INTERNATIONAL CULTURAL HERITAGE LAW AND OTHER INTERNATIONAL LEGAL REGIMES[1]

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Abstract:

International cultural heritage law (ICHL) has been developing as a subfield of general international law for nearly seventy years: since the 1954 adoption of the Hague Convention for the protection of cultural property in the event of armed conflicts and its First Protocol. Today, ICHL appears as an extremely fragmented and at the same time dense landscape of international norms deriving from many international instruments of hard and soft law, created and enforced by a growing number of interested stakeholders, both of state–as well as non-state character. This situation may confuse many heritage scholars, which, comprehensibly, may feel lost in the application of ICHL. This chapter discusses the rules and concepts applied to understand the complexity of ICHL and the relationship between core international cultural heritage law regimes and other international legal regimes that influence and conflate with heritage but are not devoted to heritage at their core.

Keywords: international cultural heritage law, legal regimes, fragmentation, intangible cultural heritage, UNESCO, relationship clauses, Vienna Convention

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[2] ** This chapter is the result of a joint work between the two authors. However, Hanna Schreiber is the main author of the following parts: Introduction, The complexity of international law and its impact on international cultural heritage law, Figure 1 and Conclusions; Sabrina Urbinati has mainly written on International cultural heritage regimes, their interactions internally and with other international regimes.

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Introduction

Over the last twenty years, international norms directly regulating the protection[3] of cultural heritage have increased considerably[4] (Pellet 2021; Weiss 2019; Treves 2019) following the adoption of several binding[5] and non-binding instruments (see UNGA 2014) which have enriched the already existing panorama.[6] Today, the complex international cultural heritage law (ICHL) embraces tangible cultural and natural heritage, underwater heritage, intangible heritage, the concept of cultural diversity, and norms regulating cultural property protection in the event of armed conflict or cultural property transfer, just to mention those adopted under the auspices of UNESCO. Even if these are perceived as belonging to the same "heritage family" they do not necessarily share the same values and approaches, as in the exemplary case of the conflicting narratives surrounding "world heritage" and "intangible heritage". Current ICHL is not only constituted and influenced by a number of international organizations dealing with cultural heritage, both of universal (such the World Intellectual Property Organization (WIPO) or UNIDROIT) and regional character (such as Council of Europe, Arab League Educational, Cultural and Scientific Organization (ALECSO), European Union, African Union, Organization of American States or Association of Southeast Asian Nations (ASEAN)), as well as of governmental and non-governmental character (International Council on Monuments and Sites (ICOMOS), International Council of Museums (ICOM), International Union for Conservation of Nature (IUCN)), but it is also further influenced by the normative activities of those organizations and the observed growing number of specific legal instruments, of binding and non-binding character (declarations, recommendations, guidelines), aimed at protecting cultural heritage.

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[3] Here the word protection has to be understood in its broader meaning, embracing also 'safeguarding', and not in its technical sense; note however, that in the six UNESCO Conventions, protection is utilized for tangible cultural heritage, while safeguarding is devoted to intangible heritage. Thus, in the following paragraphs protection will be utilized in its wider meaning when we will speak in general, whereas its technical sense as well as that of safeguarding will be utilized where they will refer respectively to tangible and intangible heritage.

[4] As recalled by Alain Pellet (2021) in his general course at The Hague Academy, "Durant tout le XIXe siècle, le droit international s'est progressivement étendu non seulement à l'ensemble des domaines des relations internationales, mais aussi à tous ceux de la vie sociale. (…) Aujourd'hui, le droit international, essentiellement conventionnel, a envahi tous les champs des activités humaines".

[5] Under the auspices of UNESCO: the Convention on the Protection of the Underwater Cultural Heritage (adopted 2 November 2001, entered into force 2 January 2009, hereafter the "2001 Convention") 2562 UNTS 3, the Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003, entered into force 20 April 2008, hereafter the "2003 Convention") 2368 UNTS 3, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007, hereafter the "2005 Convention") 2240 UNTS 346.

[6] As to the non-binding agreements, see Société néderlandaise d'archéologie (1919). As to the legally-binding norms, see the Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (adopted 25 April 1935, entered into force 26 August 1935, hereafter the "Roerich Pact"). Under the auspices of UNESCO: the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First Protocol (both adopted 14 May 1954, both entered into force 7 August 1956, hereafter the "1954 Convention" and "First Protocol") 249 UNTS 215, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970, entered into force 24 April 1972, hereafter the "1970 Convention") 823 UNTS 231, the Convention of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975, hereafter the "1972 Convention") 1037 UNTS 151 and the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (adopted 26 March 1999, entered into force 9 March 2004, hereafter the "Second Protocol") 2253 UNTS 172. The International Institute for the Unification of Private Law (UNIDROIT) adopted: the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (adopted 24 June 1995, entered into force 1 July 1998, hereafter the "1995 UNIDROIT Convention"). As to the Council of Europe, amongst other instruments, see the Council of Europe Convention on Offences relating to Cultural Property (adopted 19 May 2017, not yet entered into force, hereafter the "2017 CoE Convention") ETS No. 119.

However, because ICHL exists in a wider international law context, it is likewise influenced by other-than-heritage legal regimes like: environmental law, law of the sea, human rights law, humanitarian law, international criminal law, intellectual property law, etc. Besides these instruments, adding to the complexity of the discussed matter is also a growing body of case-law developed by international judicial courts and non-judicial bodies, not to mention national legal regimes that respond to the changing international legal obligations.

This situation may confuse heritage scholars, which, comprehensibly, may feel lost in the application of ICHL. Thus, in this chapter we aim to explain existing ways of solving problems resulting from density and complexity of ICHL and possible approaches to this issue allowing legal and non-legal heritage law interpreter to find consistency and coherence in the relevant heritage regime. As all international cultural heritage legal regulations are the result of changing times, needs, interests and aspirations it is important to understand their background history and motivations of their drafters. This is the first step to critically address them and discuss best solutions where, when and how they shall be introduced together – and where and when their "togetherness" cannot work in practice.

The lens through which the analysis in this chapter is conducted includes introduction of concepts heavily discussed in recent years: the fragmentation of international law that has been for years perceived as a threat to the credibility and desired coherence of international law (Koskenniemi and Leino 2002; Peters 2017), the plurality and interaction of legal orders (Francioni 2013), and the theory of regime complexity (Alter and Meunier 2009).

We analyze the practical challenges related to the complexity of the ICHL and we show the relevance of other-than-heritage regimes, focusing on universal treaty law. We do not cover the issue of enforcement as it has been already addressed by other scholars (Francioni and Gordley 2013), and we deliberately exclude from our analysis customary law, general principles of law (see more Francioni 2020) and case-law covered by other chapters in this Handbook (references to other chapters).

The complexity of international law and its impact on international cultural heritage law

The growing complexity of international law is a phenomenon observed since the end of the Second World War, one that accelerated after 1989 (Peters 2017, 673). The expansion of the international legal framework and the institutionalization of international relations has resulted in the adoption of many treaties, the main underlying assumption being that it is the lack of international agreements that makes it easier for states to choose a war path. The growing global network of multiple international agreements was perceived as an important remedy to prevent irreversible loss of human and biological life and of natural and cultural diversity.

Alongside providing world peace, international treaty law was assigned another difficult task: it was to provide stable and reliable grounds for actions taken by the international community and to act as a flexible and adaptive framework able to respond to emerging challenges and shifting needs (Ackermann and Fenrich 2017). The result was the emergence of the "treaties in motion" phenomenon (Fitzmaurice and Merkouris 2020). Their being "in motion" means they adapt and evolve, via not only legal innovations but also through a dynamic interpretation and implementation thereof, seeing as "the legal system that we find today is not set in stone. Rather it is the contemporary result of a continuous motion throughout several centuries, and a result

that will continue to move and change as time goes by" (Fitzmaurice and Merkouris 2020, 334). The treaties on which we focus in this chapter are a bridge between stability and the need for evolution, with the same applying to the "treaty on treaties" (Vienna Convention, see Kearney and Dalton 1970). By applying this optic, we may address certain characteristics of international public law, namely its complexity, fragmentation and density, not as an inherent problem to be solved but as an inherent feature of the current international legal setting employed by its users (diverse state and non-state actors) to their interests and needs.

The complexity of the international legal framework devoted to the protection of cultural heritage, considered to form a subfield or branch of general international law, has several characteristics, of which three are the most important. First, there is *the proliferation of legal regulations*, as over time more and more topics and issues concerning the international protection of cultural heritage have received legal regulation. Second, *the increased number of interested stakeholders (that we try to pithily explain by using the term "heritage crowd")*, as the abundance and characteristics of state and non-state actors involved in heritage protection have increased dramatically. Third is *the expansion of the principle of cultural heritage protection*, as at the end of the last century international protection of cultural heritage was based essentially on treaties, whereas currently several kinds of legal norms (customary law, treaty law and general principles of international law) regulate this field.[7]

From what has been described above, a legal framework emerges which – at first glance – seems to be very dense, unclear and thus: incoherent and fragmented. This is not a surprising diagnosis and cannot be limited to ICHL as it characterizes the current situation of general international law. It recalls the diverse legal concepts used in the literature to explain its current status quo, including: "plurality of legal orders", "fragmentation of international law" and "regime complexity". All of these are important for the sake of the analysis conducted in this chapter and will be introduced below.

Fragmentation of international law and regime collisions

The "fragmentation of international law" is a general concept that has occupied the discussions of judges and professionals and international law doctrine over the last two decades and on which Martti Koskenniemi, Special Rapporteur of the International Law Commission (ILC), has produced a Report in 2006 (ILC 2006). Prior to the ILC Report, experts were essentially divided into two groups. In the first, there were those considering the fragmentation of international law to be a serious risk, especially because one issue should be decided in two or more different ways by tribunals. This group also asked for measures to be adopted to prevent such a risk. Forming the second group were those experts who considered fragmentation to be a normal phenomenon in an expanding system of law and who believed the advantages of the concrete implications of this concept to be more important than its negative effects.

Anne Peters takes this second position, suggesting even to "bury the f-word" (Peters 2017, 672) and to say "farewell to fragmentation" framed as "a problem" that needs to be solved, responsible for the "cacophony" and "damage" to the alleged coherence of the international legal system. Coherence itself must not be fetishized as it is simply an abstract and formal virtue (an unjust and unworkable legal system may be coherent, but that does not make it a

[7] A general overview of the several kinds of legal norms existing in the field of cultural heritage protection has been previously investigated by Francioni in this Handbook. The present Chapter is devoted only to treaty provisions.

better one) (Peters 2017, 679). Instead, Peters proposes to think about the observed process and its results as a situation of "diversity, specialization or pluralism", that is, a multiplicity of international regimes that allows for productive use of international law both by law-making and law-enforcing bodies. This does not exclude the fact that "the institutional, procedural, and substantive diversification called 'fragmentation' bears risks" (Peters 2017, 678). Conflicts and incompatibilities of legal obligations, the overlapping jurisdiction of courts, impediments to achieving goals and values important for one regime by another regime at the very end may result in the loss of international law's legitimacy. This concern about the quality, and thus legitimacy, of international law is a justified one. But it cannot come down to "coherency" and "clarity" only.

A lack of coherence (in values, goals and objectives) might easily be observed within ICHL itself. It is almost impossible to find a common denominator for the 1954 Convention and the 2005 Convention: they are products of different times, interests, problems and aspirations. The 1954 Conventions protects cultural property in specific situation of armed conflicts and was adopted in response to crimes against heritage perpetrated during the WWII whereas the 2005 Convention, adopted at the beginning of the twentieth century, aims to support, for economic purposes, national policies and measures promoting creation, production, distribution and access to diverse cultural goods and services. One may also justifiably ask how the exclusive, masterpiece- and state-driven discourse surrounding the 1972 Convention (aimed at protection of great, usually monumental, material heritage examples such as Machu Picchu in Peru, Taj Mahal in India or Angkor Wat in Cambodia) can be reconciled with the inclusive, representative and community-driven discourse surrounding the 2003 Convention (aimed at mainly locally cherished traditions such as Nativity scene (*szopka*) tradition in Krakow, Poland). However, we usually maintain the fiction of "six cultural UNESCO conventions" as if they would form a united, internally coherent legal system. In practice, if we want to save the term "system" for ICHL or even think that ICHL truly exist as a separate (and arguably self-sufficient) branch of international law that does not depend on other international legal rules, we need at the same time acknowledge that this system is fragmented and incoherent.

We may, nevertheless, try to change this optic. According to Peters, fragmentation is an adequate reaction to modernity and to the modern complexity of life. "Complexity requires differentiated norms and specialized law-appliers who divide labour" but also, and perhaps more importantly, "the creation of antagonistic treaties allows different political preferences (…) to express themselves on the international level" (Peters 2017, 680).

The existence of antagonistic treaties can be described as "regime collisions" and might be seen as problematic for the coherence of ICHL or general international law. It may, however, also be seen as a situation promoting pluralism of legal regimes and the inclusion of different interests. In fact, competitive pressure (between states, world regions, international organizations, etc.) allows for the development of more effective legal solutions and protects against a concentration of power in one single regime or international institution (Alter and Meunier 2009).

Pluralism of international legal order and interaction of international legal regimes

The notion of preventing power concentration and hegemonic tendencies also lies behind the discussion on international legal pluralism and, in particular, "its impulse to turn the international legal order into simply a reproduction of European (or Western) understandings of international law, and imposing them on the rest of the world for the sake of an illusory unity" (Lixinski 2013, 2).

This is also visible within ICHL, in which the 2003 Convention was perceived as a response to the growing need to appreciate different types of heritage expressions important for other-than-Western regions of the world (Schreiber 2019) and to the European dominance on the World Heritage List based on the 1972 Convention (Meskell, Liuzza, and Brown 2015). On the other hand, the 2005 Convention was adopted in order to mitigate the World Trade Organization-regime and to protect national cultural industries and was negotiated and supported by the European Union (Ferri 2005; Peters 2017).

The topic of plurality and interaction of legal regimes concerning cultural heritage has also been addressed by Francesco Francioni (2013), who proposed another way of framing the complexity of ICHL. This approach aims to embrace two processes: the plurality of legal regimes concerning heritage protection that evolved under the auspices of UNESCO since its establishment in 1945, and interaction of those heritage regimes with other-than-heritage international legal regimes.

The first process resulted in a gradual broadening of our understanding of what constitutes cultural heritage important for humanity: from tangible and movable cultural property protected by the 1954 Convention (with its protocols) and the 1970 Convention, to the addition of new elements to the traditional perception of cultural heritage as most valuable heritage objects (the 1972 Convention) which helped create a more holistic definition that includes underwater heritage (the 2001 Convention) and intangible heritage (the 2003 Convention), and, finally, to thinking in broader terms of cultural diversity in the latest 2005 Convention.

The second process refers to reciprocal, mutual interactions between the above-mentioned conventions (being the corner stones of the different heritage regimes, see definition below) and "other-than-heritage" international legal regimes, such as: human rights law, humanitarian law, environmental law, international criminal law, intellectual property law, and the emerging law on the protection of the rights of indigenous peoples. In addition to interaction between *international* legal regimes, interaction of legal regimes may also mean fruitful interaction and "division of work" between international and domestic law (as in the case of the 1972 Convention) or between public and private international law, as in the case of the 1995 UNIDROIT Convention (Francioni 2013, 14–16). Regime interaction is thus "a constant feature in the setting of agendas for new negotiations, the ongoing norm elaboration within regimes and even the domestic policy coordination between state ministries and departments" (Young 2012, 1). These interactions are based on concrete provisions and recitals in preambles to the conventions and will be presented in section 3 of this chapter.

International regimes, regime complexity and regime-shifting

Though usage of the term "regimes" is widespread in legal scholarship and has been present in the debate on the fragmentation of international law, as well as on the plurality and interaction of legal orders, most of the time the term is used implicitly (and for many non-legal scholars is usually associated with a "political regime" which is not the case here, see below). Basic definition of a legal regime considered it as a system or framework of rules governing some physical territory or discrete realm of action that is in principle rooted in some sort of law (Hurst 2018, 21).

It is important to note, however, that regime theory, discussed widely in International Relations scholarship since the 1980s (Krasner 1983), has different strains, including recent

conceptualizations of regime complex and complexity (i.a., Hasenclever, Mayer, and Rittberger 1997; Keohane and Victor 2011; Young 2012, Alter, Raustiala 2018). Due to the proliferation of theoretical and methodological research on regimes, it is claimed that a shift from regime theory to "theories of regime" can be observed (Hynek 2017). Additionally, heritage studies have developed their own understanding of "heritage regimes" (Bendix et al. 2013). Usually, however, regime theories are associated with neoliberal institutionalism, focusing on the role regimes play in mitigating international anarchy and overcoming various collective action problems among states (Bradford 2007). It is also important to note that the theoretical international relations background and the definitions of 'regime' have been influential in international law scholarship (Crawford and Nevill 2012; Dunoff 2012), to the point that there is an important "interaction" and close mutual relationship between these two bodies of knowledge: international law and international relations.

Taking into account the above elaboration, an international cultural heritage regime could be defined as *global institutional systems built around the UNESCO Cultural Conventions, consisting of a set of explicit and implicit principles, norms, rules and decision-making procedures developed with the main aim to govern the idea of Heritage of Humanity, around which states' and non-state actors' expectations and interests are built and concerning which actions are taken*. (see Schreiber and Pieliński 2023, 119). These norms and rules are to some extent codified in the UNESCO conventions and their operational documents, but they are also expressed in soft-law instruments and informal rules and practices developed around binding legal regulations.[8] In this sense, we may use the term "regime" when we wish to *collectively* address the six UNESCO cultural conventions that interact amongst themselves and with other international treaties and are embedded in a specific context, or – we may also label a "regime" each single convention with its complex social and political surroundings. In order to avoid confusion, later in this chapter we will use the term "international cultural heritage regime" when referring to any of the conventions, whereas, while trying to understand the relations *within* those heritage regimes established under the auspices of UNESCO, we will follow the concept of "international regime complexity"[9], which "refers to the presence of nested, partially overlapping, and parallel international regimes that are not hierarchically ordered. Although rule complexity also exists in the domestic realm, the lack of hierarchy distinguishes *international* regime complexity, making it harder to resolve where political authority over an issue resides" (Alter and Meunier 2009, 13).

On the one hand, international regime complexity encompasses the proliferation of overlaps across diverse, parallel-functioning hard law (such as cultural conventions) and soft law instruments (such as declarations or recommendations), conflicts among international legal obligations, and growing confusion regarding what international, regional, bilateral or national obligations to follow – and as a result – what consequences are to be expected. On the other hand, regime complexity allows diverse stakeholders to find more appropriate forums, platforms and solutions to serve their needs – if those strictly devoted to one or another element of heritage protection fail to satisfy the goals of one group or another. This strategy is sometimes referred to as "regime shifting", "whereby states and non-state actors relocate rulemaking processes to international venues whose mandates and priorities favour their concerns and interests" (Helfer 2009, 39).

As noted by Jakubowski and Schreiber, this can be observed in the case of the relationship between intellectual property and cultural heritage on the example of endeavors to protect

[8] For the sake of clarity, we will focus here mainly on treaty law.
[9] See the section below.

collectively created folklore by means of an international legal instrument developed jointly by WIPO and UNESCO. The objective could not have been achieved due to conflicting interests between developed and developing States (the clash of 'individual' IP rights protection ensured by developed States and 'collective' heritage-focused manifestations of human creativity from developing States that were exploited, mainly by developed States, due to lack of existing legal norms to protect this type of collective creation) so an international instrument that would "heritagise folklore", i.e., the 2003 Convention, was promoted instead with some underlying hope, that turning "folklore" into "heritage" will guarantee at least some sort of protection in the absence of IP legal regulations for it. The failure to establish a common regime jointly by the two IGOs resulted in the creation of a new regime (the 2003 Convention), and led to a final separation of more profound efforts (though not necessarily interests) of both WIPO and UNESCO in matters legally linking intellectual property and cultural heritage. WIPO decided to take its own way and focused its efforts on embracing intellectual property and cultural heritage on the local and national levels through non-legal means, such as research projects and training. UNESCO went on with universal heritage instruments, acknowledging the existence of intellectual property regimes beyond UNESCO and not aiming to join forces with WIPO in this area again (Jakubowski and Schreiber 2022, 351–354).

International cultural heritage regimes, their interactions internally and with other international regimes

Since 1954, treaties composing the subfield of international law labelled ICHL have been adopted under the auspices of UNESCO in different historical moments, following urgencies identified by different actors interested and involved in the relevant field. This resulted in a *corpus* composed of six universal conventions concerning different aspects of cultural heritage protection which sometimes overlap with each other and may also overlap with treaties concerning cultural heritage protection adopted by international organizations other than UNESCO, as well as treaties concerning altogether different matters (e.g., environmental law, human rights, intellectual property rights and humanitarian law).

Guidelines in the research for understanding UNESCO cultural heritage regime complexity[10] and its direct and indirect relationships with other related international regimes (e.g., environmental law, law of the sea, human rights law, humanitarian law, international criminal law, intellectual property law) are found in the law of treaties established in the Vienna Convention on the Law of Treaties (1969) (VCLT) and, especially, Article 30 thereof, titled "Application of successive treaties relating to the same subject matter".[11] We consider this article as allowing the interpreter to avoid conflicts of norms and give consistency and coherence to the relevant system. While other tools may be found in the VCLT and international law in general, such as rules on the interpretation of treaties, we decided to

[10] This relates to the 6 UNESCO Conventions. The First and Second Protocols to the 1954 Convention are considered as a unique treaty within this instrument.

[11] "1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs. 2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail. 3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. 4. When the parties to the later treaty do not include all the parties to the earlier one: (a) As between States parties to both treaties the same rule applies as in paragraph 3; (b) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations".

concentrate our analyses on the VCLT and its application because we believe it to be the point of departure to understanding relationships between regimes.

Article 30 VCLT provides a path to follow in structuring our analyses. Firstly, we will take into consideration the complexity of the UNESCO cultural heritage regime. Secondly, we will examine, using selected examples, how the relationships are established amongst different regimes directly and indirectly related to ICHL. This way of proceeding is the one proposed by Francioni (2013) and we consider it as most suitable to clearly show the practical challenges related to the complexity of the ICHL and the relevance of other-than-heritage regimes.

UNESCO cultural heritage regime complexity

The main point of reference to clarify the complexity of the UNESCO cultural heritage regime is paragraph 2 of Article 30 VCLT. This paragraph provides for a situation in which the drafters of a treaty have inserted a clause foreseeing that it is subject to, or it is not to be considered as incompatible with an earlier or later one. This kind of clause has been called by the doctrine (Russo 2015) a saving clause, though they are also known as relationship clauses.[12]

From the analysis of the relationship clauses contained in the six UNESCO conventions, it emerges that the possibility of conflict with other treaties was taken into account by their drafters. In fact, we find such clauses in almost all UNESCO conventions, with the only one not foreseeing such a provision being the First Protocol to the 1954 Convention.

Nevertheless, in the three first cultural conventions adopted by UNESCO – those relating to the protection of cultural property in the event of armed conflict (1954), the fight against the illicit trafficking of cultural property (1970) and the protection of world heritage (1972) – concerns about possible conflicts with other treaties, both inside and outside UNESCO cultural heritage regime complexity, are less discernable than in those adopted later on. Moreover, in the relevant period, legal regime pluralism did not have the degree of importance that was later ascribed to it – with more and more treaties regulating the same subject area.

Even though the 1969 VCLT had not yet been in place at the moment of the adoption of the 1954 Convention, the issue of conflicting treaties was already known in international practice. In fact, the drafters of the 1954 Convention provided for a relationship clause in Article 36 of the convention establishing a supplementary relationship between the convention and the *corpus* of treaties forming contemporary international humanitarian law.[13] Nothing was foreseen to regulate possible conflicts with other UNESCO conventions because the 1954 Convention, with its First Protocol, was the only one in existence at the time of its adoption. In 1999, UNESCO adopted the Second Protocol to reinforce the provisions of the 1954 Convention. Articles 2[14] and 4[15] of the Second Protocol foresee saving clauses, which establish

[12] We prefer this expression to that of "saving clause" and we will employ it in the further development of this chapter, because of the pragmatic position we decided to adopt towards fragmentation. See paragraph above.
[13] See the section below in this chapter.
[14] "Relation to the Convention - This Protocol supplements the Convention in relations between the Parties".
[15] "Relationship between Chapter 3 and other provisions of the Convention and this Protocol - The application of the provisions of Chapter 3 of this Protocol is without prejudice to: a. the application of the provisions of Chapter I of the Convention and of Chapter 2 of this Protocol; b. the application of the provisions of Chapter II of the Convention save that, as between Parties to this Protocol or as between a Party and a State which accepts and applies this Protocol in accordance with Article 3 paragraph 2, where cultural property has been granted both special protection and enhanced protection, only the provisions of enhanced protection shall apply".

only supplementary relationships between this protocol and the 1954 Convention with its First Protocol (Toman 2009, 55-59 and 68-73).

Article 15[16] of the 1970 Convention provides for the possibility for States Parties to conclude special agreements amongst themselves[17] (Scovazzi 2014, 119-126), as well as to continue implementing treaties – ones adopted before the Convention's entry into force – regarding the restitution of cultural property removed from their territories of origin. It seems that the drafters were aware that the main role of the 1970 Convention was to constitute a framework treaty under which other agreements could be concluded in order to fight against the illicit trafficking of cultural property.

Article 13, paragraph 7, of the 1972 Convention deals only with cooperation with international and national governmental and non-governmental organizations concerning similar matters and does not take into consideration the relationship with other international treaties.[18] The results of research on the need for consistency and coherence with other UNESCO conventions – also those adopted under other UNESCO fields of activity, such as science and education – as well as with treaties concluded outside of this international organization, appear in paragraphs 41 to 44 of the Operational Guidelines for the Implementation of the World Heritage Convention (Operational Guidelines).[19] In these paragraphs, the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage (World Heritage Committee) recognizes the benefits of closer coordination with other UNESCO programs and their relevant conventions. Moreover, it engages itself in ensuring appropriate coordination and information sharing between the 1972 Convention and other conventions, programs and international organizations related to the conservation of cultural and natural heritage. In order to achieve these goals, the Committee may invite representatives of international bodies under related conventions to attend its meeting as observers and it may appoint a representative to observe meetings of other intergovernmental bodies.

In the last three conventions adopted by UNESCO – those concerning the protection of underwater cultural heritage (2001), the safeguarding of intangible cultural heritage (2003) and the diversity of cultural expressions (2005) – the drafters seem to be more aware of the fact that these instruments may conflict with other treaties inside and outside the UNESCO cultural heritage regime. In fact, after 2000, treaty proliferation and the need to codify and progressively develop legal rules at the international level in conformity with already existing treaties were already posed in international law and practice and discussed by scholars. This is confirmed in the preambles of the 2001, 2003 and 2005 Conventions, which respectively provide:

> Realizing the need to codify and progressively develop rules relating to the protection and preservation of underwater cultural heritage in conformity with international law and practice, including the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, the UNESCO Convention for the Protection of the World Cultural and Natural Heritage of 16 November 1972 and the United Nations Convention on the Law of the Sea of 10 December 1982. (12th recital of the 2001 Convention)

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[16] "Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned".

[17] In this framework we may recall, for example, the bilateral agreements Italy has concluded with respectively the United States of America, Switzerland and China.

[18] See the section below in this chapter.

[19] The last updated version is WHC.21/01, 31 July 2021.

> Referring to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966. (1st recital of the 2003 Convention)
> Considering the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development, as underscored in the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, in the UNESCO Universal Declaration on Cultural Diversity of 2001, and in the Istanbul Declaration of 2002 adopted by the Third Round Table of Ministers of Culture. (2nd recital of the 2003 Convention)
> Noting the far-reaching impact of the activities of UNESCO in establishing normative instruments for the protection of the cultural heritage, in particular the Convention for the Protection of the World Cultural and Natural Heritage of 1972. (7th recital of the 2003 Convention)

> Celebrating the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments. (5th recital of the 2005 Convention)
> Emphasizing the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication. (6th recital of the 2005 Convention)
> Recognizing the importance of intellectual property rights in sustaining those involved in cultural creativity. (17th recital of the 2005 Convention)
> Being aware of UNESCO's specific mandate to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image. (20th recital of the 2005 Convention)
> Referring to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001. (21th recital of the 2005 Convention)

Nevertheless, in the 2001 Convention, the relationships between it and other UNESCO treaties are missing. In fact, in Articles 3 and 4, only relationships between the 2001 Convention and the United Nations Convention on the Law of the Sea (UNCLOS) and with the law of salvage and law of finds are taken into account.[20]

The situation is different in the text of the 2003 Convention. In this instrument, relationships with the 1972 Convention and with the Masterpieces of the Oral and Intangible Heritage of Humanity are taken into account. Article 3 (a) establishes a subjective relationship with the 1972 Convention, stating that nothing in the 2003 Convention may be interpreted as altering the status or diminishing the level of protection established by the 1972 Convention for a site with which an element of intangible cultural heritage is directly associated (see more Lixinski 2020). Article 31, meanwhile, establishes that the Committee shall incorporate in the Representative List for the safeguarding of the intangible cultural heritage any items previously proclaimed as Masterpieces of the Oral and Intangible Heritage of Humanity. We may argue that it would have been appropriate for the drafters to include a relationship clause also concerning, at least, the connections with the 1954 Convention and its two Protocols, as well as the 1970 Convention. In fact, the subsequent armed conflicts e.g. in Syria and Ukraine, as well as other recent emergencies, such as in Haiti, demonstrated that intangible cultural heritage may be threatened or under attack and – partly, as it also involves artefacts – subject to illicit trafficking. That is why the relationships with the 1954 Convention has been established via another document related to the 2003 Convention: the Operational Principles and Modalities (OPM) for safeguarding ICH in emergencies, adopted in 2020. The report (background document: UNESCO 2019) explaining the rationale for the adoption of the OPM acknowledges the need of a holistic approach to the existing legal framework supporting ICHL's main aim of

[20] See the section later in this chapter.

protecting heritage and refers not only to the 1954 Convention but also to other treaties and instruments such as Security Council Resolutions:

> 1. Any effort to safeguard intangible cultural heritage in emergencies should be in line with the relevant frameworks, instruments and standards at the international level. Article 2 of the Convention obliges States Parties to align their safeguarding efforts with existing international human rights instruments. Particular mention should be made of United Nations Security Council Resolution 2347 (2017), the first resolution to focus exclusively on cultural heritage and its role in the maintenance of peace and security. Although the Resolution does not specifically address intangible cultural heritage, it is concerned with a set of values that communities confer on their heritage and, as such, is particularly relevant for safeguarding intangible cultural heritage in emergencies.
>
> 2. While international law has tended to pay specific attention to the protection of tangible heritage during armed conflict, such as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols, in emergencies, tangible and intangible heritage are often inextricably linked. Article 2 of the 2003 Convention acknowledges that some places, spaces and artefacts are linked to the expression or practice of intangible cultural heritage, or are repositories of records, archives and so on related to intangible cultural heritage. In line with the UNESCO Strategy, which seeks to build synergies in the implementation of the relevant culture conventions, the operational principles and modalities will further enhance the protection of cultural heritage, in all its forms, by fostering cooperation and collaboration across the fields of heritage safeguarding.
>
> 3. Moreover, core human rights treaties and international law concerning refugees and principles pertaining to internally displaced persons are relevant with regard to the obligation of State Parties to safeguard intangible cultural heritage present in their territories. The UNESCO Strategy makes specific reference to the deprivation of cultural rights experienced by the growing number of refugees and internally displaced persons. Whether as a result of conflicts, natural disasters or the effects of climate change, displacement often results in the loss of cultural references and can deprive people of the possibility to enact their practices and expressions, thus denying them the enjoyment of their cultural rights. The disruption or suppression of the practice and transmission of intangible cultural heritage during emergencies may have serious, and broad, consequences for communities, including depriving a community of its sense of continuity and identity as well as of a primary source of livelihood.

In the decision of the Intergovernmental Committee for the Safeguarding of ICH on the adoption of OPM, we read in point 10 that the Committee:

> Encourages the Secretariat, in consultation with the Secretariat of the Second Protocol (1999) to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, to explore the possibility of a joint meeting between the Bureau of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage and the Bureau of the Committee of the above-mentioned 1999 Second Protocol, in order to explore possible synergies for the safeguarding of intangible cultural heritage in armed conflict.[21]

Another bridge between ICH and international humanitarian law and the 1954 Convention is established via Ethical Principle 5 (Ethical Principles for the Safeguarding of the Intangible Cultural Heritage, UNESCO 2015):

> **5. Access** of communities, groups and individuals **to the instruments, objects, artefacts, cultural and natural spaces and places of memory** whose existence is necessary for expressing the intangible cultural heritage should be ensured, **including in situations of armed conflict.** Customary practices governing access to intangible cultural heritage should be fully respected, even where these may limit broader public access.

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[21] Decision of the Intergovernmental Committee: 14.COM 13, point 10 of the decision (https://ich.unesco.org/en/decisions/14.COM/13). The meeting, however, did not take place and the current ongoing war on Ukraine shows the practical weaknesses of the adopted OPM that serve as an aspirational document rather than a practical, enforceable tool.

In Article 20 of the 2005 Convention, the drafters demonstrate to be more aware of the possibility of conflict between same-subject legal instruments and other conventions in general, because they make reference to "other treaties". They establish a non-subordinating relationship between the 2005 Convention and other treaties, providing for the performing in good faith of their obligations under all the international instruments potentially applicable to a certain situation. Moreover, Article 20 establishes that States Parties have to, firstly, foster mutual supportiveness between the 2005 Convention and other treaties to which they are parties to and, secondly, take into account the relevant provisions of this Convention when interpreting and applying other treaties to which they are parties. Finally, Article 20 affirms that nothing in the Convention in question shall be interpreted as modifying the rights and obligations of the Parties under any other treaties to which they are parties.

From the analyses conducted above, we may argue that the drafters of the six UNESCO conventions were aware of the possibility of collisions, that these instruments may "experience", and of the troubles for heritage policy-makers, practitioners and scholars this situation may cause: that is diminishing the preservation of cultural heritage as holistic, commonly shared resource resulting from separately applied and non-compatible approaches. For these reasons the drafters inserted relationship clauses in the texts of the conventions. Despite a dose of criticisms that can be expressed as to the actual wording of these clauses, we may affirm that their existence in the documents results in a degree of consistency inside the UNESCO cultural heritage regime complexity. When new cultural heritage legal documents are being drafted, it is also understandable and observable that relationship clauses of this kind (in the main text of a treaty) and references to other normative instruments (in the preambles to the treaties or in other related documents, such as declarations, directives, guidelines, principles, modalities, codes of ethics) are inserted with the aim of establishing coherence, proving the existence of common goals, allowing States Parties to cooperate with each other, and pushing them to find the best way to protect cultural heritage – and not to further complicate regime interactions. Finally, we consider it important to always keep in mind that every clause in a treaty is the result of lengthy discussions and compromises, and has been adopted to deal with contemporary needs and interests that evolve over time ("treaties in motion").

Relationships amongst international regimes dealing with the protection of cultural heritage

Relationships amongst "regimes" in their broadest sense (see above) may be established on many levels. We propose here, however, to consider the two most important relationships from the perspective of *international* regimes. The first concerns the relationships between different international organizations under which the relevant international instruments have been adopted. The second concerns relationships between international instruments.

Relationships amongst international organizations involved in the international protection of cultural heritage

Even though UNESCO may be considered a leading universal organization in the international protection of cultural heritage, it is not the only organization actively engaged in this field. As stated in the introduction, other international and regional organization (e.g., UNIDROIT, WIPO, Council of Europe, ALECSO, European Union, African Union, Organization of American States or ASEAN) and Non-Governmental Organizations (e.g., ICOMOS, ICOM,

IUCN) have directly or indirectly approached the matter of international cultural heritage protection under their respective points of view.

Article 30, paragraph 1, of VCLT establishes that according to Article 103 of the Charter of the United Nations, successive treaties relating to the same subject matter have to respect the rights and obligations of the latter instrument. Several agreements have been concluded between the United Nations and other international organizations, such as UNESCO.[22] Amongst these agreements there are those establishing the fundamental rules of cooperation between the Organization of the United Nations and its specialized agencies.[23] One recent example of cooperation between the United Nations and UNESCO is the Security Council's adoption of resolution 2347(2017) on the fight against the illicit trafficking of cultural property following the Syrian armed conflict (Frigo 2018; Urbinati 2019, 2021). Though the text of this resolution was proposed to the Security Council by France and Italy, it was later developed and finalized in collaboration with UNESCO.

Nevertheless, on the basis of practice, it is clear that cooperation may be established not only between the United Nations and another international organization, but also between other international organizations. Moreover, even if Article 30 VCLT remains the *fil rouge*, this last kind of cooperation may or may not have a legal basis.

An example of cooperation without any formal agreement but on the basis of practical cooperation is the adoption of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995).[24] Since common law offered no satisfactory solutions to international claims and the existing international instruments did not cover private law aspects of cultural property protection, UNESCO asked UNIDROIT to draft a new treaty. Despite there being no formal agreement on this topic, UNESCO was closely involved in the entire process, which it attended as an observer. As noted by Prott:

> UNESCO's interest was to see that any instrument resulting from UNIDROIT's efforts remained compatible with the UNESCO Convention, to reassure its Member States that the 1970 UNESCO Convention would continue to be applied, to encourage them to take part in the work underway within UNIDROIT and to provide its experience and information on the illicit trade for the benefit of the participants. (Prott 1996, 61)

We also have several examples of cooperation with a legal basis. The first is that of cooperation between UNESCO and WIPO[25] and between UNESCO and the EU.[26] Another example is foreseen in Article 13, paragraph 7, of the 1972 Convention, where cooperation is extended also to bodies – established by an international instrument – and non-governmental entities. In fact, it is foreseen that the World Heritage Committee may cooperate – in the implementation of programs and projects – with international and national governmental and non-governmental organizations working on similar matters. In the same paragraph, three non-governmental organizations are specifically cited: the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre – ICCROM), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature

[22] Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization (approved by the General Conference on 6 December 1946 and by the General Assembly of the United Nations on 14 December 1946; entered into force on 14 December 1946).
[23] See, e.g., articles VI (Recommendations of the United Nations) and VII (Assistance to the Security Council).
[24] Adopted 20 June 1995, entered into force 1 July 1998, hereafter the "1995 UNIDROIT Convention".
[25] See the section below in this chapter. More: Jakubowski, Schreiber 2022.
[26] UNESCO, 'Co-operation between the European Commission and UNESCO' (13 December 1995) UN Doc 147 EX/44. More on official relations between UNESCO and the EU see: Schreiber 2019.

and Natural Resources (IUCN). Following the adoption of the Operational Guidelines, ICOMOS and IUCN have been involved, in particular, in the assessment of States Parties' nominations for cultural and natural sites to be inscribed on the lists of the world heritage.

Finally, we may recall Article 21 of the 2005 Convention concerning consultation and coordination. This article asks the States Parties to promote the convention's objectives in other international forums. To this end, it foresees that they consult each other, as appropriate, bearing in mind the objectives and principles of the 2005 Convention.

Relationships between international cultural heritage regimes and other international regimes on the example of treaties

As previously illustrated, several international organizations have developed not only activities and programs but also international instruments directly or indirectly concerning the protection of cultural heritage. These international instruments concern, e.g., the protection of human rights, intellectual property rights and environmental law, as well as humanitarian law and criminal law. We also had the occasion to show that the six UNESCO conventions contain relationship clauses concerning their connections with treaties outside the UNESCO cultural heritage regime complexity.

As previously noted, even though the VCLT did not yet exist at the moment of the adoption of the 1954 Convention, the issue of conflicting treaties was already known. Article 36 of the 1954 Convention establishes a supplementary relationship between this instrument and the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) and concerning Naval Bombardment in Time of War (IX), both those of 29 July 1899 and those of 18 October 1907, as well as the Washington Pact of 15 April 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (so called Roerich Pact). The drafters were aware that the convention in question had to be inserted in a larger *corpus* of international instruments dealing with a more general issue: the regulation of the conduct of armed conflicts, where the protection of cultural heritage was only very partially taken into account.

To find other relationships clauses concerning connections with treaties beyond the UNESCO cultural heritage regime complexity, we have to wait until the adoption of the 2001 Convention. In section above, the reasons for the absence of such clauses in the 1970 and the 1972 Convention have been explained. However, Article 3 of the 2001 Convention establishes a supplementary relationship with the UNCLOS, which is undoubtedly the most important treaty in the field of the law of the sea. The 2001 Convention was adopted because the UNCLOS took the protection of underwater cultural heritage into account very partially. The 2001 Convention also establishes a relationship with other legal rules in Article 4. Here, the relationship concerns the 2001 Convention provisions and rules such as the law of salvage and law of finds.

In the case of the 2003 Convention, relationships with other-than-heritage regimes concern particularly human rights law, intellectual property law and environmental law (Blake 2020, 13) that was instrumental in drafting and implementing this convention. However, the relevance of other regimes to the 2003 Convention is also developed in legal scholarship: especially that concerning international humanitarian law and international criminal law (Johannot-Gradis 2015; Chainoglou 2017). On the other hand, reflection on the relationships between the law of the sea (maritime law) regime and the 2003 Convention is still quite recent and not yet developed (see however Ounanian et al. 2021; Boswell 2021).

Interestingly, the three most important other-than-heritage regimes are anchored differently in the 2003 Convention: Article 3(b) of the 2003 Convention regulates the relationship with the intellectual property rights regime and the environmental law regime (see more Blake, Lixinski 2020).

> Article 3 – Relationship to other international instruments
> Nothing in this Convention may be interpreted as: (…)
> (b) affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties.

Conversely, the relationship with the human rights regime permeates the entirety of the 2003 Convention regime, starting with its preamble, continuing in the main text of the 2003 Convention (the very definition of ICH in Article 2) and ending with other legal regulations, such as Operational Directives or Ethical Principles (UNESCO 2015; the relationships between cultural heritage and human rights is further analyzed in chapter 35 of this Handbook). It is acknowledged that cultural heritage treaties are by definition situated within the human rights context under the right to participate in cultural life, which guarantees access to and enjoyment of cultural heritage (Blake 2020).[27] This is evident in the 2003 Convention preamble:

> **Referring** to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966. (first recital)

Article 2 limits the application of the definition of ICH to only such that is considered compatible with existing human rights instruments, and combines this requirement with the new category of "mutual respect" and an old concept which Koskenniemi calls a "regime hybrid"[28] – sustainable development:

> For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

As previously pointed out, Article 20 of the 2005 Convention establishes a relationship clause concerning this instrument's connections with all "other treaties". Compared to the drafters of earlier UNESCO legal instruments, the drafters of the 2005 Convention demonstrate a greater awareness of potential conflicts between their convention and other treaties. In fact, they make no distinction between instruments that are part of the UNESCO cultural heritage regime and those outside of it. They ultimately established a supplementary relationship between the 2005 Convention and other treaties, providing for the good faith performance of their obligations under all of the international instruments potentially applicable to a certain situation. Moreover, Article 20 establishes that States Parties must, firstly, foster mutual supportiveness between the

[27] See also the International Covenant on Economic, Cultural and Social Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

[28] The concept of "sustainable development" (SD) appeared as an important game-changer after the adoption of the Rio Declaration in 1992. It has influenced all UNESCO conventions, e.g., the 2003 and 2005 Conventions explicitly refer to it in their preambles and core texts (Article 2 and 13 of the 2005 Convention, chapter 6 in the Operational Directives to the 2003 Convention). If not present in the hard law instruments – SD appears in the guidelines, recommendations and other soft law instruments. It has also heavily influenced the discussion on IP. The concept of SD, also labelled as a 'regime hybrid' (Koskenniemi 2012, 319), operationalized into the Sustainable Development Goals (SDGs) Agenda post-2015, is an additional element of UNESCO cultural heritage regime complexity – as it is overarching, cross-cutting, e.g., especially with human rights, and one of the most influential concepts in contemporary international law and international relations.

2005 Convention and the other treaties to which they are parties and, secondly, take into account the relevant provisions of this convention when interpreting and applying the other treaties to which they are parties. Finally, Article 20 affirms that nothing in the convention in question shall be interpreted as modifying the rights and obligations of the Parties under any other treaties to which they are parties.

From the analyses conducted herein, it is clear that the drafters of the six UNESCO conventions were aware of the fact that these instruments would conflict with each other and with other treaties adopted within other international organizations. They were also aware of the fact that the work of other international organizations may be related to activities carried out by UNESCO in the field of cultural heritage protection. Finally, they were aware of the fact that this situation could has made the work of heritage scholars more complicated in preserving cultural heritage. Thus, the drafters chose the way of the supplementary relationship, which in our view represents an important step towards achieving cooperation between existing regimes. The graph below illustrates and encapsulates the above elaborations.

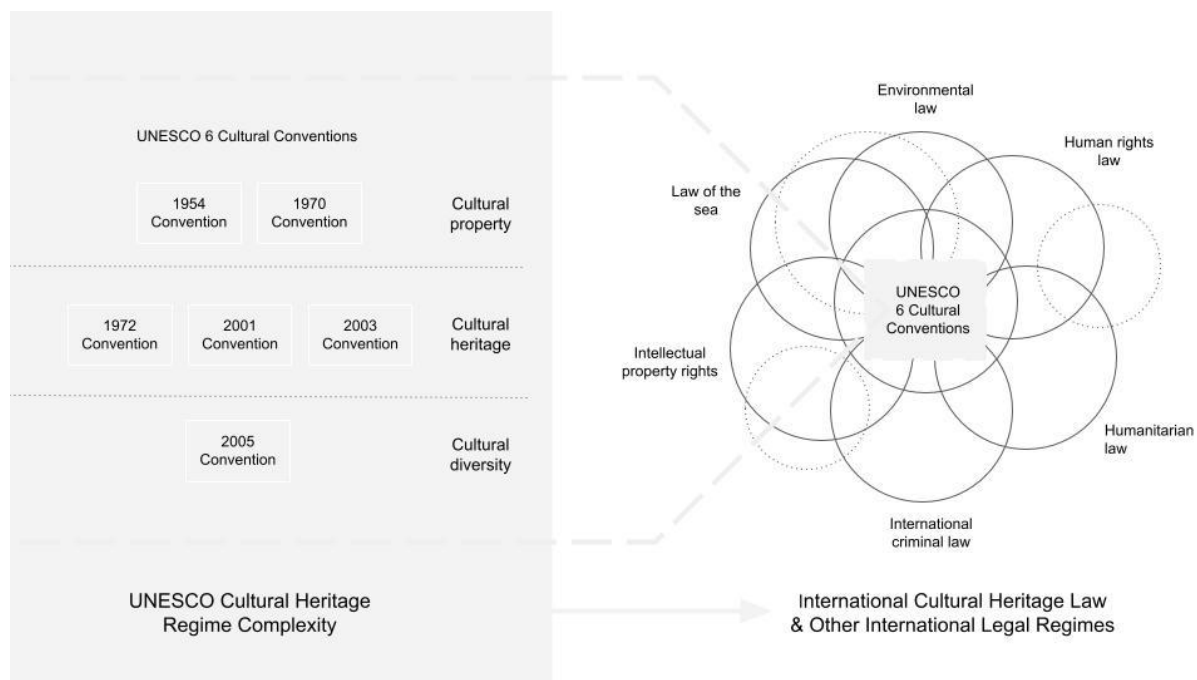

Figure 1. **International cultural heritage law and other international legal regimes. International regimes interactions & complexity.** The dotted lines in circles on the right side indicate a possibility to include other regimes that are interlinked with international cultural heritage law.

Conclusions

International regimes, both those concerning cultural heritage and those other-than-heritage, co-exist and intermingle in a dynamic manner, reflecting the situation of "treaties in motion" and the complexity of the regimes. They are the result of changing times, needs, interests and aspirations. Regimes that have been established on the basis of international cultural heritage law operate in a highly complex and internally diverse social, political, economic and cultural environment. But they are drafted, adopted, implemented and enforced with one overarching objective: to find the best possible ways and solutions to effectively preserve what is considered

to be “cultural heritage” for future generations – and for the benefits of Humanity at large. We have to admit however, that the observed impact of heritage legal terminology and cultural heritage legal definitions on heritage preservation in practice – executed *via* national and international implementing organs, selecting heritage objects or practices that shall be preserved for the future – places “law” in a particularly powerful position: the one that rather easily subordinates other spheres of heritage practice and reflection. Thus, understanding heritage law (and its confusing complexity) is nowadays non-avoidable if one wants to engage in the discussion on heritage in a meaningful way.

For the broad range of heritage scholars, the practical consequences of the complexity of ICHL and cross-cutting relationships described above are, in our opinion, twofold. First, legal knowledge and understanding must not remain a domain restricted strictly to lawyers. Strongly influencing ethnographic, political, sociological and folklore research, it is an indispensable bridge when any new international heritage efforts, activities and instruments are being drafted, discussed and enforced. Second, there shall be no leading, privileged discipline among those forming interdisciplinary heritage studies. We all need ethnographic sensitivity, understanding of conservative needs, legal scrutiny and political ambitions lying behind every successful action within international cultural heritage regimes. We hope that by discussing in this chapter the possible interactions, collisions, conflicts and cooperation examples between international cultural heritage regimes, we have contributed to the ongoing debate among heritage scholars about future challenges for the relations between “heritage” and “law”, discussed in the following chapters in this Handbook.

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