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The Netherlands

**Striking a balance between local and global interests:
communities and cultural heritage protection in
public international law**

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Citation

Starrenburg, S. H. (2024, May 2). *Striking a balance between local and global interests: communities and cultural heritage protection in public international law*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/3750283>

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

Summary

The twentieth and twenty-first centuries have witnessed a radical expansion of the scope of application of international legal rules aimed at the protection of cultural heritage. Cultural heritage treaties adopted under the auspices of UNESCO now protect a wide range of cultural heritage, ranging from individual cultural objects to cultural monuments, sites and landscapes, and even intangible cultural heritage such as social practices. This dissertation takes this field of study – international cultural heritage law – as its object of analysis, seeking to answer how the interests of the individuals and local communities most closely connected to cultural heritage should be safeguarded within this body of law.

As with many forms of international law, UNESCO's cultural heritage treaties obscure the impact of their implementation on individuals and communities at the local level. This dissertation argues that a cornerstone of this process is the use of universalising language in cultural heritage law, most notably the invocation of an alleged 'cultural heritage of mankind'. It contends that actions which are frequently justified by reference to the common interest of protecting cultural heritage paradoxically result in the erasure of living heritage value. This is because they equip state actors with the rhetorical authority to assert that certain 'universal' or 'common' interests should trump the interests of local non-state actors.

The dissertation situates cultural heritage law in the context of broader trends in contemporary international law that rely heavily on the invocation of universalist concepts, such as the 'common interest' of the international community or the 'common heritage of mankind' (Chapter 2). While the emergence of such universalist modes of reasoning is part and parcel of a broader transformation of the international legal order beyond bilateralism, state sovereignty remains an important structuring principle of that order. As a result, common interest regimes within international law must grapple with the constant tension between their goals and the legal tools with which they are equipped to achieve them.

Some of the chief obstacles in this regard are the inability of the actors charged with enforcing common interest regimes – often international organisations – to become more than the sum of their parts, coupled with the fact that many international decision-making processes concerned with the protection of common interests are inaccessible to those on whose behalf they purport to speak. This often paves the way for states to play the 'trump card'

of universalist rhetoric in ways that might be detrimental to specific communities in specific places (as opposed to the inchoate international community). Rather than decentring the role of the state within the international legal order, the invocation of the common interest in fact solidifies its position in new and unexpected ways.

The dissertation demonstrates that cultural heritage law constitutes such a common interest regime, not only in light of its subject-matter and the methods of protection it adopts, but also in terms of the tensions surrounding its implementation (Chapter 3). In this respect, it argues that the continuing invocation of universalist concepts within cultural heritage law such as the 'cultural heritage of mankind' should not be read as establishing limits on state sovereignty, but rather as an affirmation thereof. The state hereby assumes the role of trustee of the common interest of the international community with respect to cultural heritage located within its territory.

The main problem with this approach is that cultural heritage law does not set any meaningful limits to the powers of states or provide for appropriate sanctions for non-compliance with international heritage law (Chapter 4). On the one hand, UNESCO's cultural heritage conventions have undergone a remarkable transformation as the result of the establishment of new monitoring and non-compliance procedures and the progressive development of treaty obligations. On the other hand, as the dissertation demonstrates, this expansion of international heritage governance has been accompanied by states' reassertion of their sovereignty, inconsistent monitoring outcomes, and an excessive reluctance on the part of states to engage with the human rights aspects of heritage governance. Moreover, the majority of heritage conventions have yet to take concrete steps to facilitate the meaningful participation of individuals and local communities within decision-making processes.

However, there are important indications that the implementation of cultural heritage treaties continues to negatively impact individuals and local communities 'on the ground' (Chapter 5). The dissertation illustrates that these groups are frequently marginalised in the management of heritage inscribed on international lists such as those established by the World Heritage Convention and Intangible Cultural Heritage Convention. In the case of tangible heritage, local communities are sometimes perceived as 'encroaching' on heritage sites, resulting in the eviction or forced displacement of residents. Conversely, in the case of intangible heritage, listing is a way for certain states to exercise power over marginalised communities and thereby shape the protection of intangible heritage in a way that is contrary to those communities' self-understanding of their heritage; this status quo goes unchallenged by international bodies.

In this regard, cultural heritage law has much to learn from neighbouring fields of international law, in particular environmental law and human rights law (Chapter 6). Both areas of law emphasise the importance of providing for the participation of individuals and communities in decision-making

processes that affect them. They stress that such participation should be genuine and take place at a point in the decision-making process when it can influence its outcome; heightened obligations moreover exist with respect to Indigenous peoples, particularly in cases concerning their potential relocation. While neither field necessarily gives individuals or communities a 'veto' over decision-making processes, they underline there should be a real possibility for the public to influence the outcome of these processes. Moreover, the consent of the affected group becomes critical the larger the likelihood that the decision will have serious negative impacts upon their enjoyment of fundamental rights.

The dissertation provides concrete guidance on how to facilitate the participation of individuals and local communities in decision-making processes concerning cultural heritage protection in international law (Chapter 7). Although cultural heritage law already contains a number of guarantees of participation, these guarantees are often normatively weak and suffer from a lack of implementation. The first step should therefore be to ensure the consistency of existing decision-making processes and to strengthen enforcement mechanisms within cultural heritage law. Critically, the dissertation emphasises that in many situations affected publics are unable to genuinely influence decisions concerning the protection of cultural heritage that have the potential to have far-reaching consequences for their daily lives. The dissertation underlines that such public participation is not only crucial at the local level, but that local actors should also be able to influence international decisions that are likely to affect them. Moreover, participation cannot be genuine without effective access to information and to justice for affected publics.

Finally, the dissertation calls for a reconceptualisation of the notion of 'universal interest' in heritage law in order to better accommodate the interests of individuals and local communities. This requires a recognition that individuals and local communities should be seen as the core actors at the heart of cultural heritage law. This does not necessarily require the elimination of the notion of universal interests, but rather the creation of pathways through which such languages of the universal can be invoked by other actors than only the state. Doing so would allow for individuals and local communities to draw upon the inherent political potential of these concepts in order to bridge the divide between the local and the global in cultural heritage law.

