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## Selling cultural heritage?

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# Chapter 7

## Not yet a human right? UN instruments as a guide for corporate principles

*“No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor limit their scope.”* (UNESCO 2001 Universal Declaration on Cultural Diversity).

Cultural heritage, although defended by heritage managers as a human right, is still not seen as a priority by MNCs. It is rarely present in the materiality assessments of companies across sectors. And the scope of MNC operations and communication activities that affect cultural heritage rights are also not being monitored or regulated within key UN instruments.

The purpose of this chapter is to present an overview and analysis of some of the key UN instruments affecting cultural heritage, to consider the inclusion of cultural heritage within these instruments, and to discuss their potential influence on the corporate agenda. The findings suggest a lack of key guidelines, and the implication is that MNCs and the wider private-sector will fail to internalize and comprehend their duty to respect cultural heritage unless or until the recognition of cultural heritage is made more explicit within the current UN instruments that are already part of the corporate terminology.

Why should we focus on UN instruments? First, because these are the key documents that MNCs are referencing and referring to. The focus on UN instruments in this thesis is not because of their global scale, but rather because they feature in the majority of the MNC corporate social responsibility reports as a guideline for decision related to societal value, especially related to question of *what* to value. In other words, what items to feature and include on the MNC “materiality assessment”.

Over the past two decades there has been a significant increase in voluntary rules for multinational regulation, controlled by network-based coordination rather than by sanctions or hard laws (Garsten and Jacobsson 2011). The United Nations has been a key driver of these transnational instruments. And unsurprisingly then, as seen from the survey and case-studies in Chapters Four to Six, there is a clear focus by MNCs on the UN instruments as a beacon for social responsibility strategy and as a guiding normative framework for corporate ethical responsibilities. This is especially true when considering standards across a global and transnational scope of corporate activity. Whilst MNCs may be subject to specific home-country national governance, there are looser rules defining host-country operations. Against this context, key UN guidelines and instruments serves as an ethical framework for corporations and for industries (albeit only sometimes for an aspirational agenda). Multinational corporations due to their size and hegemonic status are *expected* to sign on to key UN instruments, such as the UN Global Compact; and to respect key development agendas upheld by states and corporations alike. These instruments, while limited in their lack of binding legal terms, are therefore still important frameworks that influence the corporate value of cultural heritage and the corporate scope of interactions with cultural heritage.

The chapter starts with an extended contextual background looking at heritage as a human right and an overview of the historic changes in legislation and covenants for the protection of cultural heritage,

including the evolution to a broader definition of heritage that includes intangible heritage. The further discussion is framed around the concept of state and corporate duty as defined per the *UN Guidelines for Human Rights*, and focused on the three key UN instruments being used in the MNC reports, these being the *Millennium Development Goals 2015* and the *2030 Agenda for Sustainable Development*, and the connected role of the *UN Global Compact* for corporate sustainability.

## 7.1 Heritage as a human right

In the past decades there has been a strong evolution of laws and compliance requirements leading to stronger heritage protection. However, from an analysis of cultural heritage legislation, it is clear that cultural heritage is not yet recognized as a part of the human rights framework. And indeed, cultural heritage rights may be impossible to protect by legally binding “hard laws” because of the dynamic of exclusivity: all heritage ownership is somebody else’s exclusion.

The big challenge to any legislation for cultural heritage as a human right is inherently tied to the exclusionary nature of heritage that makes it impossible to recognize and legally protect the heritages of all peoples. The argument for cultural heritage as a human right is based on the notion of the human “freedom to practice one’s cultural beliefs and not have this practice hindered by others” (Rio Tinto 2011, 114) and this has been recognized as a human right since the end of the Second World War where cultural rights were recognized in the *Universal Declaration of Human Rights 1948 (Article 27)* and the *UN International Covenant on Economic, Social, and Cultural Rights (1966)*. These cultural rights are related broadly to art and culture and they include cultural heritage, and minority rights and the access to culture. For example, the rights of people to access culture and to participate in culture of their choice as a key value of equality, human dignity, self-determination, and tolerance and non-discrimination.

The importance of cultural rights and access to cultural heritage as a human right is implicit within these UN instruments, with a focus also on the problem of the potential exclusivity of heritage.

“Human rights include many very important cultural rights, which should be given equal attention, such as the right to participate in cultural life, enjoy one’s culture, etc. Even these, however, are not unlimited. In accordance with international law, the right to culture is limited at the point at which it infringes on another human right” (UNESCO 2016).

The state role for cultural heritage, is defined both in terms of the duty to protect and an inherent responsibility. This is seen explicitly in the UN “Protect, Respect and Remedy” Framework as well as in Articles 1.1 and 1.2 of the 1966 International Covenant on Economic, Social and Cultural Rights by the UN High Commissioner for Human Rights (UNHCR). Article 1.1. discusses the state role to protect each people’s right to self-determination and the right the right of each people to freely determine their political status and freely pursue economic, social and cultural development. Article 1.2 is focused on the right of each people to their own resources and means of subsistence.

The corporate interaction in contrast is explicitly tied to the responsibility of businesses to protect these human rights based on a notion of a “principled” way of doing business. In other words, it assumes a proactive corporate response (principles to do good), as in the below excerpt from the UN Global Compact’s ‘Ten Guiding Principles’ for Business:

“Corporate sustainability starts with a company’s value system and a principled approach to doing business. This means operating in ways that, at a minimum, meet fundamental responsibilities in the areas of human rights, labor, environment and anti-corruption” (UN Global Compact 2016).

Key instruments of the past decades include the International Covenant on Economic, Social, and Cultural Rights in 1966; the Convention concerning the Protection of the World Cultural and Natural Heritage 1972 (hereafter World Heritage Convention 1972); the International Covenant on Civil and Political Rights; the Rio Declaration on Environment and Development 1992; the UNESCO Universal Declaration on Cultural Diversity 2001; the Convention on the Safeguarding of Intangible Heritage 2003; the UNESCO declaration concerning the Intentional Destruction of Cultural Heritage 2003; and the UN Declaration of the Rights of Indigenous Peoples 2007. The Fribourg Declaration on Cultural Rights 2007 explicitly refers in Issue 3 to identity and cultural heritage, including rights to access and the protection of resources for both present and future generations. (For further discussions of these legislations see also Burtenshaw 2014, Chechi 2014, Lowenthal 2011, Soderland and Lilley 2015, Silverman and Ruggles 2007, and Ziegler 2007).

Separately cultural heritage as a human right also began to be covered within the development agenda. The Millennium Summit of 2000 later led to the *2000 Millennium Declaration*, and the *2005 World Summit*. The Millennium Declaration again refers to cultural heritage and its protection only implicitly as part of broader shared values of freedom, tolerance, cultural diversity and overall access to culture. It brings an important additional focus on the shared values of equality and solidarity, especially for developing nations and for minorities, in the context of globalization. In this context of shifting national-boundaries it re-enforces the shared values of tolerance and peace, highlighting the rights to a diversity of belief, culture and language, and of differences between societies. In addition, it refers to the respect for nature and the importance of the natural heritage for future generations (and this may therefore overlap with cultural landscapes).

Overall within these instruments, cultural heritage is recognized and tactfully included, it is rarely an explicit protection or recognition of rights and ownership. However, the international recognition of cultural heritage as a human right remains indirect or non-binding (Lenzerini 2011, Soderland and Lilley 2015). Law has recognized indigenous rights of self-determination and in some cases of access to culture, including the rights to access of land and landscape. On top there are multiple international instruments relating to indigenous and tribal peoples and cultural rights in the context of development that allow for more direct inclusion of minorities and indigenous access to culture and landscapes. Recent researches especially in the past five years, have started to bring this discussion and its problems unequivocally to the table for discussion.

However, these key often act only as “soft laws” that do not bind non-state actors even in situations of disaster such as in the past decade’s proliferating instances of attacks on cultural heritage or “heritage terrorism” (Soderland and Lilley 2015, 10). It likewise does not include measures to address non-compliance, other than suspension from committee membership (ibid). Moreover, even if binding legal terms exist, they do not offset the power-dynamics created by corporate capital. Big corporations with big legal teams may still have an advantage to circumvent the law: “cultural heritage may still be held as another means of the dominant cultural group imposing its agenda on others” (Chechi 2014, 185).

Soderland and Ian Lilley likewise note that international human rights related to cultural heritage have until recently been completely ignored by key UN instruments (cf. Meskell 2010 and Welch and Lilley 2013) and discuss how the UN declarations concerning the Millennium Development Goals (MDGs) have failed to include cultural heritage (2015, 5).

“The absence of culture (and heritage) in the MDGs is now seen as a major oversight” with the UN General Assembly seeking to remedy this through the establishment in 2009 of a special procedure entitled “independent expert in the field of cultural rights”, which has been noted for the “right of access to [,] and enjoyment of [,] cultural heritage” (Soderland and Lilley 2015, 5).

Arguably the concept of cultural heritage is in a constant struggle to be explicitly adopted in these values because of its exclusionary nature of interpretation. The de-facto definition of heritage as a human right is in itself problematic as the right to culture is limited at the point where it infringes on another human right. In such cultural heritage has a mixed relationship with human rights and cultural rights (Lowenthal 2011, Meskell 2002, Silverman and Ruggles 2007, Ziegler 2008). Just as cultural heritage can empower it can also be used to justify human rights abuses “whilst heritage can unite, it can also divide” ... [and in such it is] “by no means a neutral category” nor is it inherently positive (Silverman and Ruggles 2007, 3). Unfortunately, this inherent risk earns cultural heritage an “uneasy place in the United Nations’ call for universal human rights” (ibid, 5). It may take many more instances of cultural heritage being intentionally abused, destroyed, and lost, whether for political or economic motives, before cultural heritage rights become explicitly recognized.

## **7.2 From tangible to intangible heritage**

Legislation for the safeguarding of cultural heritage as it exists today can be divided in terms of the protection of movable vs. immovable, visible vs. invisible, and tangible vs. intangible heritages, and is reviewed below there has been a slow shift in past decades to include the intangible, immovable and invisible heritages. An important historical context addressed below is this move out from a more Eurocentric focus on tangible heritage, and the broadening to include intangible heritages and living heritages within the legislation and the resultant changes in thought regarding heritage ‘preservation’.

Up until the 1980s the regulatory environment was focused on moveable heritage or cultural property which then undertook a qualitative change in the 1990s with an expansion of the term of ‘property’ to consider a broader scope of heritage, particularly intangible cultural heritages (Al Attar, Alywin and Coombe 2009, Ziegler 2007). This period has also seen the inclusion of industrial heritage sites and the protection of indigenous perceptions, particularly spiritual values, alongside dream landscape of story-telling, and cultural landscapes with both non-visual and visual elements (Gfeller 2015, 498-499). In addition, whereas in early UNESCO conventions cultural and natural heritage were combined and treated together, they have later been separated to recognize the specificities of each (Gfeller 2015, 372-374).

Hodder has proposed that a focus on the tangible heritage (dealing with places) rather than a focus on the people (the human rights terminology) is actually a better means to protect local stakeholders-referring to the limits of the human rights discourse. He suggests that stakeholders could be better represented by a heritage focused definition, i.e. rights related to property, voting, adequate standard of living, and so forth (Hodder 2010, 2012). Meskell 2013 discusses some alternative methods for indigenous recognition especially within the World Heritage system and policy, and argues for a need for greater recognition of the network of indigenous experts such as via the establishment of a World Heritage Indigenous Peoples Council of Experts (WHIPCOE) who could help address and solve problems.

Tangible heritages have also traditionally been more protected than intangible heritages, such as in tangible heritage assets in the World Heritage Listing often seen as evidence of a Eurocentric approach to culture. New listings have been sought to offset this in the 1990s with a plethora of “cultural landscapes” referring to interactions between people and the natural environment (Frey and Pamini 2009, Frey, Pamini, and Steiner 2011). Furthermore, there has been increased consideration of industrial and agricultural landscapes within the World Heritage listing and to recognize these types of landscapes for their outstanding universal value, such as the conceptualization of ‘dead’ mines as part of the cultural landscape (Alvarez, Pieiga and Suarez-Lazare 2010).

The protection of immovable heritage has been a more recent development coming in parallel with the increasing scope and scale of development. Today there is an almost universal requirement that development projects be conducted with Environmental Impacts Assessments (EIA) policy. The

environmental protections set up in EIA policies are further supported by additional guidelines such as the *AkweKon Voluntary Guidelines 2004* which set out to outline conduct for sacred places: cultural, environmental, and social assessments concerning “development that may impact sacred sites, lands, or waters that are used or occupied by indigenous communities” (Rio Tinto 2011, 113). This has also been reflected in archaeological charters that have developed in the past decades such as the *1990 ICOMOS charter for Archaeological Protection in the Context of Development and Land-use*.

Other new regulations are likewise seeking to amend the status quo and give intangible heritage an equal voice in legislation. For example, the *1999 Burra Charter*, Australia, presented a unique step towards the recognition of the cultural significance of places. This charter was actually born from the local needs, reshaping the principles of the 1964 Venice Charter for Historic Monuments to make it relevant for the Australian environment. Particularly important in the 1999 charter is the trend to the concept of “physical” sites as “places of cultural significance” instead of a focus on sites or monuments. It identifies five criteria of significance, namely the *aesthetic, historic, scientific, social, and spiritual* (and this can be a useful guidance for valuation methodology (Throsby 2013, 458).

The *2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH)* has also helped create a shift in legal paradigm focusing on the international effort to safeguard “living heritages”, referring to the social practices and traditions that contribute to the creation of distinctive cultural communities. This was preceded by a series of earlier recognitions of intangible heritages: for example, nineteen “masterpieces” recognized as cultural goods for their “orality or immateriality dimensions”, and including the Nôfaku theatre in Japan, the Jemaa el-Fna Square in Marrakech, and the paths of San Giacomo di Compostela (Vecco 2010, 324). The convention seeks to “validate” the right of nationals to defend their cultures against unwanted influences from MNC and other external stakeholders (Brown 2005). At the same time, it falls short in the needs of intangible cultural heritage protection:

“although there is nothing obviously harmful about the CSICH’s ambitious program of cultural documentation, one struggles to imagine how it will protect cultures as living, dynamic systems” (Brown 2005, 47).

For example, critical for the safeguarding of living treasure is policy that recognizes the process of training so that the ‘holders’ of skills can pass these to the next generations:

“the national living treasure does not own skills as intangible heritage properties, but holds them. A national living treasure inherited the skills from the past and transmits them to the future generation” (Goto 2013, 574).

In such many have argued that the convention is still inadequate to ensure adequate models for the protection of immaterial heritage understood beyond the Eurocentric legislative context of preservation rather than living traditions (Brown 2005, Lenzerini 2011, Meskell 2013).

Processes for protecting immateriality are already well-established in some countries, which raises the question of why UNESCO has been unable to successfully re-apply these models. For example, legislation has existed in Japan since 1950s that recognizes immateriality through the *separation* of the process of knowledge as a distinct element from the cultural good (Vecco 2010, 324). Goto 2013 also looks at this from a cultural economic perspective, emphasizing the many different definitions of intangible cultural heritages and how this also affects the development of different policy instruments. In Japan, where intangible heritage is widely recognized (and indeed carried by living peoples) there is a policy of protection for drama, music, craft-techniques and heritage “holders”—namely living people who do not own, but rather, holds a certain heritage skill and policy seeks to ensure its transmission to future generations (Goto 2013, 568). Likewise, many cultures focus on non-ownership rather than the traditional

policy focus on objects located within their “original” source, a notable example being from Papa New Guinea where from one research cultural elements are seen to have added value when circulated rather than safeguarded (Brown 2005, 47).

The *2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society* (also referred to as *The Faro Convention*) aims to provide a framework for stakeholder inclusion opening the opportunities for anyone from society who wants to be involved in cultural heritage and its definition and management. The Faro Convention explicitly emphasizes the role of culture and cultural heritage and the value of cultural heritage towards sustainable development agendas (Rio Tinto 2011, 114). It recognizes the value of cultural heritage not only towards development policies and improved quality of life but also the value in itself for the ‘contribution it can make to other policies’” (cf. Council of Europe 2005 in Klammer et al. 2013, 38). This convention and its development agenda focus will of course also influence the definition and role of heritage managers in the future as their roles as managers increasingly overlap with pluralistic economic and political agendas (Van den Dries et al. 2015).

Finally, the UNESCO 1972 convention for World Heritage is often relevant for corporations because of their link to the UNESCO World Heritage Sites or to the World Monuments Fund as a “global” partner, as seen in the examples of American Express, Canon, Google, Philips, Panasonic, Seaborne tours, Sony and many others. The UNESCO 1972 Convention “seeks to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity”. As per article 4 of the convention, each State Party recognizes:

“the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State...”

In addition, the state role includes the duty to establish and support centers for training in the protection, conservation and presentation of heritage and encourage scientific research. Additionally, the UNESCO World Heritage Sites (WHS) List represents a role for the state that suggests the promotion of and raising awareness for sites of outstanding universal value via conservation, credibility, communication, capacity building, and so forth (UNESCO, 2008). There is a focus on the value of heritage and its enjoyment and this holds both for tangible and intangible cultural heritage (ICH):

“With respect to ICH, this translates into an obligation not only to avoid direct interference by state officials with the enjoyment by the communities and persons concerned of their intangible heritage, but also to create the proper conditions to *ensure* that the heritage in point is *concretely* and *effectively* enjoyed by such communities and persons, in light of their specific expectations and needs” (Lenzerini 2011, 115 - italics original).

### **7.3 UN Guiding Principles for Human Rights**

One of the core legislative frameworks being considered by MNCs at least in their stated and publicly available materials and reports is the *2011 UN Guiding Principles for Human Rights* (hereafter the UN Guiding Principles) and the associated UN Global Compact, discussed later.

The UN Guiding Principles are critical for the legislative evolution as they comprise the first ever “global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity” (UNHRC 2011). The purpose of the UN Guiding Principles is not to force new laws but to improve the results of existing international laws through the development of a comprehensive and holistic framework that makes it possible for “rights and obligations to be matched with appropriate remedies when breached” (Ruggie 2011, 6).

The guiding principles focus explicitly on both state and business responsibility, and moreover they apply to all States and businesses regardless of size, location, and so forth. The framework is divided into a three sets of guidelines focused on the responsibilities of the State (“the state duty to protect human rights”) the responsibilities of businesses (“the corporate responsibility” to respect human rights, and the “access to remedy” (Ruggie 2011). These principles make a huge step to improve on the current limitations of the regulatory environment and they present an important step forward for the protection of human rights against adverse impacts caused or contributed to both by States and corporation.

Overall the Guidelines thus serve as a framework towards a more holistic and common platform, as described in the final report of the Special Representative to the Secretary General of the UNHCHR:

“13. What do these Guiding Principles do? And how should they be read? Council endorsement of the Guiding Principles, by itself, will not bring business and human rights challenges to an end. But it will mark the end of the beginning: by establishing a common global platform for action, on which cumulative progress can be built, step-by-step, without foreclosing any other promising longer-term developments.

14. The Guiding Principles’ normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved. Each Principle is accompanied by a commentary, further clarifying its meaning and implications” (Ruggie 2011, 5).

However, the rigor of these principles for cultural heritage depends on cultural heritage being recognized as a human right *a priori*.

Part I of the guidelines “The State Duty to Protect Human Rights” emphasizes the state responsibility for any abuse of human rights within their territory being carried out by third parties, including business enterprises, and with the responsibility to undertake steps to prevent abuses through legal tools. States are also expected to make these expectations explicit to any third party thinking of conducting business in the state’s territories (P.1 and 2). The guidelines also emphasize the heightened abuses of human rights in conflict-afflicted areas and emphasize the additional state responsibility to uphold and support business respect for human rights in this context (P.7). The state is also bound to responsibilities to ensure transparency, making sure that government department, agencies and institutions are aware of these human rights obligations i.e. “vertical policy coherence” that serves to avoid the tensions between state implementation of policy (P.8). Overall then, the state has a key responsibility for the success of the available laws and policies through the establishment of in-country regulation, the monitoring of assessments and follow-through on companies’ compliance, and to develop a policy for increased transparency and contract disclosure.

Part II of the guidelines “The Corporate Responsibility to Respect Human Rights” is based on the foundational principle that business enterprises should respect human rights both by avoiding infringement of rights and by addressing adverse impacts on human rights (P. 11)., and that this responsibility applies to those human rights that are internationally recognized, including at a minimum those of the International Bill of Human Rights and those of the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work : “Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights” (P.12). Businesses’ responsibility requires that corporations must avoid negative human rights impacts, address them when they occur, and seek to prevent or mitigate adverse

impacts, including those related not only to their own activities but also those that occur through business relationships with other parties (P.13). The supporting commentary outlines the following “small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms.

As per the guidelines, conducting due diligence will help businesses avoid the risk of human rights abuses, but by itself the process of conducting due diligence does not in itself absolve the enterprise of liability for any abuse they cause or contribute to. In conducting the diligence businesses are expected to (a) draw on internal, independent, and or external human rights expertise and (b) include meaningful consultation with “potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation” (P.18). Businesses are further responsible for the horizontal integration of findings from assessments, i.e. ensuring that all business units are aware of the findings and that the results are embedded into different functions (P.19); and to complete follow-up and feedback procedures (P.20). Furthermore, businesses are responsible for the external communication of these findings in a “form and frequency” appropriate to their size and scale and this “particularly when concerns are raised by or on behalf of affected stakeholders” (P.21). Policy for remediation is described in (P.22). (P.23) focuses on issues of context, ensuring that business enterprises uphold the same responsibilities no matter where they operate. (P.24) holds companies responsible for the proper prioritization of adverse human rights impacts, should it be necessary, with the responsibility to focus on the impact which would be the most severe. Importantly, this corporate responsibility to respect exists independently of States’ abilities or willingness to fulfill their own human rights obligations.

Part III of the guidelines, “Access to Remedy” focuses on both the judicial and non-judicial grievance mechanisms to be carried out by the State in order to investigate, punish and redress business-related human rights abuses when they do occur (P.25-31) and are aimed at both states and corporations.

#### **7.4 The 2015 UN Millennium Goals & 2030 Sustainable Development Agenda**

##### *The 2015 UN Millennium Goals (MDG)*

Adopted by 189 UN Member States during the 2000 Millennium Summit the *UN Millennium Goals for Development (MDG) 2015* recognized the important responsibility and role of businesses in order to reach the Millennium Development Goals for 2015. Within the Millennium Development Goals (MDG) there was no goal directly focused on cultural heritage although Goal 7 focused on environmental responsibility can be linked to cultural heritage issues such as through the promotion of biodiversity. However, assessing the eight goals and their measurements in the 2015 MDG review, there is no mention of cultural heritage even in this context and there are no targets related directly to cultural heritage, although some recognition is given to the representation in the data of indigenous communities. It is only in 2010 that this oversight has been addressed in the ‘*MDG Outcome of the Millennium Summit*’ adopted by the UN General Assembly which belated but for the first explicitly addressed and recognized “the contribution of culture to the achievement of the Millennium Development Goals (MDGs) and to development (para. 16 and 66)” (UNESCO 2011c) and re-emphasized in 2011 with the UN General Assembly *Resolution 66/208 on Culture and Development* which re-affirms the importance of culture within the overall poverty reduction and development agenda (ibid).

##### *The 2030 UN Agenda for Sustainable Development (SDA)*

The MDG have been replaced by the 2030 agenda by the *Transforming Our World: The 2030 Agenda for Sustainable Development* adopted by the United Nations in October 2015 as the post-2015 development agenda. The agenda which came into effect in January 2016 and drafts the development goals of the next

fifteen years until 2030. The new agenda introduces 17 goals and 169 targets, a dramatic increase versus the 8 goals and 21 targets of the previous MDG 2015. Similar to previous international instruments, it recognizes cultural rights in the context of peace, security and the right to self-determination (paragraph 35) and the value of intercultural understanding and tolerance in the connect of global citizenship (paragraph 36).

“We pledge to foster intercultural understanding, tolerance, mutual respect and an ethic of global citizenship and shared responsibility. We acknowledge the natural and cultural diversity of the world and recognize that all cultures and civilizations can contribute to, and are crucial enablers of, sustainable development”.

Different from the previous international agenda, it focuses all of its objective on *sustainable development* rather than development goals in isolation. This focus on sustainable development allows, for the first time, for an explicit focus on cultural and natural heritage and its protection, in line with sustainable development goals. Furthermore, there is overall more explicit focus on current and *future generations*, and a new element focused on cities and city renewal, goals that were not presented in the previous MDG 2015. As stated “The framework we are announcing today goes far beyond the Millennium Development Goals. Alongside continuing development priorities such as poverty eradication, health, education and food security and nutrition, it sets out a wide range of economic, social and environmental objectives” (paragraph 17); and likewise “It is important to recognize the link between sustainable development and other relevant ongoing processes in the economic, social and environmental fields” (paragraph 55).

Moreover, and perhaps most importantly as cultural heritage managers, the 2030 agenda explicitly recognizes cultural heritage in its targets, as described below.

Goal 11. “Make cities and human settlements inclusive, safe, resilient and sustainable”

Below this goal, the agenda includes the following related targets:

...

11.4 “Strengthen efforts to protect and safeguard the world’s cultural and natural heritage”

...

11. a “Support positive economic, social and environmental links between urban, peri-urban and rural areas by strengthening national and regional development planning”.

These new targets allow for cultural heritage to really be considered for current and future state and corporate agendas. Other goals in the new 2030 agenda may also more implicitly be related to cultural heritage. For example, Goal 8 refers to the promotion of “sustained, inclusive and sustainable economic growth”, including employment availability, and target 8.9 relates to sustainable tourism directly. Goal 12, to “ensure sustainable consumption and production patterns” is a direct call to action to both States and corporations, and again may overlap with cultural heritage for example in scenario of conflicts related to contested ownership, over-consumption of natural resources, and so forth. Goal 14, referring to the conservation and sustainable use of the oceans and marine environment may directly lead to improved protection of underwater cultural heritage; and Goal 15 related to the protection of natural environment and eco-systems may have implications for natural heritage and associated cultural landscapes.

Regarding progress and monitoring, the new agenda encourages Members States to conduct an inclusive stakeholder approach to the monitoring of the goals, including indigenous peoples, civil society, the private-sector and other stakeholders” (paragraph 78).

## 7.5 The UN Global Compact

The UN Global Compact is a voluntary call to action for companies to act sustainably and in accordance with ten universal principles on human rights, labor, environment and anti-corruption, and take actions that advance societal goal. Established in 1999 at the World Economic Forum by Kofi Annan, Former Secretary-General of the UN and its establishment has represented a specific and important change in the UN model of regulation towards more decentralized and network-focused regulation:

“The set-up of the Global Compact represented a breach with the UN model of representational democracy and nation-state influence. It signaled an attempt by the UN to gather momentum and to take a leading role in establishing a new, voluntary kind of governance structure for the regulation of transnational corporations on a global scale” (Garsten and Jacobsson 2011, 383).

It is a highly popular framework for corporations, as seen both from its quantitative list of subscribed corporations and from the mention of the UN Global Compact in almost all of the corporate reports or documents analyzed in this research. As stated on its website homepage, the UN Global Compact is the “The World’s Largest Corporate Sustainability Initiative”.

“The Guiding Principles require that companies have a policy commitment to respect human rights, and proactively take steps to prevent, mitigate and, where appropriate, remediate, their adverse human rights impact” (UN Global Compact 2011).

“Since the year 2000, over 5000 business firms have subscribed to the UN Global Compact’s call to engage in self-regulation in order to fill the regulatory vacuum that has emerged as a result of the process of globalization” (Scherer and Palazzo 2010, 2)

The vision is to create genuine collaboration where the interests of people, communities, and markets can be sustainably aligned. The Global Compact Outlines Ten Principles on human rights, labor, environment, and anti-corruption. These principles are derived from key legislation, including the UN Universal Declaration of Human Rights, the United Nations Convention Against Corruption, the Rio Declaration on Environment and Development and the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work.

The UN Global Compact has been recognized within research for its importance as a central actor for the promotion of global accountability. Despite its soft laws, it’s network-based structure has had much more mobilizing power than similar instruments due to the network power, both to enforce regulation but also to strengthen the impression of authenticity: “each organization and code of conduct, standard or the like, strengthens each other” (Garsten and Jacobsson 2011, 384). This creates an ethically problematic approach to regulation: whilst this network serves as an important change in how corporations consider “regulation” it has also been much criticised due to the lack of binding mechanisms of enforcement. The risk of such loose network structures is of course that the United Nations risks granting multinational corporations a veneer of legitimacy through their inclusion in the compact, without any mandated action or change in behaviour. It risks being abused as another tool for corporate public-relations and branding, with little impact on human rights and local interests (Garsten and Jacobsson 2011).

Moving beyond these critiques, the section below looks more specifically at how cultural heritage is presented within the UN Global Compact and whether cultural heritage matters within this soft regulation and standards.

Principles 1 and 2 are most relevant as they refer specifically to Human Rights: *Principle 1* - Businesses should support and respect the protection of internationally proclaimed human rights; and *Principle 2*-

corporations should ensure they are not complicit in human rights abuses. The UN Global Compact guidelines emphasizes not only the necessary due diligence for the avoidance of adverse impacts, but also calls for proactive action to support human rights:

“This means seeing the opportunity to take voluntary action to make a positive contribution towards the protection and fulfillment of human rights whether through core business, strategic social investment/philanthropy, public policy engagement/advocacy, and/or partnerships and other collective action. Action to support human rights should be a complement to and not a substitute for action to respect human rights” (UN Global Compact 2011).

Further, Principle 1 calls for a clear process of human rights due diligence to demonstrate and ensure corporate responsibilities for human rights are being met, and this is process should draw on on internal as well as independent expertise in human rights to ensure an appropriate multi-stakeholder engagement.

Whilst it is a voluntary framework for inclusion, it is a seemingly pivotal source for MNCs in defining their CSR strategy. This is evidence not only in the scale of corporate inclusion (over eight thousand companies and four thousand non-business partners (UN Global Compact 2011), but also as seen in the report analysis in this research where the majority of companies referred the UN Global Compact as a key guiding instrument in their process of defining their sustainability and responsibility codes of conduct; and often taking these guidelines as the starting framework for stakeholder engagement and assessment. In such, the UN Guiding Principles, and the presence (or absence) of cultural heritage rights herein may serve as a blue-print for the topics that MNCs are considering when in their analysis of business ethics and their process of human rights due diligence.

The active participants on the UN Global Compact can be filtered using the tools on the website (Appendix C). There are two revealing findings from this filter platform used to find specific initiatives. First, there is no filter related to cultural rights or cultural heritage rights (although there are specific sections for detailed initiative areas such as children’s rights, anti-corruption policies, women’s empowerment principles, climate change, etc.). The section for human rights is referred to under initiatives for “Human Rights and Labor Working Group”. When using the filter to sort for the companies involved in this initiative there are a total of 26 companies (out of a total of 6077 listed companies). This low ranking may be linked merely to an invalid filter or insufficient inputs, but a comparison of other initiatives suggests otherwise: caring for Climate has 301 results, Anti-Corruption initiatives have 341 results, and Women’s Empowerment likewise has 266 results; although initiatives for Child Labor have only 6 results).

The list for Human Rights shown below also instantly reveals the home-country dominance of European companies as well as the sector dominance of key distractive industries and of monopolistic services such as telecommunications and finance. The 26 companies active in this filter, fall into the following industries: Food Producers, Industrial Engineering, Metals and Mining / General Industrials, Oil and Gas Producers, Gas, Water and Utilities / Electricity, Industrial Transportation, Telecommunications, Financials, Technology and Hardware, Support Services (Law), and Life Insurance. It is also relevant that ten of the twenty-six listed are from the disruptive industrials/ metals and mining or oil production sectors, a potentially telling evidence of high adverse impact being met with high ‘voluntary’ corporate response within certain key industries as part of a push reaction to ensure the social license to operate. Obviously this is only a quantitative summary of one filtering tool made available online, and should not be over-stated. However, it is presented here to illustrate an alternative useful ‘ranking’ of companies claiming an interest in specific human rights, and it may be a useful criterion for cultural heritage management research looking to assess the human right due diligence process across sectors. Indeed, many of the firms on this ranking have been focus corporations in heritage management and associated social sciences.

## 7.6 Discussion

As seen in this chapter, cultural heritage has gained more visibility in recent decades, but it is still largely absent from key UN instruments. Foundational instruments such as the UN Guiding Principles for Human Rights, still do not include cultural heritage protection as a key priority. The impression gained from current instruments is that cultural heritage only really matters within the development agenda; and even here it is limited.

The UN Millennium Goals 2015 do recognize access to culture but it is only an implicit link to cultural heritage. It is only post-2015 that the updated 2030 Agenda for Sustainable Development has expanded to include an explicit goal on cultural heritage protection. Beyond this development scope, there is no guideline or instrument to protect against more opportunistic usage of heritage such as its usage in marketing and advertising materials, as seen in the previous chapters. Several expansions of the key UN covenants and instruments may be needed to ensure heritage protection represents the true broad scope of MNC interactions with heritage, including through their activities and their wider communications.

Some of the changes apparent in the 2030 Sustainable Development Agenda clearly mark a new vernacular emphasis on cultural heritage and its value. Admittedly there is some conceit to celebrate this inclusion, considering it is only one out of 179 targets outlined. Nonetheless, it is, finally, the recognition of cultural heritage being reflected in the development agenda, and it is likely to be increased awareness and focus on cultural heritage by both States and MNC stakeholders.

The classification of cultural and natural heritage as a target under the Goal 11 of “cities and human settlement” is also worth commenting on and comparing to the similar concepts of smart cities, future generations, and urban sustainability within the report analysis (Chapter Four). Contrasting this with the prior chapters, it may be feasible that sectors like the automobile, and technology sectors, already closely associated with “smart cities” and “mobility” as key responsibility concepts, may also be the industries that are the closest conceptually to this Goal 11 and even to the resultant target of cultural heritage which falls under this pillar. Given the focus of the new 2030 Agenda, it would not be surprising if such corporations continue to expand their cultural heritage interactions such as the example of BMW’s “Cultural Journey” or IBM’s virtual technologies and solutions for heritage sites, both in the city and beyond.

The UN Global Compact explicitly links to and builds from the UN Guiding Principles, amongst other regulations. The lack of the explicit inclusion of cultural heritage as a human right is likely to have a direct impact on the corporate responsibility agenda and materiality assessment. As seen in the previous chapters, the majority of companies’ investigated in this research reference the UN Global Compact, the Millennium Development Goals, and the UN Guiding Principles in their public reports as the key standards used to develop their responsibility agendas. If cultural heritage is not explicitly stated in these instruments, then it is to be expected perhaps that MNCs also do not elevate it to a key priority, or even consider it as a relevant human right being affected by corporate operations and communication.

The current UN instruments do not make specific outlines for situation of adverse impacts, such as the extractive industries or the banking sector. However, it does not consider the many examples of industries where operational and communication activities are impacting cultural heritage and cultural rights through the multiple ‘pull’ or proactive interactions with cultural heritage, which may also overlap with the area of marketing and advertising regulations. There is very limited binding as well as non-binding regulation in regards to how cultural heritage can be selected and represented by corporations.

Arguably, advertising guidelines for cultural heritage are limited by the multiple interpretations behind heritage and the potential conflicts of interpretation that adumbrate the ethical discussions of how heritage can be presented, according to different local stakeholders. Nonetheless, a safe advertising guidelines or guidance models could be provided, such as mandatory stakeholder inclusion within brand campaigns and their creation; or a more formalized ‘veto’ process to restrict the dissemination of potentially offensive or marginalizing materials. Today this exists to some extent through mass electronic media, where social messaging can easily lead to strong anti-corporate or anti-brand complaints, and the resultant retraction of marginalizing advertising materials. However universal access to such tools cannot be assumed.

A further gap may also be in the more ethical and educational guidelines that need to be provided to MNCs to inform and educate on the risks inherent behind many corporate communication messages, such as in the MNC appeal to a “glocal” campaign and the accompanying “particularization of the universal’ and “universalization of the particular”. Some human rights areas are starting to provide these tools, such as UNICEF’s guidelines for corporation on children’s rights and associated business principles. A similar manual and process of education could be implemented for cultural heritage rights, but today such documents and network are not well established. Indeed, the initial step to enable such relationships assumes a minimum acceptance of engagement by key stakeholders, including cultural heritage experts.

However, the existence of cultural heritage within UN instruments is a necessary step to ensure its global governance; especially in the context of weak regulation that defines the current context. “Unlike national governance with its monopoly on the use of force and the capacity to enforce regulations upon private actors within the national territory, global governance rests on voluntary contributions and weak or even absent enforcement mechanisms” (Scherer and Palazzo 2010, 2).

Admittedly, including cultural heritage within these instruments is likely to result in increased private-sector interaction with cultural heritage, as it becomes a more explicit and visible goal within the global development agenda. Such increased engagement could increase the negative externalities of such interactions and there are many risks of corporate interactions that need to be assessed on a case-by-case basis. At the same time, it could provide valuable new opportunities for shared value and innovation between the private-sector and the cultural heritage industry; and an important prioritization of cultural heritage within global stakeholder agendas.

We should not be scared to improve the scope of UN instruments and we need to ready and open to engage with the private-sector and to join platforms such as the UN Global Compact in order to sit at the same table and make this change happen.

