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The Twain Shall Meet: International rules for the protection of heritage and nature

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This article discusses the international agreements that have been made for the protection of heritage and nature. It is shown that, while there are often formal separations between the two realms, there is an increasing convergence between them. An overview is given of the significance of the various international organisations who deal with the international rules of law concerning nature and heritage. On four topics, there is further discussion about the possibilities for cooperation between the two domains: the World Heritage Convention, the conventions for biological diversity and intangible heritage, the rules concerning the Law of the sea and the Wetlands Convention.

1. First Introduction: wars belong in the museum

When I submitted my abstract for a lecture at the 23rd symposium of the European Archaeological Council (EAC) in Vienna, the world looked different. The Russian invasion of Ukraine had not yet taken place, and Europe seemed to be a relatively peaceful continent (Figure 1). I would like to compare the international agreements on heritage and nature, and then make the opportunities for cooperation visible. There is a clear need for international cooperation to deal with these soft values. Because of recent events, I felt the need to take one step back and pay attention to the development of international law as a project of peace, security and wellbeing.

The catastrophic event of World War II gave a tremendous push to the development of international cooperation. That in itself was not surprising, because the need for peace treaties actually arose every time after another terrible war had been fought in Europe. But it seems that after World War II, we actually learned something. As President Franklin Roosevelt said, 'civilization is not national - it is international'.

Even during the war, in the early spring of 1945, many nations gathered in San Francisco to give rise to the United Nations. The idea was formed that an



international organisation was needed for educational and cultural cooperation. No time was wasted. As early as November 1945, the United Nations Educational, Scientific and Cultural Organization (UNESCO) was founded in London. A quote by Prime Minister Clement Attlee made it to the Preamble to the Constitution of UNESCO. It declares that 'since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed'. UNESCO was created in order to respond to the firm belief of nations, forged by two world wars in less than a generation, that political agreements are not enough to build a lasting peace. Peace must be established on the basis of humanity's moral and intellectual solidarity. There is a need to cooperate on subjects like education, science and yes, the protection of nature and heritage.

Another event took place in the following year, 1946. A well know British leader of the conservative party gave a famous speech to the academic youth of the University of Zurich: 'It is to re-create the European family, or as much of it as we can, and to provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe. The first step is to form a Council of Europe'. This idea was brought further through a conference at The Hague in 1948, chaired by the same Winston Churchill. He stated: 'We cannot aim at anything less than the union as Europe as a whole. And we look forward with confidence to the day when that union will be achieved'. To the present day, the Council of Europe tries to be a force of good on the continent, valuing human rights, rule of law and democracy. However let us not forget that other post-war organisation. At the initiative of France (Schumann, Monnet) and Germany (Adenauer) we entered into a long process towards connecting the economies of the European nations. It started the process of formal integration, which ultimately led to the European Union.

The international treaties for the protection of heritage and nature are based on this post-war desire to form an international community based on certain values. The institutions that resulted from this still form the corner stone of these treaties to this day.

Important conventions for the protection of heritage and nature have been concluded via the United Nations and especially UNESCO and the Council of Europe. The EU is very dominant in the field of nature protection and, in a different way, for the protection of heritage as well. It will do no harm as an introduction to this subject to remind ourselves of the origins of these rules. This international cooperation is rooted in a deeply felt desire for peace.

2. Second Introduction: laws for nature and heritage

From the moment people lived on this earth, they depended on their natural environment. For a long time, that relationship was very direct. People's lives were connected to it in a natural way. Because humans succeeded in organising themselves in a way that resulted in a greater influence on the natural environment, that connection became less self-evident. Nowadays we have reached the point of



referring to natural heritage and cultural heritage as two different entities that we approach from different domains. This leads to different networks, different organisations and different legal regimes.

I experienced a Dutch example of this phenomenon myself on 8 December 2015. On that date, the Senate of the Dutch Parliament dealt with two bills: a new Heritage Act and a new Nature Conservation Act. The two legislative processes had run completely in parallel, without any common points being identified or coordination being considered at any time. In addition, both national laws were needed for the implementation of several international treaties. Apparently, this fact created no need for coordination whatsoever. Although both domains are seemingly inextricably linked, there is surprisingly little overlap through policy and regulation. It seems that there is profit to be made at both national and international level if these worlds are kept apart from each other.



Figure 1: Text on the wall of the military museum in Vienna: wars belong in the museum

3. International Organisations

It is impossible to provide an overview of the developments of international law from both perspectives within the framework of this article. However, it is interesting to see where the international protection of nature and heritage already mesh, and also to see where it would be possible to take initiatives in this area. From a European perspective, the Council of Europe and the European Union (EU) are the institutions from which international agreements are being produced and kept alive. It is striking that the EU plays a much more dominant role in the field of nature protection than is the case with heritage protection. Since the adoption of the Birds Directive in 1979, the EU has had jurisdiction with regard to the harmonisation of rules for nature protection. This differs markedly from the protection of the heritage. The EU-treaty of Lisbon certainly devotes fine words to Europe's heritage. Article 3.3 states that 'It [the European Union] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced'. At the same time, the principle of subsidiarity has been explicitly declared applicable in the same treaty. Regarding the conservation and safeguarding of cultural heritage art, 167.5 says that the EU 'shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States'.

This difference is very relevant. While the EU can do a lot for heritage, it will not draw up directives or regulations for its protection. The picture in nature conservation is reversed. In particular, the EU Habitats Directive (Council Directive 92/43/EEC) is so



comprehensive that the other international agreements of the United Nations (UN) and the Council of Europe lose much of their significance within the EU-area.

There is another reason for this. The conventions of the Council of Europe and the UN/UNESCO still need to be translated into the national (legal) order. Due to the supranational nature of the EU, there is a direct effect and, moreover, there is a legal system to enforce compliance. In other words, a country will actually suffer if it does not comply with EU law.

The Council of Europe seems to be more active in the field of cultural heritage than in the field of nature conservation. Although since the Convention on the Conservation of European Wildlife and Natural Habitats (Bern 1979), a network has been actively linked to this convention, the Council's heritage initiatives are much more numerous. In this context, the conventions of Granada (1985), Valletta (1992), Florence (2000), Faro (2005) and Nicosia (2017) can also be mentioned, for successively the protection of architectural and archaeological heritage, the management of landscape, the value and significance of the cultural heritage, and offences relating to cultural property.

On a global scale, the United Nations and in particular UNESCO are active in both areas. This is most clearly expressed in the Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention 1972), but other conventions and associated networks also offer opportunities for integration of goals.

4. International Agreements for the Protection of Nature and Heritage: opportunities for cooperation

Below, four treaties are discussed from a legal perspective, in which it is promising to realise a further combination of the protection of nature and heritage. Of course, this is a far from an exhaustive overview. However, these examples do show that it is relatively easy to take steps in the right direction.

4.1. World Heritage Convention (WHC)

The best-known convention concerning cultural and natural heritage is undoubtedly the WHC. The WHC seeks to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity. However, it is striking that even in this convention, which includes both aspects, a dualistic approach remains in place. Natural and cultural heritage have distinct definitions and can be proposed separately for World Heritage listing.

If we look at the application of this convention, the focus seems to be more on the protection of cultural heritage. The possibility to nominate so-called mixed sites is



only used in a specific way. Currently, 897 cultural properties have been designated, 218 natural sites and 39 mixed sites. This does not mean that the implementation of the convention should be based on these sharp lines. Article 90 of the Operational Guidelines states that 'biological diversity and cultural diversity can be closely linked and interdependent and human activities, including those of traditional societies, local communities and indigenous peoples, often occur in natural areas'.

The provisions in the Operational Guidelines that relate to the management system of the listed sites (articles 108–119) are promising. It contains a clear call for integrated management: 'Legislation, policies and strategies affecting World Heritage properties should ensure the protection of the Outstanding Universal Value (OUV), support the wider conservation of natural and cultural heritage, and promote and encourage the effective, inclusive and equitable participation of the communities, indigenous peoples and other stakeholders concerned with the property as necessary conditions to its sustainable protection, conservation, management and presentation'. In other words, even if it is not a mixed site, the Member State should consider the management in its entirety. A one-sided focus on 'only' the OUV is understandable, but not desirable. For the integration of the management of nature and heritage, there is an important starting point here.

4.2. Biological diversity and intangible heritage

The United Nations Convention on Biological Diversity (Rio de Janeiro 1992) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) each approach the convergence of the cultural heritage and the natural heritage from a different angle but in a similar way.

The Convention on Biological Diversity acknowledges in article 8 the significant contribution made by local and indigenous knowledge, innovations and practices to achieving sustainable environmental management and protection. In this way, this convention has an obligation to take measures to promote this.

The UNESCO Convention for intangible heritage is more or less mirrored in this respect. The starting point of this convention is of course the intangible heritage. When you engage in activities regarding the safeguarding of this kind of heritage, this often goes hand in hand with activities that contribute to a sustainable use of our natural resources.

The preamble of the convention leaves no room for misunderstanding. It emphasises 'the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development'. It also mentions 'the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage'. This aspect is also reflected in the treaty's definition of intangible cultural heritage. It explicitly mentions 'knowledge and practices concerning nature and the universe'.



Both treaties require special attention to the lifestyle and practices of indigenous peoples.

4.3. Law of the sea

Most of the earth's surface concerns seas and oceans that are not territorially classified. The importance of dealing well with this natural marine environment goes without saying. But in the same environment, there is also a challenge in the field of heritage.

The principle of the free use of the sea has a long tradition, and was legally established by the Dutchman Hugo Grotius with the publication of his book *Mare Liberum* (1609). The Law of the Sea then developed further and was finally codified to a large extent in the United Nations Convention on the Law of the Sea (UNCLOS 1982). This convention is mainly about territorial demarcation, the economic use of the sea and the underwater sea bed and the regulation of shipping (innocent passage).

With these principles, it is logical that the interests of nature receive a lot of attention in the treaty. There is a separate chapter on conservation and management of the living resources, and there are rules to reduce and control pollution of the marine environment. Admittedly, these rules seem to be largely motivated by the desire for responsible economic exploitation of natural resources.

Such an incentive to set rules for the protection of heritage is much less strong, while from a heritage point of view there is reason for regulation. After all, this involves dealing with thousands of ancient shipwrecks, hundreds of sunken cities and large prehistoric submerged landscapes.

At a late stage of the negotiations on UNCLOS, two provisions were included for the handling of archaeological and historical objects (see articles 149 and 303 in UNCLOS). The operation of these articles in practice leaves much to be desired. This can partly be explained by its unfocused formulation. It is often unclear who will have to undertake what kind of measures. UNCLOS turned out to be insufficient for adequate protection of the underwater cultural heritage.

Due to rapid technological developments and increasing economic use of the marine environment, the heritage is increasingly in the danger zone. That was the reason for UNESCO to take up the gauntlet and take the initiative for a separate treaty: Convention on the Protection of the Underwater Cultural Heritage (2001).

An advantage of such a separate treaty is that the subject gets the attention it deserves. Within the large framework of UNCLOS, it forms an interest that easily gets overlooked. But an undesirable effect of such a separate treaty is that the rules of engagement become independent of the regulation of economic activities that threaten the heritage.

In all cases, it is a good thing that the networks for the protection of both interests are able to find each other and counterbalance the geopolitical and economic



exploitation of the marine environment. UNCLOS and the Convention on the Protection of the Underwater Cultural Heritage provide a useful base to do so.

4.4. Wetlands

In 1999, as part of its inaugural meeting, the European Archaeological Council (EAC) held a symposium on the archaeological heritage management of wetlands in Europe. The symposium was organised jointly with the Wetland Archaeological Research Project. This meeting was also the prelude to the first publication of EAC (occasional paper no. 1).

The international agreements on wetlands are laid down in the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar 1971). This treaty is about the management of wetland ecosystems. In other words, nature conservation. But the treaty also recognises the importance of cultural, historical and archaeological interest.

Here lies a fertile ground for cooperation. The Wetlands Convention is an excellent starting point to ensure that the needs of cultural heritage, alongside those of natural heritage, are properly considered in the management and wise use of wetlands.

The strategy for the heritage management of wetlands drawn up by founding EAC president Adrian Olivier (included in the above-mentioned publication) is still relevant today.

5. Conclusion

Although there is a clear need to connect the management of the interests of heritage and nature, it too often appears that the formal structures with which these domains are approached operate independently.

Already in the very first publication of EAC, a bridge was built between, in this case, the wetlands convention (Ramsar) and the practice of archaeological heritage management. The EAC proceedings of the international online conference 1-2 July 2021 'Climate Change and Archaeology' also touched on this theme (Fluck and Guest 2022).

This article has mainly looked at the possibilities for cooperation that exists, based on the international agreements for nature protection and heritage. A number of examples of this have been elaborated. Even more important than these international treaties are the people who have to bring them to life. It is important that crossovers are made from the existing networks. The existing framework for international cooperation can be used for this purpose. Behind all international agreements is an infrastructure that has its roots at the UN/UNESCO, the Council of Europe or the European Union.

At a time when the world community is facing enormous challenges in terms of climate, caring for the environment and preserving biodiversity, it is important that



the heritage community continues to connect with these developments. It is no longer profitable to stay safe within the boundaries of one's own domain. Knowledge of international law can help to take this step.

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