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# MOVING CULTURES: ENGAGING REFUGEE AND MIGRANT CULTURAL RIGHTS IN INTERNATIONAL HERITAGE LAW

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## Abstract

*In thinking about the rise of the Anthropocene, an important facet of this looming new era remains under-explored: namely, how cultural identity, and its tangible and intangible markers, are to be renegotiated and protected. Notwithstanding that the origins of international heritage law lie in protecting heritage in times of crisis (wartime and natural or man-made disasters), regimes under UNESCO for safeguarding cultural heritage in international law are ill-prepared for the challenges of the Anthropocene. A particular question that needs to be considered is the protection in international law of cultural heritage and identity when communities are displaced from their homes. Because international cultural heritage law is connected to state territoriality, states have the ultimate authorizing power over the meanings and uses of cultural heritage. In the past, this power has at times been used to the detriment of minority groups contesting the majoritarian state. But how might this power play out in a context where communities are forced to move? What, if anything, can international heritage law do to ensure that these populations, who have already lost their homes and livelihoods, can maintain their cultural identity through the protection of their heritage? I argue that international law's separation between the cultural and biological facets of human existence presents a major obstacle to safeguarding the cultures of migrant and refugee groups, ultimately frustrating the very objectives that this separation was meant to achieve, namely, the protection of these populations. Only by reintegrating biology and culture can international law create the means for reimagining civilization in the Anthropocene.*

**Keywords:** *cultural heritage, Anthropocene, refugees, migrants, UNESCO, intangible cultural heritage, territoriality*

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## I. INTRODUCTION

The rise of the Anthropocene draws increasing attention in the social sciences more generally. And, yet, much of the concern relates to the immediate impact on human livelihoods, comprising access to clean water, food, sanitation, and disappearing territory. Those questions are indeed most pressing and urgent, but in focusing on them, we also create a blind spot that prevents us from thinking beyond that immediacy. More specifically, when we think about our responses to the Anthropocene, much of our focus seems to be somewhat dystopian, told in a language of crisis in which our social and cultural systems will collapse, and a

version of the state of nature will set in.

The bright side of that framing is that it is a powerful call to action. Framed as a crisis,<sup>1</sup> the Anthropocene and its potential consequences become unavoidable, as is the need to address and adapt to them. But there is also a dark side: our consistent focus is on the biological elements of human survival as a race, forgetting that, if we are to be more than a race, and be in fact a civilization, there are other elements that are equally important to consider. That is the powerful inclination I wish to push against in this article.

International law has long articulated a separation between the biological and cultural aspects of human existence. This separation can be seen from the fact that, for instance, the Genocide Convention,<sup>2</sup> excluded late in its drafting the idea of cultural genocide.<sup>3</sup> Conversely, international law addressing culture has for the most part, and until recently, excluded the connection between cultural heritage and human goals, instead of focusing on civilization as filtered by a class of experts one step removed from the everyday practice and attachment to said culture.<sup>4</sup> This gap has significant ripple effects in how we imagine humanity in times of crises: either as human groups upon whom crisis bears so heavily that their culture no longer matters; or as culture whose safeguarding is a low priority unless an expert-driven voice of the “international community” says they are worthy of our attention. Nothing could be further from the truth.

Human groups move from assemblages of individuals towards communities on the basis of a shared culture. This shared culture enables a sense of belonging, of existing; it allows for better outcomes for groups as they move across borders, whether voluntarily or forcibly; it generates resilience in the face of vulnerability; it galvanizes action and provides hope. Yet, international law’s separation of culture and

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<sup>1</sup> Hilary Charlesworth, “International Law: A Discipline of Crisis,” *The Modern Law Review* 65:3, (2002).

<sup>2</sup> Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

<sup>3</sup> Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective*, (Oxford: Oxford University Press, 2016).

<sup>4</sup> Lucas Lixinski, “International Cultural Heritage Regimes, International Law and the Politics of Expertise,” *International Journal of Cultural Property* 20:4 (2013).

biology does not allow us to make those linkages clearly, and, as we discuss and prepare responses to the imminent or already ongoing consequences of the Anthropocene, it is urgent that we bridge that gap.

In this article, I wish to focus on one aspect of the international legal response to the Anthropocene in the context of the culture-biology gap. Specifically, I will examine the cultural rights of migrants and refugees with respect to their cultural heritage. I focus on groups whose movement has been forced, either by reason of persecution, economic need, or disappearing territory. I exclude for our present purposes of voluntary migration. In the context of forced movement, I argue that international law's separation between the cultural and biological facets of human existence presents a major obstacle to safeguarding the cultures of migrant and refugee groups, ultimately frustrating the very objectives that this separation was meant to achieve, namely, the protection of these populations. It is therefore urgent that we bridge that gap. For international law more generally, bridging the gap means international legal responses that move beyond the short-sighted immediacy of our perception of a crisis, bringing along better outcomes for affected human groups, and a reimagining of how we perceive threats posed to our existence not just as biological entities, but as a civilization. For international cultural heritage law, it means breathing life into the "human dimension" of cultural heritage and making a reality of the promise of cultural heritage as a means to promote human emancipation and other rights-related goals.

In order to support this claim, the article proceeds as follows: the next section (2) focuses on a discussion of international cultural heritage law in the Anthropocene, highlighting existing regimes and instruments under the United Nations Educational, Scientific, and Cultural Organization (UNESCO). Next, I will focus on the often-neglected matter of the discussion of the cultural rights of migrants and refugees as an international legal concern (3). Taken together, these sections will more clearly delineate the biology-culture gap mentioned above and will provide the basis for a discussion of state international legal obligations towards the cultural heritage of migrant and refugee groups, whether they are the state of origin of these groups (4) or the receiving state (5). On that basis, I will briefly discuss the need to

untether international law on culture from territoriality and the nation-state, an important if elusive and aspirational challenge (6). Concluding remarks follow (7).

## II. INTERNATIONAL CULTURAL HERITAGE LAW IN THE ANTHROPOCENE

Cultural heritage, in international law, is a broad and fairly fragmented category. Under UNESCO standard-setting instruments, it comprises manifestations of culture as varied as monuments and sites,<sup>5</sup> cultural objects,<sup>6</sup> shipwrecks and other underwater artifacts and installations,<sup>7</sup> buildings or groups of buildings,<sup>8</sup> archives,<sup>9</sup> landscapes,<sup>10</sup> and manifestations of living heritage known as intangible cultural heritage (comprising social rituals, dance, music, festivals, legal systems and other ways of knowing nature and the universe).<sup>11</sup> Over time, newer instruments have been designed (and old ones revised through their implementation guidelines) so as to focus increasingly on living cultures, which has both a tangible (the connection that people feel to sites and objects) and intangible dimension (social practices that may or may not involve physical heritage).<sup>12</sup>

UNESCO activity with respect to heritage has often gained momentum in the aftermath of a crisis. The first treaty under its aegis,

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<sup>5</sup> Convention concerning the Protection of the World Cultural and Natural Heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 15 December 1975) (WHC), Art. 1.

<sup>6</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, opened for signature 14 November 1970, 823 UNTS 231 (entered into force 24 April 1972) (1970 Convention), Art. 1.

<sup>7</sup> Convention on the Protection of the Underwater Cultural Heritage, opened for signature 2 November 2001, 2562 UNTS 3 (entered into force 2 January 2009) (UCHC), Art. 1(1).

<sup>8</sup> WHC, Art. 1.

<sup>9</sup> 1970 Convention, Art. 1(j).

<sup>10</sup> UNESCO Recommendation on the Historic Urban Landscape, including a glossary of definitions (adopted 10 November 2011).

<sup>11</sup> Convention for Safeguarding of the Intangible Cultural Heritage, opened for signature 17 October 2003, 2368 UNTS 3 (entered into force 20 April 2006) (ICHC), Art. 2(1).

<sup>12</sup> Lucas Lixinski, *Intangible Cultural Heritage in International Law*, Oxford University Press, 2013.

the 1954 Hague Convention on Cultural Property in Wartime,<sup>13</sup> responds directly to the pillage and destruction of cultural heritage during World War II.<sup>14</sup> Likewise, the World Heritage Convention (WHC) gained international diplomatic momentum for its adoption in no small part because of the flooding of Venice and Florence.<sup>15</sup> Therefore, the evolution of the international legal safeguarding of cultural heritage is closely tied with crises.

One of the effects of this tie is that several UNESCO instruments contain specific language that protects heritage in difficult times. The WHC, for instance, includes specific language on disasters, and creates as a special mechanism a List of World Heritage in Danger.<sup>16</sup> This list is meant to further galvanize international action to safeguard heritage threatened by major changes in human societies (even if in recent practice it has been more often than not perceived as simply a “naming and shaming” device).<sup>17</sup>

Threats to heritage brought about by the Anthropocene effectively split heritage into two large domains : a heritage that is inextricably, and as a matter of fact, tied to a territory (such as world heritage and underwater heritage); and heritage that is not tied to a territory (such as

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<sup>13</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, opened for signature 14 May 1954, 249 UNTS 240 (entered into force 7 August 1956) (1954 Hague Convention).

<sup>14</sup> See generally Lynn H. Nicholas, *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War*, Vintage Books, 1995.

<sup>15</sup> See generally Rodney Harrison, *Heritage: Critical Approaches*, Routledge, 2013.

<sup>16</sup> WHC, Art. 11(4): “The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of “List of World Heritage in Danger”, a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. [...] The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by [...] the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.”

<sup>17</sup> Magdalena Marcinkowska, “*Between Exclusion and Inclusion: On the Challenges Facing World Heritage Preservation Efforts: Interview with Mechtild Rössler*”, *Santander Art and Culture Law Review*, vol. 3, no. 2, 2017.

movable and intangible heritage). This categorization matters because responses will be very different : heritage tied to territory is at the mercy of changes brought about by the Anthropocene, whereas other heritage can, at least, as a matter of fact, be displaced in response to changes. The primary focus of this article is on the latter category. Intangible cultural heritage, in particular has been the object of specific analysis in the context of climate change, suggesting that stronger safeguarding of (intangible) cultural heritage is needed in countries more exposed to the effects of climate change.<sup>18</sup>

In the former category, though, Venice is a key example. As a World Heritage Site, and the object of a key campaign that led to the adoption of the World Heritage Convention, this archipelagic city is an international symbol of cultural heritage-related responses to Anthropocene challenges. As the city is threatened by rising sea-levels, commentators remind us that, as important as the plight of Venetians is :

“when you think about the loss of Venice, [it is] not the Venetians who are the topmost on most people’s minds[ it is] the loss of a beautiful and historic city that has played an enormous role in the development of Western Civilization. [...] The loss of Venice is about the loss of a part of ourselves that reaches back in time and binds us together as civilized people.”<sup>19</sup>

With respect to the other category of heritage for our purposes, though, the challenge rests not with what is possible as a matter of fact, but rather as a matter of law. Because of our state-centric paradigm in international law, heritage is conceptualized and safeguarded in its ties to a territorial state. So, movable heritage is closely tied to national identity, and existing instruments prevent its movement across borders without the authorization of the territorial state;<sup>20</sup> intangible heritage is safeguarded only within the boundaries of the state party that recognizes said intangible heritage as important.<sup>21</sup>

<sup>18</sup> Hee-Eun Kim, “Changing Climate, Changing Culture: Adding the Climate Change Dimension to the Protection of Intangible Cultural Heritage”, *International Journal of Cultural Property*, vol. 18, 2011, 259.

<sup>19</sup> Jeff Goodell, *The Water Will Come: Rising Seas, Sinking Cities, and the Remaking of the Civilized World*, Black Inc., 2017.

<sup>20</sup> 1970 Convention, Arts., 6-7.

<sup>21</sup> ICHC, Art. 11.

This state-centrism, and ensuring territorial connection is at odds with the nature of the heritage, but it aligns with the international legal paradigm under which the relevant treaties were concluded.<sup>22</sup> A key consequence of this alignment is the severing of ties between heritage and communities or groups, even if they could be useful to promote resilience and adaptation to Anthropocene-related events.<sup>23</sup> In this way, international heritage law's enabling of the uses of heritage for nationalistic projects and its ensuing tie to territory helps create and reinforce the biology-culture divide. The biology-culture divide is further reinforced in the Anthropocene or climate change discourse, where culture-related aspects are seldom mentioned, and biological or natural aspects are foregrounded. That happens even within UNESCO, in its reporting on the matter (led by the science branch of the organization).<sup>24</sup> Further, international law's categorization into subfields and silos maintains the divide in ways that fail to "reflect the messy, complex interconnectedness of the issue" of climate change and the Anthropocene.<sup>25</sup>

This close tie to territory is a product of UNESCO standard-setting, though, and does not match pre-UNESCO practice with respect to movable heritage in particular. As documented by Andrzej Jakubowski, there is abundant state practice prior to relevant UNESCO treaties that suggests that a people's cultural heritage follows the people first, and territory second.<sup>26</sup> It was with the advent of UNESCO, and the decolonization process in Africa and Asia that heritage was once again

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<sup>22</sup> For a collection of essays considering cultural heritage and climate change beyond the law, see David C. Harvey and Jim Perry, eds., *The Future of Heritage as Climates Change: Loss, Adaptation and Creativity*, Routledge, 2015.

<sup>23</sup> Kim, see note 19, 269.

<sup>24</sup> As discussed by Kim, *Ibid*, 270-271. See also a recent issue of the UNESCO Courier, the organization's premier public outreach vehicle, dedicated to the Anthropocene. It does not mention cultural heritage at all, and mentions social and cultural aspects only inasmuch as they relate to impacts of the Anthropocene on geophysical features. UNESCO, "Welcome to the Anthropocene!", *The UNESCO Courier*, April-June 2018.

<sup>25</sup> *Mutatis mutandis*, see Jane McAdam, "Environmental Migration" in Alexander Betts, ed., *Global Migration Governance*, Oxford University Press, 2011, 159 (referring more broadly to the problem of climate-induced migration).

<sup>26</sup> Andrzej Jakubowski, *State Succession in Cultural Property*, Oxford University Press, 2015, 323.



tied to (artificial)<sup>27</sup> territorial boundaries. An unintended consequence of this tie is an entire set of regimes under UNESCO that replicate and reinforce territoriality and matching statehood at the expense of cultural ties that people may have to their own culture. This mismatch is particularly experienced with respect to the heritage of migrant or refugee groups, discussed in the next section.

### III. MIGRANTS, REFUGEES, AND CULTURAL HERITAGE

The biology-culture divide exists as well in the legal regimes that focus on the rights of migrants and refugees, in spite of the widespread acknowledgment of cultural elements being integral to the identification and unity of diasporic groups.<sup>28</sup> In these treaties, including most notably the 1951 Refugee Convention<sup>29</sup> and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW),<sup>30</sup> there is no reference to culture in relation to these groups, let alone cultural heritage. A recent report from the International Organization for Migration on indigenous international migrants, for instance, makes no reference to culture, even if indigenous rights in general are often framed around culture.<sup>31</sup> And an extensive proposal for a treaty-specific for persons displaced by climate change, while acknowledging the important role of culture as a background consideration, dedicates very little space to the discussion of cultural

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<sup>27</sup> Makau Mutua, “*Why Redraw the Map of Africa: A Moral and Legal Inquiry*”, Michigan Journal of International Law, vol. 16, 1995.

<sup>28</sup> Lester Edwin J. Ruiz, “*In Pursuit of the ‘Body Politic’: Ethics, Spirituality, and Diaspora*”, Transnational Law & Contemporary Problems, vol. 9, 1999, 636-637.

<sup>29</sup> Convention Relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) (Refugee Convention).

<sup>30</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) (CRMW).

<sup>31</sup> Erika Yamada and Marcelo Torelly, eds., *Aspectos jurídicos da atenção aos indígenas migrantes da Venezuela para o Brasil*, Organização Internacional para as Migrações, 2018. For the connection between indigenous rights advocacy and culture, with a critical analysis of its unintended consequences, see Karen Engle, *The Elusive Promise of Indigenous Development: Culture, Rights, Strategy*, Duke University Press, 2010.

rights of these migrants.<sup>32</sup> Yet, it is well-documented that migrant and refugee groups constitute diasporas that are connected via their cultural heritage and practices. Why is there such a disconnect between the law and the reality of these communities ?

Part of the reason is the mentality of the urgency of crises involving mass displacement of people, discussed in the previous section. The only concern is the immediate biological survival of the individuals in those groups, who are treated as such. It is very little in international law and the individual rights paradigm reigning under it since after World War II that refers to migrants or refugees as collectivities, even if their flows often happen collectively. Therefore, by being treated as individuals, it is easy to focus on their biological existence, and neglect the elements that bind these individuals together, namely, their shared culture and heritage. Even if the Refugee Convention requires persons claiming refugee status to prove their belonging to a persecuted group,<sup>33</sup> cultural belonging is only used to inform an individual's situation, and is thus only part of the background or factual matrix of the assessment, rather than a key concern. The focus is not in redressing the persecution of the group as such, but rather allowing the individual entry into the territory of the receiving state. An unintended consequence of this “de-culturalization” of refugees and migrants, particularly refugees, is that it makes it easier to dehumanize them, which is a crucial problem in refugee law- and policy-making.<sup>34</sup>

Secondly, there is an obvious disinterest from states in adding cultural protections to relevant instruments and regimes, whether they

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<sup>32</sup> David Hodgkinson and others, “*The Hour when the Ship Comes In*’: A Convention for Persons Displaced by Climate Change”, *Monash University Law Review*, vol. 36, no. 1, 2010, 12 and 42 (on the importance of culture) and 44-45 (on intangible cultural heritage).

<sup>33</sup> Refugee Convention, Art. 1: “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

<sup>34</sup> Victoria M. Esses, “*Immigration, Migration, and Culture*” in Oliver Braddick and others, eds., *Oxford Research Encyclopedia of Psychology*, Oxford University Press, 2018.

are the sending or the receiving state. For sending states (or the states of origin of these groups), often the reasons why these groups leave is because they are being persecuted (particularly in the case of refugees). And the persecution of these groups means there is little to no interest in preserving their culture. Even if the cause of distress is the state's failure by virtue of conflict, one can hardly expect a failed state to be able to address issues around culture and heritage, particularly since these considerations are traditionally treated as secondary.

From the perspective of receiving states, there is also little to no interest in providing protection to the culture and heritage of incoming groups of migrants or refugees. Not only is there a risk that the receiving state may run afoul its international obligations if, for instance, it allows refugees to bring movable heritage (under the terms of the 1970 Convention, as discussed above), but, perhaps most crucially, protecting cultural distinctiveness of incoming migrants and refugees can destabilize (even if only momentarily) the receiving state's social structures, a concern even in multicultural states. Further, incoming foreigners have no political rights in the receiving polity, and their concerns can thus easily be pushed aside.

Nevertheless, culture is centrally important to refugee or migrant groups, especially nationals of small island nations, upon whom the impacts of the Anthropocene are being felt first.<sup>35</sup> Particularly important in this respect is a cultural heritage that is not inextricably tied to the land, since it can move across borders. Intangible cultural heritage is notably mentioned in studies of migration and culture, particularly as tied to religion<sup>36</sup> and culinary practices.<sup>37</sup> It is important to note, though, that the current international legal regime on intangible cultural heritage largely excludes religion per se,<sup>38</sup> and that food practices that

<sup>35</sup> For a collection of essays tying cultures and small island nations, see Tim Curtis, ed., *Islands as Crossroads: Sustaining Cultural Diversity in Small Island Developing States*, UNESCO Publishing, 2011.

<sup>36</sup> Ajaya Kumar Sahoo and Dave Sangha, "Diaspora and cultural heritage: the case of Indians in Canada", *Asian Ethnicity*, vol. 11, no.1, 2010, 81-94 and 88-89.

<sup>37</sup> Pnina Werbner, "Migration and Culture" in Marc R. Rosenblum and Daniel J. Tichenor, eds., *Oxford Handbook of the Politics of International Migration*, Oxford University Press, 2012, 215-242 and 221-230.

<sup>38</sup> See Benedetta Ubertazzi, "Article 2(2)" in Janet Blake and Lucas Lixinski, eds., *Commentary to the 2003 Convention for the Safeguarding of the Intangible Cultural*

have gained international recognition as cultural heritage are only those suggested by the territorial state, therefore tending to be quintessentially national (such as the French gastronomic meal). Some cross-border culinary practices have gained recognition as cultural heritage, though, pointing that it may be possible to engage certain traditions brought in by migrant groups that way.<sup>39</sup> Further, cultural objects that embody intangible heritage, particularly those of everyday life, help enliven diasporic culture and practices.<sup>40</sup>

Further, refugee and migrant groups' ability to bring and maintain some of their heritage paradoxically can facilitate their process of integration in the receiving state,<sup>41</sup> as supported by psychological studies in this area.<sup>42</sup> It is therefore in said state's interest to protect their heritage and cultural rights, and have their heritage recorded and safeguarded in museums and other cultural institutions,<sup>43</sup> even if they do not have the political agency to demand so of the state. Cultural institutions, in particular, by validating the refugee or migrant group's culture, can validate said culture and enhance its value even for the community themselves (let alone for the host state).<sup>44</sup> There is of course a risk, however, that these institutions will replace migrant and refugee groups' agency in determining the fate of their own culture, and that is a risk to be avoided, particularly within the host state.

But how can and do these interests translate into international legal obligations, either as a matter of existing international law (*lege lata*) or aspirational obligations (*lege ferenda*)? The next two sections explore some of these possibilities, from the perspectives of states of origin of migrants and refugees as well as receiving states.

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Heritage, Oxford University Press, forthcoming (manuscript on file).

<sup>39</sup> For a survey of international legal responses to food as cultural heritage, see Lucas Lixinski, "Food as heritage and multi-level international legal governance", *International Journal of Cultural Property* (forthcoming 2018).

<sup>40</sup> Saphinaz-Amal Naguib, "Museums, Diaspora and the Sustainability of Intangible Cultural Heritage", *Sustainability*, vol. 5, 2013.

<sup>41</sup> Werbner, see note 38, 215.

<sup>42</sup> Esses, see note 38.

<sup>43</sup> Naguib, see note 41.

<sup>44</sup> *Ibid*, 2186.

#### IV. OBLIGATIONS OF THE STATE OF ORIGIN

As indicated above, obligations imposed on the state of origin of migrant groups are difficult to specify and enforce, as these states are often troubled or even failing or failed states. Because of these difficulties, many of these obligations are *de lege ferenda*, but they are grounded in existing international law. A challenge in identifying these obligations lies in the biology-culture divide, in that it prevents the dialogue between cultural heritage obligations (normally interpreted as rights of states over “their” heritage) and other bodies of international law more attentive to the needs of migrant and refugee groups (which tend to focus on biological, rather than cultural, needs). That said, existing or aspirational international legal obligations can be identified with respect to three different phases: the migrant or refugee group’s departure; the group’s separation from the state of origin; and possibly their return to the state of origin.

With respect to obligations upon the group’s departure, a key obligation related to cultural heritage is to allow safe passage of cultural objects and artifacts that speak primarily to that group’s cultural heritage. Those artifacts can either be themselves the heritage (in the sense of the 1970 Convention), or they can be (alternatively or in addition) instruments for the practice of the group’s intangible cultural heritage. To be sure, the line of what is that group’s heritage versus the shared heritage or identity of other groups within the nation is often blurred, as states often, in their multicultural accommodation projects, weave minority heritage into narratives of national cultural identity. A test of cultural proximity is thus necessary, to decide whether a certain cultural artifact belongs primarily with the migrant or refugee group, or with another group (or even the nation-state as the representative of the collectivity). This test could be similar to existing tests that try and identify whether a certain practice is essential to a belief system for the purposes of freedom of belief and religion.<sup>45</sup> If a certain practice is essential to the set of beliefs (which does not need to be a religion, it can be a set of cultural and social practices), then it warrants protection under international law. This test is in line with the balancing test applied

<sup>45</sup> European Commission on Human Rights, *Arrowsmith v United Kingdom* (Application No 7050/75), Comm Rep 1978, 19 DR 5. For a further discussion, see Lixinski, see note 13, 166-167.

by the Inter-American Court with respect to the competing rights of indigenous peoples and private parties.<sup>46</sup> In determining who could exercise the same right over the same interest (in the Inter-American Court's case, fittingly for our purposes, the right to property), the Court considered the right's relationship to the core of the identity of the affected parties. Transposing both tests to our present context, it means that, if the artifact in question is essential for a certain cultural practice, and said cultural practice is more important for the continuation of the group's identity than it is for other stakeholders, then the leaving group should be entitled to take said object with them upon their departure. It thus falls on the state of origin to issue the export certificate required by the 1970 Convention<sup>47</sup> in order to ensure the safe passage of the artifact.

After the group's departure, and during their time away from the state of origin, there are two key obligations upon the state, both of which being primarily negative (but with corresponding positive duties). Specifically, they are obligations not to impair or destroy conditions tied to the continuity of the culture and heritage of the departing group. Those are obligations not to destroy (or allow others to destroy, or to allow to fall into disrepair) cultural heritage, whether sites or objects, that are central to the group's culture but have stayed in the state of origin. Similarly, the state has an obligation not to retaliate (or allow others to retaliate) against members of the departing group that may have left, by preventing or punishing cultural practices. Sadly, often enough the latter happens (even if it can amount to the international crime of persecution), particularly when the group is persecuted in their state of origin. In those cases, it is incumbent on any of the parties to a relevant heritage treaty to enforce relevant international legal obligations as *erga omnes partes*,<sup>48</sup> even if there are notable practical difficulties with this approach, the discussion of which goes beyond the scope of this article.<sup>49</sup>

<sup>46</sup> Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v Paraguay*, Merits, Reparations and Costs, IACtHR Series C no 125, 17 June 2005, paras. 146-148.

<sup>47</sup> 1970 Convention, Art. 6.

<sup>48</sup> See eg Francesco Francioni, "*Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity*", *Michigan Journal of International Law*, vol. 25, 2003-2004.

<sup>49</sup> But see Lucas Lixinski and Vassilis Tzevelekos, "*The Strained, Elusive and Wide-*

And, should the group ever return to the state of origin, the said state is under an obligation to welcome back the group and accommodate their culture, on the group's own terms and in accordance with their expressed desires, in national multicultural projects. That accommodation is particularly important as culture is transformed in the receiving state, or, more drastically, the diaspora becomes the only place where the heritage is practiced.<sup>50</sup> Those obligations mean allowing artifacts to be brought back into the country, and also allowing these communities to (re-)occupy spaces they have traditionally used for cultural practices, even if they may have been listed as protected monuments since the group's departure and are considered out of bounds for everyday use by virtue of domestic heritage law. State duties in this area can also extend to the inclusion of cultural and social practices into national inventories of intangible cultural heritage, with the consequent funds necessary for the safeguarding of said heritage, particularly important given the likely urgency of safeguarding these fragile re-introduced cultural manifestations.

Out of these three moments (upon departure, during time away, upon return), the obligations upon departure are the ones most solidly grounded upon existing law (*de lege lata*), using a combination of existing international cultural heritage law and international human rights law. Other obligations either depend on the implementation of doctrines that currently exist in international law in theory, but that present practical or political difficulties, like *erga omnes partes*. But the survey above shows that there are important elements that cannot be disregarded by states of origin, even when their policies and practices are the reason why people are displacing themselves. The state that receives these groups also has a number of obligations, some of which mirror or follow directly from the state of origin's obligations in this space, and others that respond to idiosyncrasies of the receiving state. These are the object of the next section.

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*Ranging Relationship between International Cultural Heritage Law and the Law of State Responsibility: From Collective Enforcement to Concurrent Responsibility*" in Alessandro Chechi and Marc-Andre Renold, eds., *Cultural Heritage Law and Ethics: Mapping Recent Developments*, Schulthess, 2017.

<sup>50</sup> Naguib, see note 41, 2183.

## V. OBLIGATIONS OF THE RECEIVING STATE

In theory, the receiving state is best placed to do more with respect to safeguarding the heritage of migrant and refugee groups (at least the heritage, as discussed above, that is not inextricably tied to the territory). That said, as also mentioned above, there are fewer incentives for the receiving state to take action. The migrant or refugee groups do not have political rights in the new polity immediately, meaning they cannot influence domestic law- and policy-making in their favor, nor can express their grievances through the electoral process. They “are considered as mere instruments of economic and demographic planning, not as human beings endowed with dignity and rights.”<sup>51</sup> Further, it is not in the interest of many receiving states to undertake action they often perceive as disruptive of their own cultural heritage and identity narratives (a “fantasy of domination” in which refugees and other migrants “take over” the state, being incumbent upon the state “to either restore or maintain a ‘proper’ balance to multicultural diversity”).<sup>52</sup> Finally, the obligations upon receiving states have to do with the immediate accommodation of incoming individuals, measured against their biological existence, rather than the structural causes that led them to flee as individuals or groups, which often connect to culture but also mean scrutinizing the internal situation in another state (their *domain réservé*).<sup>53</sup> Therefore, reasons for traditional voluntarist international legal structures and the biology-culture divide contribute to reducing the scope of presently expected obligations incumbent upon receiving states with respect to the cultural heritage of incoming migrant and refugee groups.

However, there are reasons to rethink this *status quo*. First, there are a range of long-term benefits for accommodating the culture and heritage of migrant and refugee groups, particularly in that groups whose culture

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<sup>51</sup> Alessandro Chechi, “*Migrants’ Cultural Rights at the Confluence of International Human Rights Law and International Cultural Heritage Law*”, *International Human Rights Law Review* vol. 5, 2016, 36.

<sup>52</sup> Sara Dehm and Max Walden, “*Refugee Policy: A Cruel Bipartisanship*” in Anika Gauja and others, eds., *Double Disillusion: The 2016 Australian Federal Election*, ANU Press, 2018, 602.

<sup>53</sup> Janet Blake, *International Cultural Heritage Law*, Oxford University Press, 2015, 282.



of origin is better safeguarded in a new state settle more easily and start contributing to that society more quickly.<sup>54</sup> This idea is somewhat of a paradox, considering many states still believe integration into the pre-existing social and cultural structures is key. But one thing does not preclude the other, and in effect studies show that they are mutually reinforcing. There is therefore a strong incentive for safeguarding the culture of origin of migrants and refugees. This incentive, however, is sadly unlikely to work in short election cycles, which is how statecraft is often measured these days, particularly with respect to refugee and migration policy.<sup>55</sup>

Nevertheless, there are three categories of obligations that receiving states have with respect to incoming migrant or refugee groups. Like the obligations of states of origin, these are classified in relation to the “lifecycle” of a migrant or refugee group in the state, thus including the group’s arrival, their settlement or “integration”, and, if applicable, their departure, either to return to the state of origin or to a new territory.

With respect to the group’s arrival, the key obligation upon the receiving state is to allow entry of artifacts belonging to said group. This obligation largely mirrors the one discussed in the previous section with respect to the group’s departure from their state of origin, and the same test is drawn from international human rights law as to the relative importance of the artifact to that group’s culture applies. But there are also some important caveats. One of them is that, under the terms of the 1970 Convention, the state would be under the obligation to return the object to the state of origin if it has been brought into their territory without a valid export permit.<sup>56</sup> However, if the group in question is being persecuted, particularly on cultural grounds (widely understood here, to include at least religion and ethnicity), then the state of origin is unlikely to issue the export permit, particularly if the state also sees itself as having a claim (based on cultural or economic considerations) over the artifact. In this instance, it is upon the receiving state to consider their obligations under the 1970 Convention among their duties to these migrants or refugees, which includes an obligation not to prevent these

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<sup>54</sup> Chechi, see note 52, 28.

<sup>55</sup> See generally Dehm and Walden, see note 53.

<sup>56</sup> 1970 Convention, Art. 7.

groups from maintaining their cultural links.<sup>57</sup> Therefore, the biology-culture gap needs to be bridged so that a claim over a cultural artefact be understood not simply as a claim over an object belonging to a state (the framing in the 1970 Convention, read in isolation), but rather as the balancing of the interest of a state over an object versus the group's right to their cultural identity.

Moreover, there are obligations upon the receiving state as the group settles into the social and cultural environment of the receiving state. These have been articulated by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) with respect to the right to participate in cultural life.<sup>58</sup>

The CESCR issued a general comment to this provision in 2009,<sup>59</sup> which discusses the scope of the right to participate in cultural life more broadly. Importantly, this general comment discusses the rights of migrants to participate in cultural life. The Committee indicated that states:

*“should pay particular attention to the protection of the cultural identities of migrants, as well as their language, religion and folklore, and of their right to hold cultural, artistic and intercultural events. States parties should not prevent migrants from maintaining their cultural links with their countries of origin”*<sup>60</sup>

This provision is in line with the language in the CRMW.<sup>61</sup> Note that the CESCR puts particular emphasis on intangible cultural heritage here, rather than artifacts. That may be because intangible cultural heritage is less controversial in relation to migrants and refugees (since the protection of movable cultural heritage, as discussed in the previous paragraph, could run afoul of obligations under the 1970

<sup>57</sup> CRMW Art. 31.

<sup>58</sup> International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), Art. 15(a).

<sup>59</sup> Committee on Economic, Social and Cultural Rights, General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/21 (21 December 2009) (General Comment No. 21).

<sup>60</sup> *Ibid*, para. 34.

<sup>61</sup> CRMW, Art. 45: “1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to: ... (d) Access to and participation in cultural life.”

Convention). But it is also the case that intangible cultural heritage is more important to this moment of an immigrant or refugee group's journey in the receiving state, and that human rights apply more directly to the residence of the group in the receiving state, rather than the exact moment of their entry. Nevertheless, museums in the receiving state can play an important role, even if one must be wary that they do not overstep their mandate and become the sole authorizers of migrant or refugee heritage, as discussed above.<sup>62</sup>

The CESCR also indicates that states have an obligation:

*“to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial measures, that would contribute to the realization of this right”*

which includes taking:

*“appropriate measures or programmes to support minorities or other communities, including migrant communities, in their efforts to preserve their culture.”<sup>63</sup>*

International jurisprudence has acknowledged the right of migrant communities to maintain their cultural ties in spite of restrictions in the receiving state, through the right to freedom of expression<sup>64</sup> and the right to freedom of association.<sup>65</sup> In this connection, there is also an obligation upon states to take :

*“appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life.”<sup>66</sup>*

In other words, it is upon the state not only to facilitate the preservation of migrant culture, but also to ensure that these groups

<sup>62</sup> Naguib, see note 41, 2187 (suggesting that “[u]ltimately, it is the museum who sets the structure on which to construct the heritage of migration and diasporas and who decides on its sustainability.”).

<sup>63</sup> General Comment No. 21, para. 52(f).

<sup>64</sup> European Court of Human Rights, *Khurshid Mustafa and Tarzibachi v Sweden* (Application No 23883/06), Judgment of 16 December 2008.

<sup>65</sup> European Court of Human Rights, *Sidiropoulos and Others v Greece* (Application No. 26695/ 95), Judgment of 10 July 1998; European Court of Human Rights, *Gorzelik and Others v Poland* (Application No. 44158/98), Judgment of 17 February 2004.

<sup>66</sup> General Comment No. 21, para. 52(g).

can participate in public life, and that the structural causes behind their persecution are addressed by the receiving state. This obligation is further compounded when there are intersectionality factors at play, such as the case of migrant or refugee children,<sup>67</sup> older persons,<sup>68</sup> or women.<sup>69</sup> A few promising examples already exist in local practice, but they are more often than not restricted to major metropolitan areas and are still to have a widespread impact on national law- and policy-making.<sup>70</sup>

Lastly, receiving states also have obligations vis-à-vis these migrant and refugee groups should they ever decide to leave, either back to their state of origin, or elsewhere. In this context, they become the state of origin, and the obligations discussed in the previous section apply. It is important here to bear in mind that these groups have the right to take their artifacts with them, even if the receiving state, in an effort to protect said artifacts in the interest of the migrant or refugee groups, or by virtue of this group's integration and role in the social structures of the broader polity, considers said artifacts to also be part of their national heritage.

This survey of existing and aspirational obligations of both states of origin and receiving states of migrant and refugee groups shows that there is a wide range of international legal obligations that, interpreted

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<sup>67</sup> International Labor Organization, Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, opened for signature 24 June 1975, 1120 UNTS 324 (entered into force 9 December 1978), Art. 12: "Each Member shall, by methods appropriate to national conditions and practice ... (f) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue..."

<sup>68</sup> Laia Colomer, "Managing the heritage of immigrants. Elderly refugees, homesickness, and cultural identities", *The European Archaeologist*, vol. 39, 2013.

<sup>69</sup> United Nations Human Rights Council, "Report of the Special Rapporteur in the field of cultural rights – Karima Bennouna", UN Doc. A/HRC/31/59 (3 February 2016), para. 38.

<sup>70</sup> For instance, see Clara Arokiasamy, "Embedding shared heritage: the cultural heritage rights of London's African and Asian diaspora communities", *International Journal of Heritage Studies* vol. 18, no. 3, 2012. Cf. Luann Good Gingrich, "Preserving Cultural Heritage in the Context of Migratory Livelihoods", *International Migration* vol. 52, no. 3, 2014 (focusing on Mennonite migration to rural Canada).

systemically, provide important guidance with respect to the importance to accommodate and protect the culture and heritage of these groups. This protection arises not out of alignment between these groups and a territorial state's rights under international law, but it is rather based on the rights that migrant and refugee groups enjoy themselves, and obligations owed to them by states. The gap between culture and biology presents a major obstacle in identifying and applying these rights and obligations, though. The imperative to preserve the heritage of migrant and refugee groups highlights the shortcomings of this gap, alongside other basic pillars of international legal ordering, within and beyond the specific domain of cultural heritage law, to address the challenges of the Anthropocene.

## **VI. RETHINKING TERRITORIALITY AND STATEHOOD AS LINCHPINS OF INTERNATIONAL LAW AND CULTURE**

As indicated above, the territorial paradigm permeates cultural heritage and its safeguarding in international law, effectively preventing the recognition of the mobility of cultures that is so important to protecting, promoting, and fulfilling the rights of migrants and refugees. That link between heritage and territory, though, is not historically a given, and its contingencies need to be understood as a means of unpacking the possibilities of culture and (re)imagining international law in this area.<sup>71</sup> Further, the idea of community coalescing its culture around territorially-based constructs has long been surpassed,<sup>72</sup> even if UNESCO-era international law enshrines that type of understanding. And, since culture plays a key (if often underestimated) role in international law and relations,<sup>73</sup> it is worth considering the implications of our rethinking of the relationship between culture and international law beyond cultural heritage law.

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<sup>71</sup> On the importance of contingencies in international legal thinking, see Ingo Venzke, "What If? Counterfactual (Hi)Stories of International Law", *Asian Journal of International Law* (advance publication 2017).

<sup>72</sup> Werbner, see note 38, 216.

<sup>73</sup> Jacinta O'Hagan, "Conflict, Convergence or Co-existence? The Relevance of Culture in Reframing World Order", *Transnational Law & Contemporary Problems*, vol. 9, 1999.

Focusing on the history of state succession with respect to tangible cultural heritage, Andrzej Jakubowski has examined extensive practice regarding the movement of cultural artifacts and their relationship to peoples in contexts of fluid or moving state borders. Territoriality, he acknowledges, is a key principle connecting people, land, and heritage, going as far back as the nineteenth century. However, this principle evolved to make territory but a proxy for the idea of nation-state, when it came to cultural heritage.<sup>74</sup> Particularly in the aftermath of World War II, state boundaries were in flux, and entire national or ethnic groups had been displaced as a result of the conflict. Thus, strict territoriality gave way to the recognition of the primacy of collective cultural rights, and cultural heritage was meant to follow the fate of these displaced groups.<sup>75</sup> This idea, central as it was for the conceptual understanding of the relevance of heritage in the context of new and changing states, was not explicitly inserted in relevant arrangements, and, when UNESCO started undertaking the codification of international law in the area of cultural heritage protection and safeguarding, territorial provenance was reaffirmed and enshrined by default in the regime we today apply in international law with respect to culture.<sup>76</sup>

Key in this story is that the link between culture and territory is not a given, nor is it necessary; rather, it is a default position of a state-centric international law. That it was subsequently reinforced during the decolonization process is relevant, but not essential, to understanding the purpose of international heritage law. During the decolonization process of Africa and Asia in the decades immediately after the foundation of the United Nations, the connection to territory was reinforced as a proxy for the emerging nation-state, but, in effect, heritage was needed to restore and galvanize the identity of the peoples of these new countries, much as it was important for the national identity of successor states in the nineteenth century.<sup>77</sup>

That territory was chosen has more to do with the limits of the decolonization itself than with heritage. More specifically, the formation of new states was closely tied to the *uti possidetis* principle, meaning

<sup>74</sup> Jakubowski, see note 28, 322.

<sup>75</sup> *Ibid*, 323.

<sup>76</sup> *Ibid*.

<sup>77</sup> *Ibid*, 52.

boundaries set by colonial powers, in full disregard of pre-existing ethnic or cultural lines, needed to be respected. Therefore, in the absence of unified cultural polities in these newly independent states, territory became the common denominator. That in itself, though, enacts colonial violence, and, if we are serious about overcoming these legacies, then we should be willing to let go of territoriality in this area, and embrace the fact that, as we already knew before the United Nations was founded, culture and cultural heritage belong with peoples, rather than with land. Heritage gives people its continuity, rather than give territory its stability.<sup>78</sup> That the two align is more a matter of coincidence and colonial violence than one of purpose. In fact, even the International Court of Justice (notably conservative in basic matters of international law) has, in a recent case, recognized that culture and territory can be separated.<sup>79</sup>

In the context of the Anthropocene, decoupling heritage from territory means that migrant and refugee groups are entitled to the full gamut of their cultural rights, and entitlements to the heritage that binds them together as a community. Thus, states of origin must allow these groups to carry their own heritage with them if they are in fact abandoning the polity as a group, and resettle said heritage in their new country. Likewise, the receiving state should accommodate the new heritage of the entering migrant or refugee group, not only by protecting their right to keep their artifacts, but also by creating the conditions through which their intangible cultural heritage can be practiced and safeguarded. It is in the interest of the receiving state, after all, that these entering groups feel welcome and accepted, and, as numerous examples show, the heritage of migrant and refugee groups often does become deeply enmeshed with the pre-existing heritage of that polity. That the law as is does not reflect that common wisdom has more to do with the law being dated than it being a disincentive or prohibition to receiving state action.

Thinking about international law's relationship to culture and cultural heritage more broadly, we have that international cultural

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<sup>78</sup> *Ibid*, 44-45.

<sup>79</sup> International Court of Justice, Frontier Dispute (Burkina Faso / Niger), Judgment of 16 April 2013.

heritage law, and the imperative of safeguarding the culture of migrant and refugee groups, helps us understand the artificiality of the ties between international legal rights and obligations to territory. As territory becomes an increasingly threatened constant in the Anthropocene, international law would do well to rethink this artificial and contingent relationship, and to allow itself to become the instrument of human emancipation the twentieth and twenty-first centuries have promised, but are yet to fulfill.

Decoupling international law on culture from territory also implies diminishing the overwhelming influence of state sovereignty on the field.<sup>80</sup> An authority vacuum is thus created, and one that could and should aptly be filled by other representatives of the international community whose interest is not on their immediate state-centric institutional interests, but who can act as spokespeople for affected communities. Ideally, of course, communities themselves would have a voice in decision making about their heritage in the context of forced relocation, but, should that not be possible, international or regional organizations can act as their representatives, as long as they understand that their focus is not on the protection of their own existence, that of a class of experts, or of heritage as an end in itself. Rather, the goal is to promote the cultural heritage of migrant and refugee communities in these communities' own terms, and for their benefit wherever they relocate.

## VII. CONCLUSION

The rise of the Anthropocene presents a number of challenges to international law. But with challenges come opportunities to overcome

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<sup>80</sup> Alternatively, with the emergence of deterritorialized states, things can remain the same. See Rosemary Rayfuse and Emily Crawford, "*Climate Change and Statehood*" in Rosemary Rayfuse and Shirley V. Scott, eds., *International Law in the Era of Climate Change*, Edward Elgar Publishers, 2012; Maxine Burkett, "*The Nation Ex-Situ: On climate change, deterritorialized nationhood and the post-climate era*", *Climate Law*, no. 2, 2011, 369 (arguing that "'cultural identity will survive territory even at a significant distance'").



internal barriers to international legal ordering that predated our imminent predicament as a civilization. Chief among them, as this article has shown, is the divide in international law between culture and biology. This divide creates a sense of immediacy and crisis in international law that is short-sighted and prevents international law from achieving its own objectives by obscuring key elements that need to be taken into account when addressing the needs of human communities. Flowing from that gap is international law's insistence on individual (and thus easily translated into biological) over group (inherently cultural) interests being at the forefront of international legal efforts.

But a brief look into the evolution of applicable norms underscores their contingencies, and shows that, much like the biology-culture divide, territoriality as a necessary link between cultural heritage in international law is also not a given. Breaking away from this link allows us to effectively safeguard the culture and heritage of migrant groups, and, most importantly, it serves as a powerful reminder to ourselves of international law's purpose. Culture can be a bridge towards humanity, and beyond the increasingly artificial constructs and anchors of statehood and territoriality, but we need to remember that culture is only as good as the community that practices, lives, and carries it onwards.

## REFERENCES

- Arokiasamy, Clara. "Embedding shared heritage: the cultural heritage rights of London's African and Asian diaspora communities". *International Journal of Heritage Studies*. Vol. 18. No. 3. 2012.
- Blake, Janet. *International Cultural Heritage Law*. Oxford University Press. 2015.
- Burkett, Maxine. "The Nation *Ex-Situ*: On climate change, deterritorialized nationhood and the post-climate era". *Climate Law*. No. 2. 2011.
- Charlesworth, Hilary. "International Law: A Discipline of Crisis". *The Modern Law Review*. Vol. 65. No. 3. 2002.
- Chechi, Alessandro. "Migrants' Cultural Rights at the Confluence of International Human Rights Law and International Cultural Heritage Law". *International Human Rights Law Review*. Vol. 5. 2016.
- Colomer, Laia. "Managing the heritage of immigrants. Elderly refugees, homesickness, and cultural identities". *The European Archaeologist*. Vol. 39. 2013.
- Committee on Economic, Social and Cultural Rights, General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/GC/21 (21 December 2009).
- Convention concerning the Protection of the World Cultural and Natural Heritage. 1037 UNTS 151 (opened for signature 16 November 1972, entered into force 15 December 1975).
- Convention for Safeguarding of the Intangible Cultural Heritage. 2368 UNTS 3 (opened for signature 17 October 2003, entered into force 20 April 2006).
- Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. 249 UNTS 240 (opened for signature 14 May 1954, entered into force 7 August 1956).
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 823 UNTS 231 (opened for signature 14 November 1970, entered into force 24 April 1972).
- Convention on the Prevention and Punishment of the Crime of Genocide. 78 UNTS 277 (opened for signature 9 December 1948, entered into force 12 January 1951).
- Convention on the Protection of the Underwater Cultural Heritage. 2562 UNTS 3 (opened for signature 2 November 2001, entered into force 2 January 2009).
- Convention Relating to the Status of Refugees. 189 UNTS 137 (opened for signature 28 July 1951, entered into force 22 April 1954).
- Curtis, Tim. Ed. *Islands as Crossroads: Sustaining Cultural Diversity in Small Island Developing States*. UNESCO Publishing, 2011.
- David C. Harvey and Jim Perry. Eds. *The Future of Heritage as Climates Change: Loss, Adaptation and Creativity*. Routledge. 2015.
- Dehm, Sara and Walden, Max. "Refugee Policy: A Cruel Bipartisanship" in Anika Gauja and others. Eds. *Double Disillusion: The 2016 Australian Federal Election*. ANU Press. 2018.
- Edwin J. Ruiz, Lester. "In Pursuit of the 'Body Politic': Ethics, Spirituality, and Diaspora". *Transnational Law & Contemporary Problems*. Vol. 9. 1999.
- Engle, Karen. *The Elusive Promise of Indigenous Development: Culture, Rights, Strategy*. Duke University Press. 2010.

- Esses, Victoria M. "Immigration, Migration, and Culture" in Oliver Braddick and others. Eds. *Oxford Research Encyclopedia of Psychology*. Oxford University Press. 2018.
- European Commission on Human Rights. *Arrowsmith v United Kingdom* (Application No 7050/75), Comm Rep 1978. 19 DR 5.
- European Court of Human Rights. *Gorzelik and Others v Poland* (Application No. 44158/98). Judgment of 17 February 2004.
- European Court of Human Rights. *Khurshid Mustafa and Tarzibachi v Sweden* (Application No 23883/06). Judgment of 16 December 2008.
- European Court of Human Rights. *Sidiropoulos and Others v Greece* (Application No. 26695/ 95). Judgment of 10 July 1998.
- Francioni, Francesco. "Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity". *Michigan Journal of International Law*. Vol. 25. 2003-2004.
- Good Gingrich, Luann. "Preserving Cultural Heritage in the Context of Migratory Livelihoods". *International Migration*. Vol. 52. No. 3. 2014.
- Goodell, Jeff. *The Water Will Come: Rising Seas, Sinking Cities, and the Remaking of the Civilized World*. Black Inc. 2017.
- Harrison, Rodney. *Heritage: Critical Approaches*. Routledge. 2013.
- Hodgkinson, David and others. "'The Hour when the Ship Comes In': A Convention for Persons Displaced by Climate Change". *Monash University Law Review*. Vol. 36. No. 1. 2010.
- Inter-American Court of Human Rights. *Yakye Axa Indigenous Community v Paraguay*. Merits, Reparations and Costs. IACtHR Series C no 125. 17 June 2005.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. 2220 UNTS 3 (opened for signature 18 December 1990, entered into force 1 July 2003).
- International Court of Justice. *Frontier Dispute (Burkina Faso / Niger)*. Judgment of 16 April 2013.
- International Covenant on Economic, Social and Cultural Rights. 993 UNTS 3 (opened for signature 16 December 1966, entered into force 3 January 1976).
- International Labor Organization, *Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*. 1120 UNTS 324 (opened for signature 24 June 1975, entered into force 9 December 1978).
- Jakubowski, Andrzej. *State Succession in Cultural Property*. Oxford University Press. 2015.
- Kim, Hee-Eun. "Changing Climate, Changing Culture: Adding the Climate Change Dimension to the Protection of Intangible Cultural Heritage". *International Journal of Cultural Property*. Vol. 18. 2011.
- Kumar Sahoo, Ajaya and Sangha, Dave. "Diaspora and cultural heritage: the case of Indians in Canada". *Asian Ethnicity*. Vol. 11. No.1. 2010.
- Lixinski, Lucas and Tzevelekos, Vassilis. "The Strained, Elusive and Wide-Ranging Relationship between International Cultural Heritage Law and the Law of State Responsibility: From Collective Enforcement to Concurrent Responsibility". In Alessandro Chechi and Marc-Andre Renold. Eds. *Cultural Heritage Law and*

- Ethics: Mapping Recent Developments*. Schulthess. 2017.
- Lixinski, Lucas, *Intangible Cultural Heritage in International Law*. Oxford University Press. 2013.
- Lixinski, Lucas. “Food as heritage and multi-level international legal governance”. *International Journal of Cultural Property* (forthcoming 2018).
- Lixinski, Lucas. “International Cultural Heritage Regimes, International Law and the Politics of Expertise”. *International Journal of Cultural Property*. Vol. 20. No. 4. 2013.
- Lynn H. Nicholas, *The Rape of Europa: The Fate of Europe’s Treasures in the Third Reich and the Second World War*. Vintage Books. 1995.
- Marcinkowska, Magdalena. “Between Exclusion and Inclusion: On the Challenges Facing World Heritage Preservation Efforts: Interview with Mechtild Rössler”. *Santander Art and Culture Law Review*. Vol. 3. No. 2. 2017.
- McAdam, Jane. “Environmental Migration” in Alexander Betts. Ed. *Global Migration Governance*. Oxford University Press. 2011.
- Mutua, Makau. “Why Redraw the Map of Africa: A Moral and Legal Inquiry”, *Michigan Journal of International Law*. Vol. 16. 1995.
- Naguib, Saphinaz-Amal. “Museums, Diaspora and the Sustainability of Intangible Cultural Heritage”. *Sustainability*. Vol. 5. 2013.
- Novic, Elisa. *The Concept of Cultural Genocide: An International Law Perspective*. Oxford University Press. 2016.
- O’Hagan, Jacinta. “Conflict, Convergence or Co-existence? The Relevance of Culture in Reframing World Order”. *Transnational Law & Contemporary Problems*. Vol. 9. 1999.
- Rayfuse, Rosemary and Crawford, Emily, “Climate Change and Statehood” in Rosemary Rayfuse and Shirley V. Scott. Eds. *International Law in the Era of Climate Change*. Edward Elgar Publishers. 2012.
- Ubertazzi, Benedetta. “Article 2(2)” in Janet Blake and Lucas Lixinski. Eds. *Commentary to the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*. Oxford University Press. Forthcoming (manuscript on file).
- UNESCO Recommendation on the Historic Urban Landscape, including a glossary of definitions (adopted 10 November 2011).
- UNESCO. “Welcome to the Anthropocene!”. *The UNESCO Courier*. April-June 2018.
- United Nations Human Rights Council, “Report of the Special Rapporteur in the field of cultural rights – Karima Bennouna”. UN Doc. A/HRC/31/59 (3 February 2016).
- Venzke, Ingo. “What If? Counterfactual (Hi)Stories of International Law”. *Asian Journal of International Law*. (advance publication 2017).
- Werbner, Pnina. “Migration and Culture” in Marc R. Rosenblum and Daniel J. Tichenor. Eds. *Oxford Handbook of the Politics of International Migration*. Oxford University Press. 2012.
- Yamada, Erika, and Torelly, Marcello. Eds. *Aspectos jurídicos da atenção aos indígenas migrantes da Venezuela para o Brasil*. Organização Internacional para as Migrações. 2018.