sure, the legal protection of intangible heritage is a relatively recent phenomenon. As such, this might be among the primary reasons to present intangible heritage as a detached area from the tangible world of cultural heritage. This definitional

⁴⁶ L. LIXINSKI, *Selecting Heritage*, cit., pp. 81-100.



approach is not taking into consideration the instrumental use of intangible heritage. One thing is to present intangible heritage as dependent on tangible heritage as a process or practice for its production. One different thing, not included in the current approach but implicitly detectable in UNESCO's practice, is to make intangible heritage conditional or at the service of tangible heritage. In this perspective, is the role of intangible heritage finalized to the production or constant re-creation of tangible heritage? Rather, is it aiming at giving a foundation and a precise political direction to claims concerning religious tangible heritage? Additionally, intangible heritage already existed even before being included in UNESCO's system of protection offered by the 2003 Convention, the *Representative List of the Intangible Heritage of Humanity*, or the *List of Intangible Heritage in Need for Urgent Safeguarding*. The mechanisms created for intangible heritage (identification, listing, and regulation as a *corpus separatum* from the tangible side of religious heritage) highlights that there is a clash with its progressively consistent and pivotal presence in World Heritage Sites' dossiers. Indeed, intangible heritage seems to be an integral part of those nomination processes related to religious heritage sites.

ii) The second problematic aspect is related to the processes of *standardization* and *canonization* of tangible and intangible heritage and their evaluation made according to *objective* and *scientific* criteria⁴⁷. Are the subjective and sensitive values of intangible heritage and its objective/scientific/standardized evaluation compatible? Rather, are they dissonant grounds, especially when it comes to their evaluation and appreciation?

⁴⁷ Preamble, UNESCO, *Convention Concerning Protection of the World Cultural and Natural Heritage*, Paris, 16 November, 1972; V. SCHMUTZ, M.A. ELLIOTT, *World Heritage and the Scientific Consecration of "Outstanding Universal Value"*, *International Journal of Comparative Sociology*, Vol. 58(2), 2017, pp. 140-159; P. CHONG, *Legitimate Judgement in Art, the Scientific Word Reversed?*, *Social Studies of Science*, Vol. 43, 2013, pp. 265-281; S. TIMMERMANS, S. EPSTEIN, *A World of Standards but Not a Standard World*, *Annual Review of Sociology*, Vol. 36, 2010, pp. 69-89; L. LIXINSKI, *International Heritage Law for Communities: Exclusion and Re-Imagination*, Oxford University Press, Oxford, 2019, p. 77; S. LABADI, UNESCO, *Cultural Heritage, and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions*, *Archaeology in Society*, AltaMira Press, 2012; J. JOKILEHTO, *The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties*, An ICOMOS study compiled by Jukka Jokilehto, with contributions from Christina Cameron, Michel Parent and Michael Petzet, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäßler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6.



The answer is complex, but it is relevant to consider that in the field of tangible heritage, experts have recognized that since artistic, architectural, historical and religious values inherent to the Outstanding Universal Value (OUV) have a subjective and sensitive content. As a consequence, they cannot be universally appreciated or measured through scientific methods. Yet, the OUV is assessed by national and global institutions on the basis of (supposed) objective and scientific criteria, but this does not imply neither a neutral use of powers by UNESCO nor does guarantee that they can be strictly measured in a scientific and impartial way. Intangible cultural heritage and its representativeness underwent the same process of standardization. If the property or the immaterial element are included by UNESCO in the Lists, this proclamation helps Governments gaining an incredible legal and political prestige. Indeed, the “scientific measurement” of these values in tangible heritage site is a legal responsibility primarily attributed to national states that have huge interests in having cultural heritage sites labelled as UNESCO’s heritage. On the one side, the consequences of such a flexible use of the OUV are substantial in order to strengthen the sovereignty of States. On the other side, following the process of globalization, this universal evaluation methods used by national and global institutions in order to establish the value of cultural heritage ends up in the mortification of the subjective values inherent to cultural heritage⁴⁸. This statement means that cultural heritage, either tangible or intangible, regardless of its intrinsic religious and subjective values differently appreciated across the globe, possess representativeness or outstanding universal value only if it complies with UNESCO’s objective and scientific standards for nominations. As a consequence, regardless of its peculiar and distinctive values, cultural heritage will benefit from UNESCO’s legal protection inasmuch as the political choices of States are encouraged and approved by UNESCO. To say it differently, these subjective and culturally-related values that are not perceived the same way across the globe, are not considered as outstanding or representative if they do not comply with UNESCO’s universal standards. The latter are not differentiated according to the distinctiveness or peculiarity of the subjective values, but they are simply applicable to all the typologies of heritage.

⁴⁸ **F. LANZERINI**, *Il valore ‘soggettivo’ del patrimonio culturale come elemento essenziale dell’identità dei popoli*, in **A. GENTILI**, *La Salvaguardia dei beni culturali nel Diritto Internazionale*, Milano, Giuffrè, 2008; **F. LANZERINI**, *Intangible Cultural Heritage*, cit.; **L. CASINI**, “*Italian Hours*”: *The Globalization of Cultural Property Law*, *International Journal of Constitutional Law*, Volume 9, Issue 2, April 2011, pp. 369-393.



The same consideration applies to those criteria recently elaborated to recognize immaterial heritage as *representative*. Accordingly, the values of intangible heritage are intrinsically made up by subjective values, such as those pertaining to religious rituals, mythology, liturgies, iconography, and architectural techniques of construction based on religious life style. Yet, in UNESCO's system, they must abide to national and cultural archetypes and prevailing political interests selected by national institutions on the basis of global standards⁴⁹. On the one side, the tendency to uniformity set through global rules clashes with the intrinsic and subjective value of cultural diversity that UNESCO itself declares to promote in the 2003 Convention and in Article 1 of the *Universal Declaration on Cultural Diversity*⁵⁰. On the other side, these global rules allow National States to use and forge these standardized definitions to allow certain cultural and political interests to prevail at the expense of other less representative values. Once again, this is a subjective choice that raises political sensitivity. In this sense, the use of immaterial heritage as a mean to promote distinctive national identity is exemplified in the case of Norway under Swedish domain in the mid to late nineteenth century. In the 19th century, Norway, then under Swedish rule, ventured into creating the concept of *True Norwegianness*, built precisely around the celebration of folk culture, including costumes and festivals. Folk culture was then re-introduced in smaller villages, an improved version of a cultural distinctiveness then disappearing or vanished. The use of costumes and dialects generated a sense of pride and fuelled the claims for authentic Norwegian identity, which ultimately led to the political independence movements in the country. Sweden also engaged in this process of identity-building through folk culture during the same period⁵¹,

⁴⁹ A similar approach and similar criticalities arise in the field of tangible heritage and in the evaluation of the Outstanding Universal Value of those religious contested sites. The same criticisms are unearthed by eminent scholars such as **S. LABADI**, *UNESCO, Cultural Heritage*, cit.; **F. LANZERINI**, *Il valore "soggettivo" del patrimonio culturale come elemento essenziale dell'identità dei popoli*, in **A. GENTILI**, *La Salvaguardia dei beni culturali nel Diritto Internazionale*, Milano, Giuffrè, 2008; **F. LANZERINI**, *Intangible Cultural Heritage*, cit.; **L. LIXINSKI**, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*, Cambridge University Press, Cambridge, 2021; **N. AKAGAWA**, *Safeguarding Intangible Heritage: Politics and Practices*, Routledge, New York, 2019; **G.M. GOLINELLI**, *Cultural Heritage and Value Creation: Towards New Pathways*, Rome, Springer, 2015.

⁵⁰ Article 1, **UNESCO**, *Universal Declaration on Cultural Diversity*, Resolution adopted on the report of Commission IV at the 20th plenary meeting, on 2 November 2001.

⁵¹ **L. LIXINSKI**, *Selecting Heritage*, cit., pp. 81- 100.



but only in 2019 Norway was able to include in the *Representative List of the Intangible Heritage of Humanity* the *Practice of traditional music and dance in Setesdal, playing, dancing and singing (stev/stevjing)*. Interestingly, the report emphasizes the origin of the Setesdal as dating back to the 18th century⁵².

iii) The third problematic issue emerging from the above illustrated process of *scientificization* and *objectivization*⁵³ of intangible heritage is related to the use of intangible cultural heritage: the elaboration of standards for nomination does not guarantee their impartial and neutral use. Indeed, the compliance to these scientific criteria can be easily manipulated by States in order to comply with the legal requirements of UNESCO's nomination processes, while pursuing at the same time their political agendas. Additionally, it creates a friction between the promotion of cultural diversity in a global and overarching perspective and the attempt of enclosing intangible heritage within precise territorial boundaries. Indeed, communities striving for statehood in the past have used intangible religious heritage as a tool to promote a distinctive national identity. Nowadays, States where politically active minorities exist, fear that minorities will use their distinctive religious intangible heritage as an instrument to increase their political claims internally and internationally, with the ultimate goal of forcing the State into agreements on autonomy, or even creating the conditions for secession⁵⁴. Once again, is this non-neutral use a natural effect deriving from the processes of

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

⁵³ Preamble, UNESCO, Convention Concerning Protection of the World Cultural and Natural Heritage, Paris, 16 November, 1972; J. JOKILEHTO, *The World Heritage List: What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties*, An ICOMOS study compiled by J. Jokilehto, with contributions from C. CAMERON, M. PARENT and M. PETZET, Documentation Centre UNESCO-ICOMOS, XVI, Berlin: Hendrik Bäbeler Verlag, 2008, (Monuments and Sites; XVI), ISBN: 978-3-930388-51-6; V. SCHMUTZ, M.A. ELLIOTT, *World Heritage*, cit., pp. 140-159; P. CHONG, *Legitimate Judgement*, cit., pp. 265-281; S. TIMMERMANS, S. EPSTEIN, *A World of Standards*, cit., pp. 69-89; S. LABADI, UNESCO, *Cultural Heritage*, cit.

⁵⁴ G.J. ASHWORTH, B. GRAHAM, and J.E. TUNBRIDGE, *Pluralising Past: Heritage, Identity and Place in Multicultural Societies*, Pluto Press, London, 2007. The reference is on how indigenous culture has been translated as heritage and what this means in terms of the weakening of their political claims, K. ENGLE, *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy*, Durham University Press, 2010, pp. 141-161; J. BLAKE, *Introduction to the Draft Preliminary Study*, cit.



globalization? Rather, is it mostly related to sensitive situations, where intangible heritage is assuming a vehicular role to promote or disadvantage identity, cultural and political realities through UNESCO's listing tools? In order to answer this problematic question, the nomination of the *Buddhist Chanting of Ladakh: recitation of sacred Buddhist texts in the trans-Himalayan Ladakh Region* is a good example⁵⁵. This is an instance that illustrates the clashes of interests, contestation, and the possible uses of intangible heritage as a territorial marker. In particular, geography and history have contributed to a distinctive Ladakhi identity. Ladakhi nationalism has outlived integration into the Union of India, and there are still many pockets of it throughout Ladakh. This nationalism is largely fuelled by perceptions of a historical connection to Tibet, and a sense of distinctiveness from the other ethnic groups in the State (Muslims and Hindus), thus justifying the claims of separation both from Jammu (Hindu) and Kashmir (Muslim). Alongside with nationalism, the performance of Buddhism chanting in Gonpas (monasteries) is a very important social, cultural, educational, and political element. After UNESCO's nomination, visibility to monks teaching and performing the ritual was granted and, at the same time, a certain degree of control over this minority was granted to the Indian government, that wanted to ensure a secular and tamed view of Ladakh teaching as part of India, rather than treating the group as a dissenting unit seeking for self-determination. Is this a strategic decision made by the Indian Government and by UNESCO? Hence, this heritage listing process raises issues related to Tibetan autonomy, regional autonomy and accommodation of Muslim minorities in the Indian State. More specifically, it illustrates that the process throughout which State and experts come together to choose the world's wonders is related to identity and political issue. On the one side, the process is strictly connected to the national ground and to those communities struggling for autonomy. On the other side, it demonstrates that these claims find their way up to UNESCO. More specifically, it illustrates the range of possibilities of listing as a means for the autonomy of the Ladakhi, to listing as means of domination of the same Ladakhi or the exclusion of other minorities in the region. Listing could also be seen as a means to exert broader control over the minority group and even the geographical area, given its function as a symbolic flag being planted in

⁵⁵ 7.COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Buddhist Chanting of Ladakh: recitation of sacred Buddhist texts in the trans-Himalayan Ladakh region, Jammu and Kashmir, India*, File No. 839, 2012; L. LIXINSKI, *Heritage Listing*, cit., pp. 387-409.



Ladakh. It could also work as an important tool in managing the Kashmir conflict because of the conflict's connection to cultural identity, at least to the extent that it affects Buddhists and Ladakhi region⁵⁶.

As a result, topics that oftentimes would be too politically charged in a wider forum, can be discussed and articulated with respect to the more general problems, such as those of contestation, exercise of sovereign powers, self-determination and definition of disputed borders. In this perspective, intangible heritage becomes a political instrument that is the object of political choices primarily made by Member States. Indeed, through the *List of Representative Intangible Heritage of Mankind*, the 2003 Convention leaves to States, and not to local communities, the choice of determining which manifestations of heritage should be inventoried and preserved, both at a national and at a global level. Once again, this is a choice that raises political and cultural sensitivity at a national and global level. It imposes a universal and objective evaluation and compliance to subjective choices. These considerations reveal that there is an inner contradiction with the fluid character that intangible cultural heritage should have according to its original conception in UNESCO's formulation - its non-dependency to territorial borders and political boundaries. In this regard, it is ambiguous how States and UNESCO, in making decisions concerning heritage sites, are seeking to enclose intangible heritage within territorial boundaries, thus making it instrumental to tangible heritage. This takes place through choices that raise strong political, religious and cultural sensitivity.

To a wider extent, this political and instrumental use of intangible heritage involves other reflections on some specific elements of the domain of intangible religious heritage: reference is made to the architectural techniques of construction and to rituals. They are indeed powerful tools to enforce specific traits of State's cultural, religious and political identity: this reinforcement takes place through UNESCO's nominations. Is it possible to assert that the Outstanding Universal Value and the Representativeness of religious heritage are aseptic or detached from political discourses? This topic is going to be discussed within the following paragraphs, that tackle the issues of the neutrality of nomination processes, and the uses of architectural techniques of construction and rituals.

⁵⁶ L. LIXINSKI, *Heritage Listing*, cit., pp. 387-409.



6 - Architectural Techniques of Construction: Uncharted Aspects and Legal Issues

The first issue is related to the implicit connection between intangible heritage and tangible heritage in a “non-conventional way”. This consideration follows a thorough examination of to the main treaties adopted by UNESCO.

Within the current definition of intangible heritage provided by Article 2 of the 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage*, there is no explicit mention to the architectural techniques of construction. Currently, the conception of intangible heritage as the immaterial portion of a culture is related to its embodiment in the material products of arts and architecture. This statement, and namely, the close interaction between tangible and intangible heritage in terms of “constant recreation of practices”, is so far the predominant connection existing between tangible and intangible heritage. In a wider sense, according to the 2003 Convention, intangible heritage is interpreted as instrumental for the production of a representative tangible heritage (art and architecture), with no independent dimension.

Nonetheless, as noted above, there is a major shift in the conception of the architectural techniques of construction: this change goes beyond its mere expunction from the current legal framework on intangible heritage; it even goes beyond the conception of intangible heritage as the “constant recreation of practices” for the creation of tangible product.

Indeed, architecture was explicitly taken into consideration by the 1989 UN *Recommendation on the Safeguard of Traditional Culture and Folklore*. The text mentions *architecture and other arts* as part of the folklore of traditional or popular cultures. This category is not resumed in the 2003 Convention: to put it otherwise, once the 2003 Convention has replaced the 1989 Recommendation, no explicit mention to architectural techniques of construction has been made. Rather and interestingly, the relevance of (religious) architecture as an element that has also an *intangible essence* is found in criterion (iv) of the 2022 UNESCO’s Operational Guidelines⁵⁷. This criterion is related to the evaluation of the outstanding value of tangible heritage sites. If architectural techniques of construction were

⁵⁷ Criterion (iv) states that cultural properties are deemed to have an Outstanding Universal Value if they are “an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history”, UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC.21/01, 31 July 2021.



classified as immaterial elements under article 2.2 of the 2003 Convention, they would be inscribed under the *Representative List of the Intangible Heritage of Humanity*, or the *List of Intangible Heritage in Need for Urgent Safeguarding*. Actually, architecture is used as a tool to evaluate the OUV of sites under criterion (iv). In the legal framework pre-empting the 2003 Convention, these techniques of construction were qualified as folklore. The new definition of intangible heritage does not include the architectural techniques of construction, which seems to have been incorporated in those criteria (especially criterion (iv)) used by UNESCO to evaluate the World Heritage Sites' OUV. More precisely, much emphasis is added on those architectural techniques of constructions of religious sites whose Outstanding Universal Value has distinctive national and cultural traits. More specifically, (religious) techniques of architectural construction are implied to enforce and support the OUV of sites: in this perspective, architecture strengthens the qualification of the sites as belonging to a specific political identity.

These are relevant aspects that witness the connection between intangible and tangible heritage in a non-conventional way that is also the result of a radical change in the development of a culture around immaterial heritage. Hitherto, to an even greater extent, if intangible heritage is used as a tool to evaluate the OUV of sites in nomination processes that raise political, cultural and religious sensitivity, one could also affirm the instrumentality of intangible heritage as a vehicle for the attribution of a political identity of sites through distinctive religious architectural. In this perspective, the Outstanding Universal Value of World heritage sites establishes a connection with those specific architectural techniques of construction that are selected by Governments and UNESCO as bearers of specific cultural, religious and political traits. Several nomination processes, that oftentimes raise conflict of interests and struggles for the exercise of sovereign powers, bring this issue forward. They actually raise the problem of the attribution of a paternity to religious architecture and rituals in order to push UNESCO to take a decision on the identity of the proposed sites.

If architectural techniques of construction (originally included in the domain of folklore) are currently used as an instrument to strengthen the political/national classification of the site through criterion (iv) of the Operational Guidelines for the Implementation of the 1972 World Heritage Convention, this might also suggest an instrumental/manipulated use of the intangible heritage. Additionally, this might also suggest that the approach of Member States and UNESCO is not neutral, but rather, a pathologic use of intangible heritage is made in



order to achieve their political goals. Some examples are used in the following paragraph in order to refine these issues.

7 - Architectural Techniques of Construction and UNESCO

As previously stated, some examples are brought to shed a light on the intrinsic connection between religious architectural technique of construction, criterion (iv), and the political ownership of the site.

First, the *Old Town of Timbuktu (Mali)* has been included in the World Heritage List in 1988 under criterion (ii)⁵⁸, criterion (iv), and criterion (v)⁵⁹, and it is presently included in the List of the World Heritage in Danger Sites⁶⁰. The mosques and the holy places of Timbuktu played an essential part in the spread of Islam in Africa (criterion (ii)), thus witnessing the spiritual and intellectual relevance of the city under the Aksia dynasty (criterion (iv)). Most importantly, the mosques built of adobe (or banco) are more representative than the more extensively remodelled dwellings of traditional construction techniques that have become vulnerable under the impact of irreversible change (criterion (v)). The report is truly focused not only on the architecture that has a religious essence, but also on the impact of this religious architecture on the system of religious beliefs. In particular, aside from the three mosques (the mosque of Djingareyber, the mosque of Sankore and the mosque of Sidi Yahia), the nomination enumerates 16 cemeteries and mausoleums, described as “essential elements in a religious system since, according to popular belief, they constitute a rampart that shields the city from all misfortune”.

⁵⁸ Criterion (ii): to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design, **UNESCO**, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC.21/01, 31 July 2021.

⁵⁹ Criterion (v): to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change, **UNESCO**, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC.21/01, 31 July 2021.

⁶⁰ The Old Town of Timbuktu, Mali, ICOMOS, File No. 119 Rev., 1987.



Second, the outstanding significance of the *Ancient Town of Djenné* (Mali) was recognized in 1988 under criterion (iii)⁶¹ and criterion (iv). Although being reconstructed during the French occupation (1906-1907), the Great Mosque built on banco is described as a fairly successful pastiche of local religious architecture. Precisely by virtue of the local religious architecture, the title of “the most beautiful city of Africa” and that of “the typical African city”⁶² is conferred to the Ancient Town of Djenné. This recognition emphasizes the city’s iconic role through its religious architectural techniques of construction. However, the construction of earthen mosques, religious buildings, houses and villages is widespread for centuries in Western Africa (Mali, Niger, Nigeria, Togo, Benin, Ghana, and Burkina Faso), Southwest Asia and Southwest America: the difference is related to the process of identification, recognition and inclusion of these sites in national inventories and then in the World Heritage List as sites whose OUV has a specific national characterization⁶³. The above-mentioned (intangible heritage) elements, such as the techniques implied to produce this specific religious architecture, the religious ideology, and the system of beliefs behind its realization, are used to justify the inscription of the sites in the World Heritage List as outstanding and iconic pieces of traditional Mali religious architecture.

Third, the *Monasteries of Haghpat and Sanahin* (Armenia) are relevant instances that emphasize the link between religious architecture as a tool that testifies the OUV of the site and the attribution of the site to a State. Under criteria (i)⁶⁴, (ii), (iv) and (vi)⁶⁵ the group of monastic buildings is described as the highest representative of Armenian religious architecture

⁶¹ Criterion (iii): to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared, UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC.21/01, 31 July 2021.

⁶² The Ancient Town of Djenné, Mali, ICOMOS, N. 116 Rev., 1987.

⁶³ J.-L. BOURGEOIS, B. DAVIDSON, *Spectacular Vernacular: the Adobe Tradition*, Aperture Foundation, 2nd Edition, New York, 1996; S. PRESTON BLIER, *Butabu: Adobe Architecture of West Africa*, Princeton Architectural Press, New York, 2004 (Photograph by J. MORRIS).

⁶⁴ Criterion (i): to represent a masterpiece of human creative genius, UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC.21/01, 31 July 2021.

⁶⁵ Criterion (vi): to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria); UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC.21/01, 31 July 2021.



between the 10th and 13th centuries. The unicity of the style developed from a blending of elements of Byzantine ecclesiastical architecture and the traditional vernacular architecture of the Caucasian region. We should notice that other monastic ensembles of this kind survive in Armenia (such as those monasteries at Goshavank and Haghartsin) and exhibit the same features in terms of religious architecture, but ICOMOS is of the opinion that:

“It is generally recognized, however, that the culturally most important and most completely preserved are those of Haghpat and Sanahin. In view of their geographical proximity and the fact that they were founded as part of the same *movement of national regeneration*, as well as the high cultural significance of both, it is logical to treat them as a single unit for inscription on the World Heritage List”⁶⁶.

In this case, religious architecture becomes a political statement, thus reconnecting the site to the institutional identity and political history of the country.

The last significant example is represented by the nomination dossier of the Old City of Hebron, contested by Israel and Palestine by reason of its religious relevance for both parties. Particular emphasis is attributed to the architectural techniques of construction⁶⁷. The latter are an instrument used to justify and attribute the Palestinian nationality to the OUV in a case of political contestation. We should wonder whether the architectural techniques of construction and the traditions/religious beliefs of the Old Town of Hebron/Al Khalil are a sufficient tool to demonstrate the inextricable link between intangible cultural heritage, tangible cultural heritage, and the exercise of sovereign powers over the contested religious town. More precisely, much emphasis is added on two elements that justify the OUV of the Town: a) architectural techniques of constructions of the town of Hebron, whose Outstanding Universal Value has distinctive national and cultural traits (criterion *(iv)*); b) traditions and religious beliefs for the three monotheistic religions, that have been the cultural foundation of the Old Town of Hebron and the source of enduring values carried from one generation to the next (criterion *(vi)*).

⁶⁶ Haghpat Monastery, Armenia, ICOMOS, No. 777, 1995; Haghpat/Sanahin, Armenia, ICOMOS, No. 777 bis, 1999, p. 164.

⁶⁷ UNESCO, WHC/Decision 42 COM 7A.28 and WHC/18/42.COM/7A.Add.2; Paris, 15 June 2018, Hebron/Al-Khalil Old Town, Palestine (C 1565).



It should be noted that the specific architectural technique of construction, characterized by the *limestone*, is actually widespread in Jerusalem, in the Middle East, in other Arab and Mediterranean countries, but it is a fundamental part of a particularly incisive decision for the attribution of a specific nationality to the disputed religious site⁶⁸. Curiously, also the first section of the Wailing Wall and its first seven visible layers that are from the Herodian period, are built from enormous *meleke* (royal) limestone stones⁶⁹.

This aspect seems to be relevant especially if the architectural techniques of construction implied in the Old Town of Hebron/ Al-Khalil and their link with the element of contestation are considered. Interestingly, architectural techniques of construction are intended as the rational element of a culture or the applied art of a culture. In this regard, the art historian and cultural theorist Aby Warburg faces the fundamental element of religious symbolism, that acquires a prominent role if the context of Hebron/Al Khalil and UNESCO is examined. Indeed, he supported the idea that what proves to be a purely decorative ornament must be interpreted symbolically⁷⁰. In this regard, the Palestinian architectural style of buildings, mainly found in the Old City of Hebron and in the old quarters, such as *Haret Al Sawakneh*, *Haret Al Aqqabeh*, and *Haret Al Ja'abreh*,⁷¹ presents the peculiarity of being mainly grouped around a focal point, namely the community mosque that becomes a symbol of the community as a whole. This traditional Palestinian architecture is the same as that of most Islamic world cities and takes the form of houses with internal backyards, enriched by additional pleasing architectural vistas and associated aesthetics instrumental to Muslim

⁶⁸ The main reference is to the Ancient City of Damascus (1979, listed under criteria (i), (ii), (iii), (iv), (vi)), the Ancient City of Aleppo (1986, listed under criteria (iii), (iv)), the Historic Cairo in Egypt (1979, listed under criteria (i), (v), (vi)), the Old City of Jerusalem and its Walls (1981, listed under criteria (ii), (iii), (vi)), the Medina of Fez (1981, listed under criteria (ii), (v)), and the Historic Areas of Istanbul (1985, listed under criteria (i), (ii), (iii), (iv)), Secrétariat ICOMOS International, Addendum 2, Evaluation of Nominations of Cultural and Mixed Properties, 2017.

⁶⁹ A. ROSS, *Stone Men: The Palestinians Who Built Israel*, Verso Books, London-NY, 2021; T. CANAAN, *The Palestinian Arab House, Its Architecture and Folklore*, Syrian Orphanage Press, Jerusalem, 1933; M. BENVENISTI, *City of Stone: The Hidden History of Jerusalem*, University of California Press, Berkeley, 1996.

⁷⁰ A. WARBURG, W.F. MAINLAND, *A Lecture on Serpent Ritual*, cit., pp. 277-292.

⁷¹ G.J. DWEIK, W. SHAHEEN, *Classification of Residential Buildings in the Old City of Hebron*, Conference Paper in WIT Transactions on the Built Environment, 2017.



religious functions⁷². This is the result of the conditions particular to Islamic society in which residential areas have narrow streets, covered markets, stone-paved courtyards and, above all, mosques surrounded by a safe zone. In this perspective, this type of popular Palestinian architecture, which is almost a kind of spontaneous architecture reflecting the social and religious status of the Mameluk and Ottoman era, might be referred to as Palestinian intangible heritage, especially because it is presented as an instrumental connection to the cultural, social and religious identity of the Palestinian people. Interestingly, this case exemplifies how the architectural techniques of construction of the entire city, characterizing the religious architecture of the town as a whole, are recognized by UNESCO as Palestinian⁷³. In other words, although not being exclusively implied for the environment of Hebron, the technique of construction and the use of the *limestone* are used to attribute a specific nationality and a title to sovereignty in the Old City of Hebron. Moreover, if this architectural technique of construction is qualified as Palestinian in a context of competing sovereignty, without mentioning its relevance as intangible heritage, then the link between intangible heritage and the decision of UNESCO of inscribing the Old Town of Al-Khalil/Hebron in

⁷² **R. FUCHS**, *The Palestinian Arab House and the Islamic "Primitive Hut"*, Muqarnas, Vol. 15, 1998, pp. 157-177; **S. MAKDISI**, *The Architecture of Erasure*, Critical Inquiry, Vol. 36, No. 3, 2010, pp. 519-559; **C.A. BREBBIA, V. ECHARRI**, *Structural Studies, Repairs and Maintenance of Heritage Architecture XV*, WIT Press, 2017, pp. 111-122 (Classification of Residential Buildings in the Old City of Hebron); Hebron Rehabilitation Committee, RAWIQ, Swedish International Development Cooperation Agency (SIDA), Survey of the Traditional Town neighbourhoods and buildings, HRC, Hebron, Palestine, 2001; Hebron Rehabilitation Committee, Old Hebron, The Charm of a Historical City and Architecture, HRC, Hebron, Palestine, 2009.

⁷³ **D. KHASAWNEH, M. GRÖNDAHL, F. RAHHAL**, *Memoirs Engraved in Stones: Palestinian urban mansions*, Riwaq-Centre for Architectural Conservation, Ramallah, 2000; **E. PALAZZO**, *Recupero Urbano nelle Città Storiche del Territorio Palestinese Occupato*, EdA, Esempi di Architettura, anno III, n. 7/2009, Il Prato Casa Editrice, Padova; **K. QAWASMEH**, *Hebron Rehabilitation Committee*, The Second Riwaq Biennale, Ramallah, Riwaq, 2007, p. 86; **A. LAÏDI-HANIEH**, *Arts, Identity, and Survival: Building Cultural Practices in Palestine*, Journal of Palestine Studies 35, no. 4, 2006, pp. 28-43; **P. SELICK**, *The Old City of Hebron: Can It Be Saved?*, Journal of Palestine Studies 23, no. 4, 1994; the Author examines these Palestinian heritage projects, notably the Hebron Rehabilitation Committee, Riwaq, and the Palestinian Museum; **C. De CESARI**, *Hebron or Heritage as Technology of Life*, in *Heritage and the Cultural Struggle for Palestine*, Stanford University Press, Stanford, 2019; **J. AWAD**, *Conserving the Palestinian Architectural Heritage*, International Journal of Heritage Architecture Studies Repairs and Maintenance, Vol. 1(3), 2017.



the Palestinian World Heritage in Danger List is particularly strong, although not explicit. Hence, this architectural technique of construction becomes symbolic of the Palestinian political sovereignty over a contested site⁷⁴. More specifically, the instrumentality of intangible heritage with a religious function seems to be implicit through the inscription of religious (tangible) properties in the Palestinian World Heritage in Danger List. The architectural techniques of construction though, are mentioned in the nomination dossier of the Old Town of Al Khalil/ Hebron as a constitutive element of the Outstanding Universal Value of such a disputed city, but they are not recognized as intangible heritage⁷⁵. Indeed, the Old Town of Hebron Al-Khalil presents the architectural sedimentation in Al-Ibrahimi Mosque/The Tomb of Patriarchs under criterion (*iv*), and, this architectural typology is associated, under criterion (*vi*), with spiritual and religious values and beliefs of Outstanding Universal significance since most of the Muslims and Jews practice a religious lifestyle: this is the Palestinian cultural foundation of the Town⁷⁶. The implicit linkage between intangible heritage and contested tangible heritage demonstrates a very strong connection, especially if it is a consistent component for the evaluation and justification of the OUV. So far, the instrumentality of intangible heritage as vehicle for the attribution of ownership of tangible contested sites through distinctive architectural techniques of construction is underexplored. In this case, it should be noted that the Outstanding Universal Value of World heritage sites is connected to specific architectural techniques of construction as bearer of a specific cultural, religious and political traits⁷⁷. Conversely, these religious or political traits are emphasized and strengthened through architectural techniques of construction that encapsulate a religious lifestyle typical of a city attributed to Palestine and claimed by Israel. In the legal framework pre-empting the 2003 Convention, these techniques of construction were

⁷⁴ Arches, porches with columns, iron protection and metal doors, woodwork, motifs of traditional patterns are clear features of the architectural identity of Palestine, **M. ABUARKUB**, *Architectural and Decorative Elements in Traditional Palestinian Houses*, New Design Ideas, Vol. 2, No. 2, 2018.

⁷⁵ UNESCO, WHC/Decision 42 COM 7A.28 and WHC/18/42.COM/7A.Add.2; Paris, 15 June 2018, Hebron/Al-Khalil Old Town, Palestine, (C 1565), pp. 5 (Justification for Inscription).

⁷⁶ **Y. MIZRACHI**, *Tell Rumeida: Hebron's Archaeological Park*, Emek Sheveh, 2014.

⁷⁷ **S.S. GHADBAN, M. ASHHAB**, *Stone Restoration Practice in Palestinian Territories: A Case Study From Jerusalem*, *Journal of Architectural Conservation*, Vol 17, No. 3, pp. 75-96.



qualified as folklore, then transformed with substantial modification in the current version of intangible heritage. The new definition of intangible heritage does not include the architectural techniques of construction, that seems to have been incorporated in those criteria used by UNESCO to evaluate the World Heritage Sites' OUV.

It is meaningful to observe that in a decision implying a wide range of discretionary powers, intangible heritage is a consistent part of the Old Town of Hebron's OUV under criterion (iv), and criterion (vi). Moreover, it is significant to notice that the incorporation of intangible heritage (architectural techniques of construction and religious lifestyle) pertains to a context of competing sovereignty and it is clearly instrumental to the attribution of the Palestinian nationality to a contested site.

These examples are brought because architectural techniques of construction play a determinant role in UNESCO's nomination processes. The role of intangible heritage is even more striking, although implicit, in tangible sites' nomination processes. The role of the architectural techniques of construction is even more troublesome when the property is religious and contested between two sovereign powers, as illustrated in the case of the Old City of Hebron. In this circumstance, intangible heritage acquires an openly instrumental and political dimension that pushes towards the attribution of a nationality to a disputed site.

8 - Rituals: Uncharted Aspects and Legal Issues

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

Speaking of rituals, we could refer to the concept of *symbolic stability*, referred to as the physical presence of a site, to help legitimating the current geographical boundaries and political organization of countries⁷⁸. Additionality, symbolic stability helps to legitimate the political structures, the rulers in place and their authority by presenting

⁷⁸ J. BLAKE, *On Defining Cultural Heritage*, The International and Comparative Law Quarterly, Vol. 49, No. 1, 2000, pp. 61-85.



them as direct inheritors of past regimes. Whether grounded on precise historical facts or not, those intangible elements might also refer to the origin of a country in a nationalistic perspective, helping support the claims for the exercise of sovereign powers. Moreover, emphasis on the religious features of the site helps to protect beliefs in national tradition and continuity. To say it differently, the traditional conception of the principle of territoriality implies political continuity: the latter is also partially guaranteed through the maintenance of traditional practices and religious sites tangibly associated with intangible heritage elements existing within defined political boundaries.

Rituals and (religious) traditions are qualified as intangible heritage and fall under the protection of the 2003 Convention. Differently from the previous version of intangible heritage introduced by the 1989 *Recommendation on the Safeguarding of Traditional Culture and Folklore*⁷⁹, the mention to mythology or other forms of art, including liturgies, symbolism and iconography, is expelled from the current definition of intangible heritage as set forth by the 2003 Convention. More specifically, for what concerns religious rituals, sacred traditions, mythology, religious symbolism and iconography, the Human Rights Committee (CCPR) did recognize that the concept of worship also extends “to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship”⁸⁰. Contrariwise, the negotiators of the 2003 ICH generally agreed that religions do not belong to the field of intangible cultural heritage, as far as their theological and moral aspects are concerned⁸¹. One could argue that even if the 2003 Convention and the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005)⁸² do not expressly

⁷⁹ Records of the General Conference, 25th session, Paris, 17 October to 16 November 1989: Recommendation on the Safeguarding of Traditional Culture and Folklore, (A. Definition of Folklore), 15 November 1989.

⁸⁰ Human Rights Committee (HRC), General Comment adopted by the Human Rights Committee under Article 40, paragraph 4 of the ICCPR, General Comment No. 22/48, The Right to freedom of thought, conscience and religion, U.N. Doc. CCPR/C/21/Rev. 1/Add. 4 (July 30, 1993); S. TONOLO, *Religious Values*, cit., pp. 187-212.

⁸¹ T. SCOVAZZI, L. VESTRA, *The Safeguarding of the Intangible Cultural Heritage According to the 2003 UNESCO Convention: The Case of The First Nations of Canada*, The McGill Journal of International Law and Legal Pluralism, InterGentes, Vol. 1, Issue 2, 2017, pp. 30-31.

⁸² UNESCO, *The Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Paris, 2005.



safeguard religions as such (through the express will of excluding them from the legal provision), the Conventions are nevertheless suitable for listing some manifestations of religious faith that are culturally felt as bonds for a certain human community (for instance, a type of religious procession that has been held for centuries on certain anniversaries or forms of transmission of religious faith). More into depth, a certain degree of protection is provided to holy places by means of religions that express themselves in such places or through the ways in which religious faith and its transmission is manifested or depicted in heritage sites. Even though religious rituals, liturgies, sacred symbolism, iconography and religious mythology, intended as sacred practices, processions, religious festivals or dances do not specifically fall under the 2003 ICH Convention, they do often find a position in the *Representative List of the Intangible Cultural Heritage of Humanity*.

The *Pilgrimage to the St. Thaddeus Apostle Monastery* (Iran and Armenia)⁸³, the *Rituals and Practices Associated with Kit Mikayi Shrine* (Kenya)⁸⁴, the *Holy Week Processions in Mendrisio* (Switzerland)⁸⁵, the *Religious Festival of the Garhwal Himalayas and Ritual* (India)⁸⁶, the *Annual Pilgrimage to the Mausoleum of Sidi 'Abd el-Qader Ben Mohammad* (Algeria)⁸⁷, the *Mongolian Traditional practices of worshipping the sacred sites* (Mongolia)⁸⁸, the *Festivity of the Virgen of Candelaria* (Peru), and the

⁸³ 15. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *The Pilgrimage to the St. Thaddeus Apostle Monastery, Iran and Armenia*, 2020 (<https://ich.unesco.org/en/RL/pilgrimage-to-the-st-thaddeus-apostle-monastery-01571>).

⁸⁴ 14. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Rituals and Practices Associated with Kit Mikayi Shrine, Kenya*, 2019 (<https://ich.unesco.org/en/USL/rituals-and-practices-associated-with-kit-mikayi-shrine-01489>).

⁸⁵ 14. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Holy Week Processions in Mendrisio, Switzerland*, 2019 (<https://ich.unesco.org/en/RL/holy-week-processions-in-mendrisio-01460>).

⁸⁶ 4. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Religious Festival of the Garhwal Himalayas and Ritual, India*, 2009 (<https://ich.unesco.org/en/RL/ramman-religious-festival-and-ritual-theatre-of-the-garhwal-himalayas-india-00281>).

⁸⁷ 8. COM 8.1, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Annual Pilgrimage to the Mausoleum of Sidi 'Abd el-Qader Ben Mohammad, Algeria*, 2013 (<https://ich.unesco.org/en/decisions/8.COM/8.1>).

⁸⁸ 12. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Mongolian Traditional practices of worshipping the sacred sites, Mongolia*, 2017 (<https://ich.unesco.org/en/USL/mongolian-traditional-practices-of-worshipping-the-sacred-sites-00871>).



*Commemoration Feast of Finding of the True Holy Cross of Christ (Ethiopia)*⁸⁹ are meaningful examples. Indeed, these rituals are all listed in the *Representative List of the Intangible Cultural Heritage of Humanity* as intangible heritage that bears distinctive cultural and identity features. Yet, they are representative manifestations of religious rituals, festive events, and practices related to the sacred dimension that involves theological and moral aspects.

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

9 - Rituals and UNESCO

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

The *Sacred City of Kandy* was listed in 1986 following the request of the Ministry of Cultural Affairs of Sri Lanka. The monumental complex includes the remains of the Royal Palace with the Great Audience Hall, the Temple of the Tooth, the Palace of Sri Wickrama, the Queen's apartments and bathing house, the Palle Wahala, the Ran Ayuda Maduwa. Three other monumental groups (Dewala, Malwatte Vihara and Asgiriya Vihara) are the final elements of the important complex. Within the evaluation dossier, it is stated that the city does not possess the monumental wealth of the two other capital of the island (Anuradhapura and Polonnaruva, already included in the World Heritage List in 1982), but much emphasis is added on the vehicular function of the cult of Buddha practiced in the Temple of the Tooth. The ritual is the justification of the OUV of the Property under *criterion (iv)* and *criterion (vi)*. In

⁸⁹ 8. COM, Intergovernmental Committee for the Safeguarding of the Intangible Heritage, *Commemoration Feast of Finding of the True Holy Cross of Christ, Ethiopia, 2013* (<https://ich.unesco.org/en/RL/commemoration-feast-of-the-finding-of-the-true-holy-cross-of-christ-00858>).



particular, the city remains the religious capital of Buddhism and a sacred city for millions of believers. Enshrined in the Dalada Maligawa is the relic of the tooth of Buddha which has long been greatly venerated. The ceremonial high point celebrated each year is the splendid ritual of the great processions on the feast of Esala Perahera. On the one side, the monumental ensemble of Kandy, rebuilt under the reign of Keerti Sri Rajasimha, is both an outstanding example and a political statement. It witnesses a type of construction in which the Royal Palace, witnessing the past seat of royal powers, is juxtaposed to the Temple of the Tooth of Buddha, where the ceremonial acts are customary since the 4th century (*criterion (iv)*). On the other side, the Temple of the Tooth, the palatial complex, the sacred city of Kandy and the rituals therein performed are directly and tangibly associated with the history of the spread of Buddhism. In particular, much emphasis is added on the Temple of Kandy as a major witness to an even flourishing cult (*criterion (vi)*), whose political ownership is ascribed to the State of Sri Lanka ⁹⁰.

Another example that embodies the blend of intangible heritage as a tool used to justify the OUV is *Tiwanaku, the Spirirtual and Political Centre of the Tiwanaku Culture* (Plurinational State of Bolivia), listed in 2000 under *criterion (iii)* and *criterion (iv)*. Within the report for the evaluation of the property, much importance is given to the ceremonial and public architecture and art. These features are described as outstanding traits that connect the property of the site to a specific civilization, which is distinct from any other pre-Hispanic empires of the Americas. More specifically, much emphasis is added on religious beliefs, rituals, ceremonies, and icons represented, such as the cult to *Pacha Mama*. Namely, the ritual is a constitutive element that enriches both the cultural, architectural, archaeological, and political significance of the great monumental complex. What is relevant in this regard is that the Outstanding Universal Value of the Property is related to the religious practices, that have an intrinsic political character and do qualify the property as symbol of Bolivian identity and nationality⁹¹.

The last site examined is the *Shrines and Temples of Nikko* (Japan), whose Outstanding Universal Value has been scrutinized in 1998, under *criterion (i)*, *criterion (iv)*, and *criterion (vi)*. The outstanding artistic value

⁹⁰ The Sacred City of Kandy, Sri Lanka, (ICOMOS), World Heritage List, No. 450, 1986, p. 2.

⁹¹ Tiwanaku, the Spirirtual and Political Centre of the Tiwanaku Culture, Plurinational State of Bolivia, WHC Nomination Documentation, No. 567 Rev., 2000, pp. 27-30; p. 45.



of the nominated properties is connected to the forms of architectural style, known as *Gonzen-zukuri* and intended as the most advanced style of typical religious Japanese architecture. More specifically, the Japanese religious architecture is directly associated with the Shintoist indigenous religious belief. The OUV of the site is indeed qualified as Japanese both because of its religious architecture and because of the rituals and religious events frequently held as to be a living tradition rooted in the lives of people at their spiritual level. This aspect demonstrates the intense relationship between architectural techniques of construction with specific identity features and rituals that justify the Outstanding Universal Value of a Japanese site⁹².

These are meaningful instances that witness the determinant role played by rituals, beliefs, ceremonies, and icons: they acquire an instrumental and political dimension that pushes towards the attribution of a nationality to a site under UNESCO's remit. In this perspective, the immaterial dimension of rituals results in the association with specific religious heritage sites belonging to specific political and institutional contexts⁹³.

10 - Conclusions

The analysis of the two main international instruments adopted by UNESCO (the 1989 *Recommendation on the Safeguarding of Traditional Culture and Folklore* and the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage*) is useful to illustrate the evolution of the legal framework dealing with the protection of immaterial elements. They were first classified as folklore and traditional culture, and eventually as intangible heritage. In this context, intangible heritage being classified as religious plays a determinant role, since UNESCO's nomination processes dealing with religious heritage are able to raise a consistent degree of political, cultural and religious sensitivity. Additionally, intangible heritage recently underwent a process of institutionalization and canonization similar to the nomination mechanisms elaborated for the evaluation of the OUV of natural and cultural sites, consecrated through the *Representative List of the Intangible Heritage of Humanity*, and the *List of Intangible Heritage in Need for Urgent Safeguarding*: these standards of

⁹² Shrines and Temples of Nikko, Japan, ICOMOS, No. 913, 1998, p. 73.

⁹³ D. DE COPPET, *Understanding Rituals*, London and New York, Routledge, 1992.



nominations are giving Member States the possibility of choosing which immaterial elements are most representative, and this is usually the result of a political choice. As a consequence, intangible heritage becomes an instrument in the hands of Member States and UNESCO.

Particular emphasis is attributed to the analysis of the religious architectural techniques of construction and religious rituals. These two elements were first protected as manifestations of folklore and traditional culture in the 1989 Recommendation. Later on, only rituals, while keeping out the architectural techniques of construction, have been included in the framework of the 2003 Convention. It is noted throughout the examination that architecture is part of UNESCO's nomination dossiers and it is used to strengthen the evaluation of the OUV of cultural sites. In the light of these considerations, it emerges that rituals and architectural techniques of construction based on religious lifestyle are part of those nomination dossiers throughout which disputing States and UNESCO are attributing a precise nationality to religious sites. Even if immaterial elements are not listed neither in the *Representative List of the Intangible Heritage of Humanity*, nor in the *List of Intangible Heritage in Need for Urgent Safeguarding*, religious architecture, rituals, traditions, liturgies, and sacred mythology are powerful tools enhance the OUV, the identity, and the political significance of religious sites. These considerations related to the instrumentalization of intangible heritage have two main results. On the one side, they reveal an inner contradiction with the fluid character that ICH should have according to its original conception in UNESCO's formulation, and namely, the attempt of enclosing intangible heritage within political boundaries: this attempt is indeed found in the nomination processes, that are actually recognizing the paternity of States with respect to specific intangible religious manifestations. On the other side, they reveal that through the application of the rules set forth by UNESCO, intangible heritage becomes a very flexible political instrument in the hand of State Parties, and this aspect is somehow clashing with the intrinsic and subjective values of intangible religious heritage.

These approaches confer credibility to the idea that intangible religious heritage is being progressively used as an instrument to shape the political, cultural and religious relevance of cultural heritage, thus enforcing also the OUV of the cultural properties under the sovereignty of States.

At this stage of the quest, there is an unsolved question related the practice of States and UNESCO: is the instrumentalization of intangible heritage a physiology or a pathology?