

What’s in a Name?: Challenges in Defining Cultural Heritage in Light of Modern Globalization

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I. INTRODUCTION

The present Article investigates the process of the ever-expanding and ever-evolving definition of cultural heritage, in relation to identifying its many forms, as a necessary course to effectively enforce cultural heritage protection mechanisms. While there seems to be a growing awareness of the broad coverage of what constitutes cultural heritage, one challenge to its protection is “how heritage practitioners [] see [] conservation work merely as a technical matter.”¹ This very narrow, rules-based type of conservation

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devoid of economic, political, and social context considerations, has led to the inefficacy of laws put in place to guard, protect, and preserve culture.

This is further highlighted in a society driven to keep up with the demands of increasing globalization and its practical effects on modern-day living. When put in the position of having to weigh the oft-competing interests of modern-day demands and those of cultural heritage preservation, the former presents a more immediate and compelling case. What is unfortunate, however, is that once an opportunity to preserve cultural heritage is abandoned, as when it results to the permanent destruction of heritage sites or monuments, there can be no second chances.

This Article begins with a practical illustration of a possible conflict between the demands of modernity and those of heritage, and proceeds to lay down the evolution of documentary bases (often, international consensus instruments) defining cultural heritage and its forms. The discussion then progresses to expanding the notion of cultural heritage to cover ‘*intangibles*,’ seen as a necessary strategy to address challenges in protecting and preserving heritage in a constantly transforming world driven by globalization and modernity, but nevertheless also a deliberate attempt to arrive at a more truthful and integrative definition. The Article identifies the new international perspective anchored on the belief of a shared and international duty to promote and preserve *cultural diversity*, towards a “*common heritage of mankind*.”² It then offers the conclusion that there still remain aspects of cultural heritage not covered by the collective existing definitions, which should be considered and investigated in order to more effectively preserve and protect cultural heritage.

A. The Kingdom of Namayan and Modern-Day Santa Ana: An Illustration

Long before the Spaniards, Chinese, and Moros stepped foot on Philippine shores, the Kingdom of *Namayan* ruled over parts of the country, particularly the areas which are now Mandaluyong, Makati, Pasay, and the Manila

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1. William Logan, *Cultural diversity, cultural heritage and human rights: towards heritage management as human rights-based cultural practice*, 18 INT’L J. OF HERITAGE STUDIES 231, 231 (2012).
2. Koichiro Matsuura, *Preface to UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO), CULTURAL DIVERSITY: COMMON HERITAGE, PLURAL IDENTITIES* 3 (2002) (emphasis supplied) [hereinafter UNESCO, CULTURAL DIVERSITY: COMMON HERITAGE].

districts of Pandacan, Paco, and Santa Ana.³ The people of *Namayan* had their own traditions and culture, distinct from their would-be colonizer and trade partners.⁴

The District of Santa Ana was the site of the kingdom's capital, where the royal family ruled, as well as its center of trade, during the Pre-Spanish Era.⁵ Archaeological excavations in the 1960s within the Santa Ana Church complex and its vicinity revealed a pre-Hispanic gravesite, dating back to a thousand years.⁶ Chinese ceramics from the Sung and Ming Dynasties have been found associated with the burials, indicating the active participation of the early communities in Santa Ana in the extensive maritime trade between Southeast Asia and China from the 12th to 15th century A.D., as well as the elaborate mortuary practices of the Kingdom's inhabitants.⁷

The National Shrine of Our Lady of the Abandoned (Santa Ana Church),⁸ built in the 17th century,⁹ is one of the most historically and culturally significant structures not only in Santa Ana, but in the whole Philippines.¹⁰ It is known for its beautiful baroque *retablo*, the only one of its

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3. Katerina Francisco, Fighting to preserve heritage in Santa Ana, Manila, *available at* <http://www.rappler.com/life-and-style/43740-preserve-santa-ana-manila> (last accessed May 21, 2016).
 4. *See* Francisco, *supra* note 3.
 5. *Id.* *See also* Augusto F. Villalon, *Santa Ana in Manila fosters community-based heritage tourism*, PHIL. DAILY INQ., Apr. 22, 2013, *available at* <http://lifestyle.inquirer.net/100011/santa-ana-in-manila-fosters-community-based-heritage-tourism> (last accessed May 21, 2016).
 6. Presidential Museum & Library, Pre-colonial Manila, *available at* http://malacanang.gov.ph/75832-pre-colonial-manila/#_ftn13 (last accessed May 21, 2016). *See* Smart, Smart and Wikimedia partnership places historic Santa Ana on the digital map, *available at* <http://smart.com.ph/About/newsroom/press-releases/2014/09/24/smart-and-wikimedia-partnership-places-historic-santa-ana-on-the-digital-map> (last accessed May 21, 2016). *See also* Parish of Our Lady of the Abandoned, History of the Parish Our Lady of the Abandoned, *available at* <http://santaanachurchmanila.com/history.html> (last accessed May 21, 2016).
 7. LEANDRO V. LOCSIN & CECILIA Y. LOCSIN, ORIENTAL CERAMICS DISCOVERED IN THE PHILIPPINES xiii (1967). *See also* Smart, *supra* note 6.
 8. *See* Parish of Our Lady of the Abandoned, *supra* note 6.
 9. *Id.*
 10. *See* Trisha Macas, Santa Ana, Manila residents cry for help to protect the heritage district, *available at* <http://www.gmanetwork.com/news/story/381043/lifestyle/artandculture/santa-ana-manila-residents-cry-for-help-to-protect-the-heritage-district> (last accessed May 21, 2016).

kind that can be found still intact in Manila.¹¹ In 1966, the National Museum excavated the inner patio of the Santa Ana Church and found a rich horde of artifacts, with the oldest recorded white and blue ceramic pieces with floral designs dating back to the 11th century.¹²

In addition to Santa Ana's influence over the country's religious development, the area is also home to some of the oldest surviving residential architecture dating back to the 19th century.¹³ For instance, the Lichauco house,¹⁴ built in 1859,¹⁵ having served as a refuge for Manila citizens displaced by World War II,¹⁶ and later declared in 2010 as a heritage house by the National Historical Commission of the Philippines,¹⁷ is a testament to the development of the historic district of Santa Ana.¹⁸

When Manila was bombed during World War II, it was in Santa Ana where civilians sought refuge.¹⁹ When the Americans came, it was the bells of Santa Ana Church — bells that the Japanese had ordered silent for seven months — that heralded the good news.²⁰ Close to the Lichauco house once stood *La Ignaciana*, the former retreat house of the Jesuit priests²¹ and the

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11. See Pamana.ph, *Our Lady of the Abandoned (Sta. Ana, Manila)*, available at <http://pamana.ph/our-lady-of-the-abandoned-sta-ana-manila> (last accessed May 21, 2016); Constantino C. Tejero, *Visita Iglesia guide for urban dwellers*, PHIL. DAILY INQ., Mar. 23, 2016, available at <http://lifestyle.inquirer.net/225501/visita-iglesia-guide-for-urban-dwellers-2> (last accessed May 21, 2016); & Triposo, *Santa Ana Church*, available at https://www.triposo.com/poi/N_1293342142 (last accessed May 21, 2016).
 12. Parish of Our Lady of the Abandoned, *supra* note 6.
 13. Villalon, *supra* note 5 & Looloo, *Sta. Ana*, available at <https://looloo.com/explore/sta-ana> (last accessed May 21, 2016).
 14. See Francisco, *supra* note 3.
 15. Lamudi, *10 Heritage Homes to Visit During the Independence Day Weekend*, available at <http://www.lamudi.com.ph/journal/10-heritage-homes-to-visit-during-the-independence-day-weekend> (last accessed May 21, 2016).
 16. Francisco, *supra* note 3.
 17. *Id.* & National Historical Commission of the Philippines (NHCP), *Declaring the Lichauco Property in Santa Ana, Manila a Heritage House* [NHCP Resolution No. 5] (July 21, 2010).
 18. See Tricia Aquino, *10 historic places to visit in Metro Manila*, available at <http://www.interaksyon.com/lifestyle/10-historic-places-to-visit-in-metro-manila> (last accessed May 21, 2016).
 19. Francisco, *supra* note 3.
 20. *Id.*
 21. Edgar Allan M. Sembrano, *NCCA issues cease order vs Sta. Ana, Manila development*, PHIL. DAILY INQ., Oct. 20, 2014, available at <http://lifestyle.inquirer.net/175011/ncca-issues-cess-order-vs-sta-ana-manila-development> (last accessed May 21, 2016) [hereinafter Sembrano, *NCAA issues cease order*]. See

Center of the *Adoracion Nocturna*, once a place of refuge of a weary Jose P. Rizal,²² and rightly recognized by the State, as early as 1939, as a site of historical and cultural significance.²³ With the discovery of historical and cultural artifacts in the site where *La Ignaciana* once stood, the State has also recognized its archeological significance.²⁴

The prominence of Santa Ana was affirmed when the City of Manila, through its then Mayor Alfredo S. Lim, declared the whole of Santa Ana as a “Histo-Cultural Heritage Overlay Zone.”²⁵ The national cultural agencies followed suit, and likewise declared Santa Ana a protected heritage area.²⁶

Unfortunately, these declarations were not enough to save Santa Ana.

Responding to the need for more residential units through vertical construction, and capitalizing on the central location of Santa Ana, the site and its historical connotations are being desecrated by a rising 30-storey condominium building, the Rivergreen Residences.²⁷ Reneging on their earlier pronouncements and legal mandate to protect and preserve the

also NHCP, *La Ignaciana*, available at <http://nhcphistoricsites.blogspot.com/2013/08/la-ignaciana.html> (last accessed May 21, 2016).

22. Sembrano, *NCAA issues cease order*, *supra* note 21.

23. Edgar Allan M. Sembrano, *Cease order on Santa Ana development lifted; heritage advocates protest*, PHIL. DAILY INQ., Jan. 12, 2015, available at <http://lifestyle.inquirer.net/181858/cease-order-on-santa-ana-development-lifted-heritage-advocates-protest> (last accessed May 21, 2016) [hereinafter Sembrano, *Cease order lifted*].

24. See Sembrano, *NCAA issues cease order*, *supra* note 21.

25. See Nathaniel R. Melican, *Condo site part of Santa Ana protected area*, PHIL. DAILY INQ., Oct. 20, 2014, available at <http://newsinfo.inquirer.net/645732/condo-site-part-of-santa-ana-protected-area> (last accessed May 21, 2016). See also Erika Sauler, *Before developers ruin it, protection of Sta. Ana heritage area pushed*, PHIL. DAILY INQ., May 28, 2014, available at <http://newsinfo.inquirer.net/606123/before-developers-ruin-it-protection-of-sta-ana-heritage-area-pushed> (last accessed May 21, 2016).

26. See Sembrano, *Cease order lifted*, *supra* note 23.

27. See Nathaniel R. Melican, *30-story condo project in Sta. Ana halted*, PHIL. DAILY INQ., Oct. 14, 2014, available at <http://newsinfo.inquirer.net/644601/30-story-condo-project-in-sta-ana-halted> (last accessed May 21, 2016) [hereinafter Melican, *30-story*].

The Rivergreen Residences is a CDC Holdings development situated in Pedro Gil Street, Santa Ana, Manila. Its company website describes it as a “waterfront community right beside the historic Pasig River, a refreshing oasis where everything is within reach ... a perfect trifecta of history, nature[,] and accessibility.” River Green Residences, *About*, available at <http://rivergreenresidences.com/about.php> (last accessed May 21, 2016).

cultural and historical heritage of the Filipinos,²⁸ the City of Manila and the cultural agencies unlawfully allowed and tolerated the construction of the multi-storey building.²⁹

Construction activities such as earth moving and pile driving were conducted prior to the issuance of an Archaeological Impact Assessment.³⁰ In fact, when the National Museum of the Philippines conducted a rapid assessment, 18th to 19th century ceramics — objects that may hold clues to local community life in Santa Ana during the colonial period — were discovered in the construction site.³¹ It is also clear that the condominium building disturbs the preservation of the appearance of Santa Ana at a time when the area was of most importance to Philippine history, a requirement in declared Heritage Zones.³²

The protection of Filipino histo-cultural heritage is a right and obligation of all Filipinos; it spans generations, from the present to the future. Once a heritage site is destroyed, it is forever gone.

II. THE EVOLUTION OF THE CONCEPTUAL DEFINITION OF CULTURAL HERITAGE

A. *The Early Years*

The concept of cultural heritage is one that is elusive of definition³³ because of its constant evolution.³⁴ It traces its roots back to the times of Roman

28. Melican, *30-story*, *supra* note 27; Sauler, *supra* note 25; & Sembrano, *Cease order lifted*, *supra* note 23.

29. *See* River Green Residences, *supra* note 27.

30. Nathaniel R. Melican, Sta. Ana condo controversy worries buyers, says exec, *available at* <http://newsinfo.inquirer.net/646361/sta-ana-condo-controversy-worries-buyers-says-exec> (last accessed May 21, 2016).

31. Parish of Our Lady of the Abandoned, *supra* note 6 & Presidential Museum & Library, *supra* note 6.

32. Implementing Rules and Regulations of the National Cultural Heritage Act of 2009, Republic Act No. 10066, § 16 (b) (2012). The Implementing Rules of the National Heritage Act of 2009 states that the

appearance of streets, parks, monuments, buildings, [] natural bodies of water, canals, paths[,] and [b]arangays within a [Heritage Zone] shall be maintained as close to their appearance at the time the area was of most importance to Philippine history as determined by the National Historical Commission of the Philippines.

Id.

33. CRAIG FORREST, INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE I (2010).

conquest, when conquerors would either appropriate for themselves or destroy the treasures and cultural works of the land that they conquered, either as an affirmation of their glory and power, or as a means to weaken their enemy.³⁵ Niccolò Machiavelli, the father of modern political science,³⁶ defended this practice when he said that “there is no safe way to retain them otherwise, than by ruining them. And he who becomes master of a city accustomed to freedom and does not destroy it, may expect to be destroyed by it.”³⁷

It was only towards the end of the 19th century when people began questioning the legitimacy of this practice.³⁸ Francis Lieber proposed a comprehensive, but fragmented, body of rules governing the conduct of belligerents in enemy territory, known as the Lieber Code.³⁹ Articles 34 and 35 of the Lieber Code provided for the protection of properties belonging to “churches, hospitals, or other establishments of an exclusively charitable character, to establishments of educations or foundations for the promotion of knowledge,”⁴⁰ as well as “classical works of art, libraries, scientific collections[,] or precious instruments.”⁴¹ These principles, as laid down in the Lieber Code, would eventually become the basis of the Brussels Declaration of 1874 and the Oxford Manual on Land and Warfare.⁴²

34. *Id.* at 2. See also Tolina Loulanski, *Revising the Concept of Cultural Heritage: The Argument for a Functional Approach*, 13 INT’L J. OF CULTURAL PROP. 207, 210 & 212 (2006).

35. Toshiyuki Kono & Stefan Wrška, *General Report*, in THE IMPACT OF UNIFORM LAWS ON THE PROTECTION OF CULTURAL HERITAGE AND THE PRESERVATION OF CULTURAL HERITAGE IN THE 21ST CENTURY 10 (Toshiyuki Kono ed., 2010).

36. Stanford Encyclopedia of Philosophy, Niccolò Machiavelli, available at <http://plato.stanford.edu/entries/machiavelli> (last accessed May 21, 2016).

37. NICCOLÒ MACHIAVELLI, THE PRINCE 26 (Randy Dillon ed. & W.K. Marriott trans., 2009).

38. See Kono & Wrška, *supra* note 35, at 10.

39. Kono & Wrška, *supra* note 35, at 10 (citing John Henry Merryman, *Two Ways of Thinking About Cultural Property in the Event of Armed Conflict*, 80 AM. J. INT’L L. 831, 834 (1986)).

40. Adjutant General’s Office, Instructions for the Government of Armies of the United States in the Field, General Orders No. 100 [Lieber Code], art. 34 (Apr. 24, 1863) (U.S.).

41. *Id.* art. 35.

42. Kono & Wrška, *supra* note 35, at 11.

In the Hague Regulations of 1899,⁴³ properties devoted to religion, art, science, charity, and hospitals owned by the State were considered private properties,⁴⁴ and were hence required to be respected and not subject to confiscation, destruction, or intentional damage.⁴⁵

In 1935, the United States and 20 other Latin countries signed the Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, otherwise known as the Roerich Pact.⁴⁶ The Roerich Pact was monumental, as it provided for the protection of “treasures of culture” not only during wartime, but also during peacetime.⁴⁷ Though the focus of the Roerich Pact was primarily on immovable properties, movable objects also enjoyed protection, so long as they were housed inside protected immovable property.⁴⁸

The 1948 Universal Declaration of Human Rights⁴⁹ and the Geneva Convention of 1949⁵⁰ elevated the general principles regarding the protection of cultural property during wartime to a universal status.⁵¹ The Geneva Convention of 1949 paved the way for the birth of the United Nations Educational, Scientific and Cultural Organization (UNESCO),⁵² which has become a leading actor in the adoption of several international conventions, recommendations, and declarations contributing to the development of general international law relating to cultural heritage.⁵³

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43. Convention with Respect to the Laws and Customs of War on Land, Annex to the Convention, *opened for signature* July 29, 1899, 32 Stat. 1803 (entered into force Sep. 4, 1900) [hereinafter Hague II Convention].
 44. Kono & Wrбка, *supra* note 35, at 12 (citing Hague II Convention, *supra* note 43, art. 46).
 45. *Id.* (citing Hague II Convention, *supra* note 43, art. 56).
 46. Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, 167 L.N.T.S. 289 (entered into force Aug. 26, 1935).
 47. *Id.* pmb1.
 48. Kono & Wrбка, *supra* note 35, at 14 (citing Merryman, *supra* note 39, at 835).
 49. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].
 50. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *adopted* Aug. 12, 1949, 75 U.N.T.S. 287 (entered into force Oct. 21, 1950) [hereinafter Geneva Convention].
 51. UDHR, *supra* note 49, art. 27 & Geneva Convention, *supra* note 50, art. 53.
 52. Kono & Wrбка, *supra* note 35, at 14.
 53. Francesco Francioni, *The Evolving Framework for the Protection of Cultural Heritage In International Law*, in CULTURAL HERITAGE, CULTURAL RIGHTS, CULTURAL DIVERSITY: NEW DEVELOPMENTS IN INTERNATIONAL LAW 9 (Silvia Borelli & Federico Lenzerini eds., 2012) [hereinafter Francioni, *Framework*].

B. The 1954 Hague Convention: Developing a Consensus on Cultural Property Protection

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict⁵⁴ (1954 Hague Convention) was the first international convention to truly attempt to reach an international consensus on what “cultural property” should be protected.⁵⁵ Essentially, the 1954 Hague Convention defined cultural properties as buildings and monuments that are of great importance to civilizations and peoples, to wit:

- (1) [M]ovable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art[,] or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books[,] and other objects of artistic, historical[,] or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;⁵⁶
- (2) [B]uildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries[,] [] depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);⁵⁷ and
- (3) [C]enters containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments.’⁵⁸

This definition considered the following criteria:

- (1) The “great importance” of the property for civilization and peoples;⁵⁹
- (2) A typological criterion founded upon the identification of three categories of property;⁶⁰ and
- (3) The criterion of registration on a list of special protection that signals the properties of exceptional importance.⁶¹

54. Convention for the Protection of Cultural Property in the Event of Armed Conflict, *adopted* May 14, 1954, 249 U.N.T.S. 215 (entered into force Aug. 7, 1956) [hereinafter Hague Convention of 1954].

55. FORREST, *supra* note 33, at 21.

56. Hague Convention of 1954, *supra* note 54, art. 1 (a).

57. *Id.* (b).

58. *Id.* (c).

59. Francioni, *Framework*, *supra* note 53, at 9.

60. *Id.*

The 1954 Hague Convention was born in the wake of the Second World War.⁶² The unprecedented destruction the War brought to cultural heritage sites in Europe and Asia manifested two key points that became the basis for the next steps in the evolution of cultural heritage in international law.⁶³ First, there was a need to afford special protection to cultural heritage in times of war and violent conflict.⁶⁴ Second, the best way to address such need was through the introduction of an international legal instrument.⁶⁵

Thus, in 1954, three years after it was established, UNESCO initiated comprehensive studies on wartime protection of cultural objects,⁶⁶ and thereafter convened an intergovernmental conference in order to transpose the deliberative results into a legally binding international framework.⁶⁷ The result of this deliberation was the 1954 Hague Convention and the Regulations for the Execution of the Convention (1954 Hague Regulations).⁶⁸

The 1954 Hague Convention also introduced the idea that cultural properties must be protected as “elements of global interest in the conservation of the great variety of contributions given by all peoples to the civilization world,”⁶⁹ and not by their material value. Thus, in its Preamble, “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contributions to the culture of the world.”⁷⁰

The relevance of the 1954 Hague Convention definition marked a shift in the concept of cultural property to an autonomous legal category that *requires international protection for the intrinsic value of culture, and not as an indirect consequence of the protection of property rights and State sovereignty.*⁷¹ The 1954 Hague Convention recognized, though only implicitly, the different values

61. *Id.*

62. Corine Wegener, The 1954 Hague Convention and Preserving Cultural Heritage, *available at* <https://www.archaeological.org/news/hca/3137> (last accessed May 21, 2016).

63. Kono & Wrbka, *supra* note 35, at 16.

64. *Id.*

65. *Id.*

66. *Id.* at 16-17.

67. *Id.* at 17.

68. *Id.*

69. Francioni, *Framework*, *supra* note 53, at 9.

70. Hague Convention of 1954, *supra* note 54, pmb1.

71. Francioni, *Framework*, *supra* note 53, at 9.

attributable to cultural properties under threat, and declared that these properties should be transmitted to future generations.⁷²

However, the 1954 Hague Convention also grappled with several challenges, including the uniquely difficult task of finding a balance between maximizing participation and maximizing protection, meaning that *the basis and definitions provided had to be acceptable to as many states as possible*,⁷³ making it difficult to establish “a comprehensive and tight legal instrument for the protection of cultural property ... weakening the positive impact of the [C]onvention, and ... this has led to heavy criticism among scholars and the international community.”⁷⁴

C. Paradigm Shift: The World Heritage Convention

Shifts in international law, however, highlighted the increasing inadequacy of the *cultural property paradigm*.⁷⁵ First, the paradigm inappropriately places “property,” which is an individual right, over “culture,” which is a collective value.⁷⁶ Second, the cultural property paradigm’s formalistic and rigid structure does not adequately address culture’s incommensurable and inalienable aspects.⁷⁷ Third, the importance of cultural processes, the anthropological meaning of culture as a way of life, and many other intangible forms of culture are not captured by intellectual property.⁷⁸ Finally, cultural artifacts and other related elements were improperly

72. Kono & Wrba, *supra* note 35, at 109.

73. *Id.* at 17.

74. *Id.* (citing ROGER O’KEEFE, *THE PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT* 93 (2006)) (emphasis supplied).

75. See Manlio Frigo, *Cultural Property v. Cultural Heritage: A “battle of concepts” in international law?*, 86 INT’L REV. RED CROSS 367, 367-78 (2004).

76. Valentina Vadi & Hildegard Schneider, *Art, Cultural Heritage and the Market: Legal and Ethical Issues*, in *ART, CULTURAL HERITAGE AND THE MARKET: ETHICAL AND LEGAL ISSUES* 6 (Valentina Vadi & Hildegard Schneider eds., 2014) (citing JOSEPH L. SAX, *PLAYING DARTS WITH A REMBRANDT: PUBLIC AND PRIVATE RIGHTS IN CULTURAL TREASURES* 4 (1999)).

77. *Id.* at 6 (citing Naomi Mezey, *The Paradoxes of Cultural Property*, 107 COLUM. L. REV. 2004, 2005 (2007)).

78. Vadi & Schneider, *supra* note 76, at 6 (citing Rosemary J. Coombe & Joseph F. Turcotte, *Indigenous Cultural Heritage in Development and Trade: Perspectives from the Dynamics of Cultural Heritage Law and Policy*, in *INDIGENOUS CULTURAL HERITAGE IN DEVELOPMENT AND TRADE: PERSPECTIVES FROM THE DYNAMICS OF CULTURAL HERITAGE LAW AND POLICY* 272-305 (Christoph Beat Graber, et al. eds., 2012)).

commodified through the practice of assigning a market value to every cultural property.⁷⁹

It was in this context that the concept of “cultural heritage” emerged through the adoption of the 1972 World Heritage Convention (World Heritage Convention).⁸⁰ Thus, in its Preamble —

Noting that *cultural heritage and the natural heritage* are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions, which aggravate the situation with even more formidable phenomena of damage or destruction,

Considering that deterioration or disappearance of any item of the *cultural or natural heritage* constitutes a harmful impoverishment of the *heritage* of all the nations of the world,

Considering that protection of this *heritage* at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific, and technological resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase, and diffuse knowledge by assuring the conservation and protection of the *world's heritage*, and recommending to the nations concerned the necessary international conventions,

...

Adopts this [16th] day of November 1972 this Convention.⁸¹

The use of the term “heritage,” instead of “property,” in the World Heritage Convention marked a conceptual shift,⁸² addressing the problems of the “property” label earlier outlined. First, the term “heritage” responds to the need, and defines the corresponding duty of the present generations to preserve a historical asset for the future generations.⁸³ Second, the scope of protection expands from the physical elements of culture to extend to its intangible elements.⁸⁴ Third, there is a recognition that beyond culture’s

79. *Id.* (citing Janet Blake, *On Defining the Cultural Heritage*, 49 INT’L COMP. L. Q. 61, 66 (2001)).

80. Convention Concerning the Protection of the World Cultural and Natural Heritage, *adopted* Nov. 16, 1972, 1037 U.N.T.S. 151 (entered into force Dec. 17, 1975) [hereinafter World Heritage Convention of 1972].

81. *Id.* pmb. (emphasis supplied).

82. Vadi & Schneider, *supra* note 76, at 7.

83. *See* Blake, *supra* note 79, at 61-66.

84. *Id.*

extrinsic value is a value that transcends boundaries and is of interest to the whole humanity, and thus, deserves protection at the international level.⁸⁵

The World Heritage Convention did not give a precise definition of “world heritage.”⁸⁶ It, however, threshed out the basic requirements of the assets it seeks to protect — cultural and natural heritage with outstanding universal value, assessed in accordance with a formal procedure regulated by the Convention.⁸⁷

On one hand, cultural heritage is classified into three components:

- (1) Monuments: [A]rchitectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings[,] and combinations of features, which are of outstanding universal value from the point of view of history, art[,] or science;
- (2) Groups of buildings: [G]roups of separate or connected buildings which, because of their architecture, their homogeneity[,] or their place in the landscape, are of outstanding universal value from the point of view of history, art[,] or science; and
- (3) Sites: [W]orks of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological[,] or anthropological point of view.⁸⁸

It is said that these three components, while being the specific and individual components of cultural heritage, are at the same time inseparable from one another for the purpose of defining cultural heritage under the World Heritage Convention.⁸⁹

Natural heritage, on the other hand, is composed of the following:

- (1) [N]atural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- (2) [G]eological and physiographical formations and precisely delineated areas which constitute the habitat of threatened

85. *Id.* See also Frigo, *supra* note 75, at 367.

86. Francesco Francioni, *The 1972 World Heritage Convention: An Introduction*, in *THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY* 5 (Francesco Francioni ed., 2008) [hereinafter Francioni, *Introduction*].

87. *Id.* See also World Heritage Convention of 1972, *supra* note 80, pmb1.

88. World Heritage Convention of 1972, *supra* note 80, art. 1, ¶ 1.

89. Francioni, *Introduction*, *supra* note 87, at 29.

species of animals and plants of outstanding universal value from the point of view of science or conservation; and

- (3) [N]atural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation[,] or natural beauty.⁹⁰

The World Heritage Convention, however, emphasizes that both natural and cultural heritage must be of “outstanding universal value” to merit international protection,⁹¹ to wit —

Considering that parts of the *cultural or natural heritage* are of outstanding interest and therefore need to be preserved as part of *the world heritage of mankind* as a whole,

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the *cultural and natural heritage of outstanding universal value*, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the *cultural and natural heritage of outstanding universal value*, organized on a permanent basis and in accordance with modern scientific methods.⁹²

The term “outstanding universal value,” however, does not have a specific definition.⁹³ What may be considered as special and exceptional items of cultural or natural heritage worthy to be considered as “world heritage” is left to the discretion of the World Heritage Committee, which is responsible for the implementation of the provisions of the World Heritage Convention.⁹⁴

In the end, with the development of knowledge, scientific thought, and the growing importance of cultural diversity in the world,⁹⁵ the World Heritage Convention’s notion of cultural heritage proved to be inadequate as

90. World Heritage Convention of 1972, *supra* note 80, art. 2.

91. Francesco Francioni, *Preamble*, in *THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY* 17–18 (Francesco Francioni ed., 2008).

92. World Heritage Convention of 1972, *supra* note 80, pmbl. (emphasis supplied).

93. *See, e.g.*, World Heritage Convention of 1972, *supra* note 80, pmbl. & arts. 1, 2, 8, 11, 12, 15, & 19.

94. Abdulqawi A. Yusuf, *Article 1: Definition of Cultural Heritage*, in *THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY* 30 (Francesco Francioni ed., 2008).

95. *Id.*

it failed to take into account the spatial, temporal, and social dimensions of cultural heritage.⁹⁶ It likewise placed too much premium on cultural output at the expense of cultural processes and associated values.⁹⁷

But these shortcomings did not go unnoticed. Throughout the years, the concept of “outstanding universal value” has also expanded to accommodate other cultural heritage considered to be worthy of international protection but were not covered by the World Heritage Convention.

In 2001, the Convention on the Protection of the Underwater Cultural Heritage⁹⁸ was established to ensure the protection and preservation of underwater cultural heritage, which is defined as follows:

All traces of human existence having a cultural, historical[,] or archaeological character which have been partially, or totally under water, periodically or continuously, for at least 100 years such as:⁹⁹

- (i) [S]ites, structures, buildings, art[i]facts[,] and human remains, together with archaeological and natural context;¹⁰⁰
- (ii) [V]essels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context;¹⁰¹ and
- (iii) [O]bjects of prehistoric character.¹⁰²

In 2003, the UNESCO established the Convention for the Safeguarding of the Intangible Cultural Heritage,¹⁰³ to protect “traditions or living expressions inherited from our ancestors and passed on to our descendants, such as *oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe[,] or the knowledge and skills to produce traditional crafts.*”¹⁰⁴

96. *Id.* at 29.

97. *Id.*

98. Convention on the Protection of the Underwater Cultural Heritage, *adopted* Nov. 2, 2001, 2562 U.N.T.S. 1 (entered into force Jan. 2, 2009).

99. *Id.* art. 1.

100. *Id.* (a) (i).

101. *Id.* (ii).

102. *Id.* (iii).

103. Convention for the Safeguarding of the Intangible Cultural Heritage, *adopted* Oct. 17, 2003, 2368 U.N.T.S. 1 (entered into force Apr. 20, 2006).

104. UNESCO, What is Intangible Cultural Heritage?, *available at* <http://www.unesco.org/culture/ich/en/what-is-intangible-heritage-00003> (last accessed May 21, 2016) (emphasis supplied) [hereinafter UNESCO, What is Intangible Cultural Heritage?].

Until this point, cultural heritage was still largely identified and defined through its physical and sensorial manifestations. However, as will be discussed in the latter part of this Article, global advancements will spark the recognition of another equally crucial aspect of cultural heritage — its intangible components — which include traditions and living expressions.

III. THE THREAT OF GLOBALIZATION AND THE MOORINGS OF CULTURAL DIVERSITY

Attempts to explore the concept of globalization have yielded the admission that a single definition of globalization does not exist.¹⁰⁵ “While scholars have focused on different aspects of growing interdependence, [such as] economic, cultural, and technological, [] at a basic level, it refers to *growing interconnectedness*.”¹⁰⁶ In effect, globalization has made the world a small village where borders are broken down in favor of shared economic processes, technological transfer, political, cultural, and social influences, and exchange.¹⁰⁷

Modernity is often seen as “a package that involves industrialization, commercialization, individualism, secularism, rationalism[,] and capitalism.”¹⁰⁸ Modernity can be viewed as “progress, advancement in science, and the arts,”¹⁰⁹ yet it is also perceived as “a social breakdown, [an] erosion of values[,] and the destruction of meaningful life.”¹¹⁰ In other words, the threat of globalization, in the context of modernity, is that cultural uniqueness is lost in favor of homogenization and a so-called universal culture.¹¹¹ The latter either refers to the dominance of a single,

105. Eric Brahm, Globalization, Modernity and Their Discontents (An Unpublished Bibliography Submitted to the Center to Advance Research and Teaching in the Social Sciences (CARTSS) Seminar Series) 1, *available at* <https://faculty.unlv.edu/ericbrahm/globalizationreview.pdf> (last accessed May 21, 2016).

106. *Id.* (emphasis supplied).

107. Fairooz Hamdi, The Impact of Globalization in the Developing Countries, *available at* <https://www.linkedin.com/pulse/impact-globalization-developing-countries-fairooz-hamdi> (last accessed May 21, 2016).

108. Henrietta L. Moore, *Intangibles: Culture, Heritage and Identity*, in CULTURES AND GLOBALIZATION: HERITAGE, MEMORY AND IDENTITY 274 (Helmut K. Anheier & Yudhishtir Raj Isar eds., 2011).

109. *Id.* at 275.

110. *Id.*

111. Don McCubbrey, Negative and positive effects of globalization for developing country business, *available at* <https://www.boundless.com/users/235420/textbooks/business-fundamentals/international-business-for-the-entrepreneur-14/globalization-opportunities-and-threats-to-developing-country-business->

existing culture, or the emergence of a composite “super culture”¹¹² culled from baseline value commonalities among different cultures.

Cultural homogenization, as an aspect of globalization and an effect of modernity, refers to the reduction of cultural diversity,¹¹³ through the popularization and dissemination of a wide array of cultural symbols — not only physical objects, but also customs, ideas, and values.¹¹⁴ Homogenization necessarily impacts cultural diversity, as the former is sometimes defined as the “process by which local cultures are transformed or absorbed by a dominant outside culture.”¹¹⁵

A. Cultural Diversity and the International Obligation to Preserve the ‘Common Heritage of Humanity’

In contrast, some authors posit that homogenization and the “universal culture” are just myths. “In the global village, people of diverse racial and cultural characteristics are brought into contact with each other. The natural result of such contact would be *efflorescence of cultural diversity*.”¹¹⁶ This suggests that constant introductions to and interactions of, between and among diverse cultures will not necessarily result in the advance of a single, dominant culture (as in most theories, the process of westernization, which has been rejected by many developing countries).¹¹⁷ Neither will it propel the evolution of a composite “universal culture,” where only similar expressions across cultures, or “common (cultural) denominators” survive, as if such “universal culture” evolves from some form of natural selection of cultures. Rather, the expectation should be the recognition, identification, and preservation of diverse cultures *in their entirety*, large or small, popular or obscure, as all belonging and contributing to a notional collective heritage.

55/negative-and-positive-effects-of-globalization-for-developing-country-business-253-15556 (last accessed May 21, 2016).

112. “Super culture” covers the cultural regularities of communities or nations which are perceived as sharing a number of distinctive common elements. PHILIP BAGBY, *CULTURE AND HISTORY: PROLEGOMENA TO THE COMPARATIVE STUDY OF CIVILIZATIONS* 105 (1959).

113. CHRIS BARKER, *CULTURAL STUDIES: THEORY AND PRACTICE* 159 (2008).

114. See JUSTIN JENNINGS, *GLOBALIZATIONS AND THE ANCIENT WORLD* 132 (2010).

115. DAVID E. O’CONNOR, *ENCYCLOPEDIA OF THE GLOBAL ECONOMY: A GUIDE FOR STUDENTS AND RESEARCHERS* 391 (2006).

116. Francis Adu-Febiri, *The Destiny of Cultural Diversity in a Globalized World*, 12 *REV. OF HUM. FACTOR STUD.* 30, 36 (2006) (emphasis supplied).

117. UNESCO WORLD REPORT, *INVESTING IN CULTURAL DIVERSITY AND INTERCULTURAL DIALOGUE* 226 (2009) [hereinafter UNESCO, WORLD REPORT].

UNESCO explains the significance of understanding cultural diversity as a sense of identity in this manner —

Cultural diversity is a prime constituent of human identity. By that token, it is *humanity's common property*. Far from seeing it as a concession to variety on the part of some imaginary singular identity, we must bear in mind the thought that diversity is the very essence of our identity. *One strand cannot be set against the other, for they are intertwined.*¹¹⁸

Recognizing the new challenges presented by globalization, international consensus documents on cultural heritage “underscore[] the concept of cultural rights which should be applied *among and within* States, and emphasize[] the dynamic nature of all cultures as they draw strength from their own traditions, and yet only really flourish when they come into contact with others.”¹¹⁹ Thus, subsequent declarations reflect the concept of solidarity, and emphasize “the need to assist developing countries or countries in transition in promoting their cultures and creating secure, competitive cultural industries at national and international levels.”¹²⁰

The duty on the part of States to safeguard cultural heritage (particularly in its physical forms), both of their own and those of other nations, for the ultimate and collective benefit of all humankind, is settled.¹²¹ This is not, however, to say that there exists a universal entitlement over its totality, which sanctions claims of appropriation or colonization,¹²² conquest, plunder, or armed conflict¹²³ in the name of “preserving” material culture. The international duty to preserve and protect is understood in the context of “exclusive ownership and possession of cultural property by source nations.”¹²⁴ While each State Party owns cultural heritage that may be found within its territory, the protection of such is the duty of the international community as a whole.

118. Matsuura, *supra* note 2, at 3 (emphasis supplied).

119. *Id.* at 4 (emphasis supplied).

120. *Id.*

121. Jilliene Grace M. Sotto, *Living Heritage: Establishing a Framework for the Protection of Traditional Cultural Expressions*, at 58 (2012) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing Cathryn A. Berryman, *Toward More Universal Protection of Intangible Cultural Property*, 1 J. INTELL. PROP. L. 293, 295 (1994)).

122. *Id.* at 59.

123. Edward M. Cottrell, *Keeping the Barbarians Outside the Gate: Toward a Comprehensive International Agreement Protecting Cultural Property*, 9 CHI. J. INT'L L. 627, 632 (2009).

124. Sotto, *supra* note 121, at 59 (citing Sarah Harding, *Value, Obligation and Cultural Heritage*, 31 ARIZ. ST. L.J. 291, 334 (1999)).

Thus, cultural heritage found within the jurisdiction of State Parties to the World Heritage Convention must be identified, protected, conserved, presented, and transmitted to future generations. A State Party is obliged to do all it can, to the utmost of its resources, to protect and preserve cultural heritage sites. To this end, it may *ask for international assistance and cooperation* in order to protect such cultural heritage, as it is, in effect, part of what will eventually be defined as the “common heritage of humanity.”

In 2001, following various international statements, UNESCO’s Universal Declaration on Cultural Diversity and its Action Plan with provisions on the Declaration’s implementation set the next important benchmark.¹²⁵ The Declaration stresses the interrelationship between cultural diversity and human rights and further discusses the impact of globalization on diversity and development, calling the preservation and promotion of cultural diversity the “key to sustainable human development.”¹²⁶

The Declaration also links cultural diversity to the term “heritage,” where its Article 1 states that “culture takes diverse forms across time and space. This diversity is embodied in the *uniqueness and plurality of the identities* of the groups and societies making up humankind. As a source of exchange, innovation[,] and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the ‘*common heritage of humanity*’ and should be recognized and affirmed for the benefit of present and future generations.”¹²⁷

Cultural diversity, as the “common heritage of humanity,” being the Declaration’s chief object, is aimed at *heritage preservation*, an intervention consistent with the widely held view that the forces of globalization and modernity are eroding cultural traditions.¹²⁸ The perspective proffers that cultural diversity “is both eroded,” as it is “recreated by processes of globalization.”¹²⁹ The notion of preserving a “common heritage of humanity” best reflects the conceptual shift offered by the World Heritage Convention decades prior; today, as was established by the Convention, the notion defines the duty of present generations to preserve historical assets for future generations;¹³⁰ expands the scope of protection to include intangible

125. UNESCO, Universal Declaration on Cultural Diversity, UNESCO doc. 31C/Res. 25 (Nov. 2, 2001) [hereinafter Universal Declaration on Cultural Diversity] & Kono & Wrбка, *supra* note 35, at 98.

126. Universal Declaration on Cultural Diversity, *supra* note 125, art. 11.

127. *Id.* art. 1 & Kono & Wrбка, *supra* note 35, at 98–99.

128. Universal Declaration on Cultural Diversity, art. 7 & Moore, *supra* note 108o8, at 273 (emphasis supplied).

129. Moore, *supra* note 108, at 273.

130. Universal Declaration on Cultural Diversity, *supra* note 125, art. 7.

elements;¹³¹ and recognizes culture's value as one that transcends boundaries, and thereby worthy of international protection.¹³²

B. Evolving Definition of Heritage: Tangible and Intangible

In its Background Note, pursuing the question of the possible role of cultural heritage in the sustainable development agenda, UNESCO observes that

[t]oday, as in the past, cultural heritage continues to perform its irreplaceable role as a vector of meaning and identity for communities and individuals. However, it is striking how far the very definition of what constitutes [] cultural heritage, in both its tangible and intangible forms, has evolved within the scientific community over recent decades to include an increasingly large section of the environment and human forms of expression.¹³³

Following this proposition of expanded definitions of cultural heritage, great monuments and iconic archaeological sites, as *tangible cultural heritage*, are now joined by other culturally significant places, including “historic cities, living rural areas and seascapes, gardens or sacred forests and mountains, industrial areas, and even sites associated with painful memories and war.”¹³⁴ Physical objects, or movable items, are also considered tangible cultural heritage, “testifying not only to the lifestyles of kings and the achievements of great artists, but also to the everyday lives of peoples.”¹³⁵

Though the focus of protection interventions may be the physical objects, some experts posit that the underlying objective is actually for the preservation of the *intangible expressions of culture*, with the objects acting as repositories.¹³⁶

131. *Compare* World Heritage Convention of 1972, *supra* note 80, art. 4 *with* Universal Declaration on Cultural Diversity, *supra* note 125, pmbl.

132. Universal Declaration on Cultural Diversity, *supra* note 125, pmbl.

133. Giovanni Boccardi & Cecile Duvelle, *Introducing Cultural Heritage into the Sustainable Development Agenda (A Background Note Submitted to UNESCO)* 1, *available at* <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/HeritageENG.pdf> (last accessed May 21, 2016).

134. *Id.* (emphasis supplied).

135. *Id.*

136. Berryman, *supra* note 121, at 330 (citing Yudhithir Raj Isar, *The Challenge to Our Cultural Heritage: Why Preserve the Past?* 21 (1986 ed.)); ISABEL MCBRYDE, *WHO OWNS THE PAST?: PAPERS FROM THE ANNUAL SYMPOSIUM OF THE AUSTRALIAN ACADEMY OF HUMANITIES 2-4* (1985); John Henry Merryman, *The Retention of Cultural Property*, 21 U.C. DAVIS L. REV. 477, 345-49 (1988); & John Henry Merryman & Albert E. Elsen, *Hot Art: A*

In order to provide a wider range of heritage protection, a broader definition of cultural property was adopted in the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. The Convention defines “intangible cultural heritage” as

the practices, representations, expressions, knowledge, skills — as well as the instruments, objects, [artifacts,] and cultural spaces associated therewith — that communities, groups[,] and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature[,] and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.¹³⁷

In practical terms, “intangible cultural heritage” includes “oral traditions, the performing arts, social practices, rituals, festive events, and knowledge and practices concerning nature and the universe[,] or the knowledge and skills to produce traditional crafts.”¹³⁸

Clearly, “intangibles” represent a considerable part of a State’s patrimony, and inspire nationalism as much as material culture (that is, the physical and object manifestations of culture).¹³⁹ This explains heritage protection mechanisms in the context of what benefits the national interests of individual States.¹⁴⁰ However, the same mechanisms developed to safeguard and preserve these intangible attributes of culture under the Convention were conceived with the underlying rationale of “cultivat[ing] [] the most important vehicle of cultural diversity,”¹⁴¹ “a task regarded as a *common concern* of the international community, in the sense that a *universal interest* existed for all states to protect and respect their own heritage in order to be accorded the same treatment by others.”¹⁴² We can then observe that

Reexamination of the Illegal International Trade in Cultural Objects, 12 J. ARTS, MANAGEMENT & L. 5, 8–11 (1982)) (emphasis supplied).

137. Convention for the Safeguarding of the Intangible Cultural Heritage, *supra* note 103, art. 2.

138. Boccardi & Duvelle, *supra* note 133, at 2.

139. Sotto, *supra* note 121, at 64 (citing Berryman, *supra* note 121, at 311).

140. *Id.*

141. *Id.* (citing Federico Lenzerini, *Intangible Cultural Heritage: The Living Culture of Peoples*, 22 EUR. J. INT’L L. 101, 101 (2011) & Francesco Francioni, *Beyond state sovereignty: the protection of cultural heritage as a shared interest of humanity*, 25 MICH. J. INT’L L. 1209, 1216 (2004)).

142. *Id.* (citing Bradford S. Simon, *Global Steps to Local Empowerment in the Next Millennium: An Assessment of UNESCO’s 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore*, in SAFEGUARDING TRADITIONAL CULTURES: A GLOBAL ASSESSMENT 111, 113 (Peter Seitel ed., 2001)) (emphasis supplied).

there are drivers both within and beyond national borders to protect heritage, even in intangible form.

UNESCO's Background Note on the link between cultural heritage and sustainable development describes the import of this obligation to preserve and protect "intangibles," to wit —

The safeguarding of cherished cultural heritage sites and of the ensemble of the intangible cultural expressions, knowledge, and skills that collectively define a community can be considered in itself to be a contribution to human well-being. *Without the cultural heritage — the familiar landmarks of our cities and landscapes, the traditions and particular ways of life inherited from our ancestors — our very existence as individuals would be hard to imagine.*¹⁴³

C. Balancing of Interests as a Factor in Defining Scope of Heritage in the Context of Globalization

A notable observable phenomenon over recent years is how the identification of cultural heritage and decisions on their use and preservation "are no longer considered as technical questions to be decided exclusively by a few 'experts,' but instead have become an integral part of the public debate and subjects of concern for various groups of interests within the communities concerned."¹⁴⁴ There seems to be a growing consensus that there should be a purpose to heritage preservation that goes beyond providing for people's spiritual needs and the pursuit of their identities to justify "the imperative of safeguarding cultural heritage" and balancing this "with other equally legitimate — and often more pressing — needs, especially in developing regions."¹⁴⁵ UNESCO sheds light on this consideration in the following manner —

The question that is being posed is not so much how to ensure the sustainability of the cultural heritage, but rather how to justify its relevance to sustainable development in the larger sense and in a rapidly changing environment, or, in other words, *how to justify its relevance to the protection of environmental resources and human wellbeing across all dimensions and from an inter-generational perspective.*¹⁴⁶

A main locus of discontent in the discourse on globalization is the introduction of rapid changes and advancements in society, often in the name of economic development, and exercising very minimal accountability for disturbances in culture and the communities' ways of life left in their wake. Sustainable development is generally defined as "development that meets the needs of the present[,] without compromising the ability of future

143. Boccardi & Duvelle, *supra* note 133, at 2–3 (emphasis supplied).

144. *Id.* at 2.

145. *Id.* at 1.

146. *Id.* (emphasis supplied).

generations to meet their own needs.”¹⁴⁷ Thus, set against the backdrop of sustainable development, examining the direct and indirect links between cultural heritage and development should be able to mitigate the ill-effects, intended or otherwise, of globalization.

Cultural heritage is inextricably linked to the lives of people, and manifests itself in social, economic, and environmental processes, making it an integral part of people’s daily experience. Therefore, efforts which have as their aim the improvement or advancement of the economic and social well-being of communities “need to consider [] cultural heritage and the opportunities it may offer when its potential is harnessed and the challenges associated with its inappropriate use.”¹⁴⁸ Considering the dependency of many people on physical and cultural ecosystems for their economic, social, and physical well-being, heritage protection and preservation are “appropriate [for] the natural and cultural heritage of human settlements, the revitalization of historic districts, and the rehabilitation of city [centers].”¹⁴⁹

D. Identity, the Core of Cultural Heritage

Helaine Silverman and D. Fairchild Ruggles observe that “[w]orldwide, cultural heritage does not figure prominently in the extensive literature about human rights, but this does not mean that it is an issue of minor importance or without significant social impact.”¹⁵⁰ They propose that heritage ought to rank with other rights such as “freedom of religion, political expression, movement, [] freedom from violence, torture[,] and hunger,”¹⁵¹ as “an essential component of human rights because the very concept of heritage demands that individual and group identities be respected and protected.”¹⁵² They point out that “[h]eritage insists on the recognition of a person or community’s *essential worth*.”¹⁵³

Culture is a fundamental component of personal identity, and is one of the means by which human beings attribute meaning to their lives.¹⁵⁴ To some degree, a person’s cultural identity is “the foundation on which every

147. World Commission on Environment and Development, *Report of the World Commission on Environment and Development — Our Common Future*, Ch. 2, I (1), UN Doc. A/42/427 (Aug. 4, 1987).

148. Boccardi & Duvelle, *supra* note 133, at 2.

149. *Id.*

150. Helaine Silverman & D. Fairchild Ruggles, *Cultural Heritage and Human Rights*, in *CULTURAL HERITAGE AND HUMAN RIGHTS* 5 (2007).

151. *Id.*

152. *Id.*

153. *Id.* (emphasis supplied).

154. Sotto, *supra* note 121, at 55–56 (citing Harding, *supra* note 124, at 19–20).

other aspect of their being is built; the cornerstone of what makes them who they are.”¹⁵⁵

Ieoh Ming Pei, a renowned Chinese-American architect,¹⁵⁶ spoke of heritage as a country’s “cultural identity, and whether big or small, majestic or simple, physical or non-physical, must be maintained and have a meaning for every new generation.”¹⁵⁷

Cultural identity, in its most basic form, is a sense of belonging.¹⁵⁸ Cultural heritage is *the tie that binds*.¹⁵⁹ It establishes a sense of “participation in a tradition that is a person’s own birthright.”¹⁶⁰ The term “heritage,” rooted in the Latin term *heres*, or that which can be inherited,¹⁶¹ reflects the connection between the past and the present; the sharing not only of what one *possesses*, but what one *is*, with future generations. Just as inheritance is passed down to generations along a bloodline, culture is passed down along generations of persons identifying themselves as belonging to a particular and unique group or nation.

At its core, cultural heritage is about identity. Thus, when cultural heritage is threatened, what stands to be lost is not simply something held or possessed in the physical realm, but more importantly, that which makes a people distinctly and uniquely who they are —

Cultural heritage is an important component of the cultural identity of communities, groups[,] and individuals, and or social cohesion, *so that its intentional destruction may have adverse consequences on human dignity and human rights*.¹⁶²

Interestingly, identity is something that “aggregates people, no matter how different their individual selves may be. But identity *is not just about inclusion*. It is also about exclusion. In order to identify with some, people

155. Nobullying.com, What is a Cultural Identity?, *available at* <https://nobullying.com/cultural-identity> (last accessed May 21, 2016).

156. *See* The Editors of Encyclopædia Britannica, I.M. Pei, *available at* <http://www.britannica.com/biography/I-M-Pei> (last accessed May 21, 2016).

157. UNESCO, CULTURAL DIVERSITY: COMMON HERITAGE 18 (2002) (emphasis supplied).

158. Nobullying.com, *supra* note 155.

159. Sotto, *supra* note 121, at 56.

160. *Id.*

161. *See* Oxford Dictionaries, inherit, *available at* http://www.oxforddictionaries.com/us/definition/american_english/inherit (last accessed May 21, 2016).

162. UNESCO, UNESCO Declaration Concerning the Intentional Destructions of Cultural Monuments, UNESCODOc. 32C/25, pmbl. (Oct. 17, 2003) (emphasis supplied) [hereinafter UNESCO Declaration].

also need to dis-identify with someone else.”¹⁶³ This supports the contemporary paradigm of “common heritage” that promotes diversity and plurality, and therefore, values and protects differences as much as commonalities among cultures. What people have in common and what sets them apart equally make up the “common heritage” held, shared, and protected by all.

IV. CONCLUSION

It has been astutely observed that “[t]he loss of heritage can easily be decried as a crime that affects multiple generations, erasing cultural memory and severing links with the past that are integral to forging and maintaining modern identities.”¹⁶⁴ Ultimately, the people are the expression of the culture that they inherit.¹⁶⁵

Going back to the story of the Kingdom of *Namayan* and its modern incarnation, the District of Santa Ana, it becomes clear that the existing legal framework is insufficient to fully preserve and protect heritage. For the community, it was plain to see what the histo-cultural significance of the district is — it stood witness to Philippine history as it happened, from life during the Pre-Spanish Era, when royal families ruled and maritime trade was booming;¹⁶⁶ to the entry of the Spanish into the country, bringing along with them the Catholic faith;¹⁶⁷ to the age of restlessness and pining for freedom from colonial rule;¹⁶⁸ to a war that tore the world, and the epoch of peace and prosperity that followed. The District of Santa Ana, as a prime residential and commercial district spanning many generations, stands as a microcosm of Philippine society, and underneath it, based on archaeological findings, literally, the past.

Despite the overwhelming historical, cultural, and archaeological value of the district, it still had to give way to the haste of modern considerations.

163. Cultural and Heritage Tourism, Heritage and Identity, available at <https://sustainableheritagetourism.com/heritage/heritage-and-identity> (last accessed May 21, 2016) (emphasis supplied) (citing Marta Anico & Elsa Peralta, *Introduction to HERITAGE AND IDENTITY: ENGAGEMENT AND DEMISSION IN THE CONTEMPORARY WORLD I* (Marta Anico & Elsa Peralta eds., 2009)).

164. Silverman & Ruggles, *supra* note 150, at 5.

165. See FORREST, *supra* note 33, at 3.

166. See Francisco, *supra* note 3. See also Villalon, *supra* note 5.

167. See Michael Lipka, 5 Facts about Catholicism in the Philippines, available at <http://www.pewresearch.org/fact-tank/2015/01/09/5-facts-about-catholicism-in-the-philippines> (last accessed May 21, 2016).

168. See The Editors of Encyclopædia Britannica, Philippine Revolution, available at <http://www.britannica.com/event/Philippine-Revolution> (last accessed May 21, 2016).

Links of the present and future generation to the past have been severed; clues to the identity they share, erased.

Were there not enough laws, guidelines, or regulations to protect Santa Ana? One may be tempted to ask. The answer is that, there are, in fact, laws, guidelines, regulations, and even agencies that exist in scores to preserve heritage. However, as can be observed in the previous chapters, the different explorations of what should comprise “cultural identity” and “cultural heritage” demonstrate how difficult these concepts are to pin down.

In their attempt to develop enforceable protection mechanisms, international consensus documents focused on empirical definitions. To be able to protect, one must first identify what must be protected; hence, definitions of heritage by identification. This protectionist framework resulted in an overemphasis on cultural property, neglecting the essence of cultural heritage, which is *identity*. But since identity is a virtual thing — a feeling, a sense, a consciousness — it is impossible to define it empirically. A comprehensive definition of cultural heritage, one that considers both the *body and soul* of culture, remains elusive.

Perhaps the difficulty lies in the fact that “cultural heritage is always, to some degree, intangible.”¹⁶⁹ “Heritage is not ultimately just about the struggle to possess objects and sites, nor simply to hold them ‘in trust for future generations.’ It is a performed negotiation — ‘what is both done at, and with, heritage sites, objects[,] and places.’”¹⁷⁰ “Cultural heritage requires memory. It is not enough for things and monuments to exist on a landscape — in order to be cultural heritage, *they must be remembered and claimed as patrimony*, even if their original meaning is lost or poorly understood.”¹⁷¹

Dr. Jaime C. Laya, who has championed culture and the arts in many different capacities, captures the urgency and necessity of protecting cultural heritage —

The importance of these places and objects in delineating our identity as a nation cannot be denied. As they coalesce with the environment as sources of images and memories, they embody the historicity of our culture. Culture is an abstract concept and can be concretized tangibly through material cultural artifacts. Physical cultural heritage structures [or] objects are by nature neither renewable nor reproducible. *Each cultural artifact is created within the contextual specificity of geographic, temporal, and social environment, and conveys with it the testimony of people’s knowledge, experience,*

169. Silverman & Ruggles, *supra* note 150, at 12.

170. *Id.* at 14.

171. *Id.* at 12 (emphasis supplied).

*values,] and way of life. When cultural objects are damaged or destroyed, a fragment of this testimony is irrevocably lost.*¹⁷²

Civilizations and cultures exist only where there are people to give them life. Let it not be forgotten that in protecting cultural heritage, its physical spaces and traces, what is ultimately preserved is a tapestry of connected narratives of the indomitable human spirit.

172. Jaime C. Laya, *Introduction to LAWS AND JURISPRUDENCE ON BUILT HERITAGE* ii (2001) (emphasis supplied).