

# Cultural Interest and Globalization: the Legal Tensions of a Close Relationship

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## ABSTRACT

Globalization tends to amalgamate national cultures and identities by examining them uniquely in terms of the economic value of cultural heritage and of cultural outputs. Over time, the global market and cultural heritage have developed a tense relationship. Cultural heritage is destined to outlive humans, while the market is fuelled by the consumption and replacement of goods to meet the immediate demands of a globalized society. National legislation and international standards are used to supply a framework for regulating this relationship. In the past, states have used the concept of cultural exception, today it is that of cultural diversity, to establish and legitimate the protection of cultural heritage, and defend it from commodification, as developed through agreements within the World Trade Organization. Now, a resistance front is being established to claim that the definition, protection and regulation of cultural heritage falls within the exclusive competence of the State. Public interest constitutes an important driving force for the conservation of cultural heritage. However, cultural heritage is nonetheless subject to pressures imposed by market forces which are dominated by private interests. This balance of power is not fully taken into consideration by international legislation. In particular, the economic dimension of cultural heritage, as promoted by globalization, remains a reality and is an important factor in its conservation. In the long run, international legislation will inevitably have to evolve towards finding a balance between the public interest (which underpins national policies for cultural heritage conservation) and the economic values of cultural assets. This will be achieved by viewing them in terms that exclude global commodification. Based on a description of this situation, this paper discusses the stakes that conservation of cultural heritage has within the processes of globalization. It also examines the mechanisms that could be deployed by national legislation and international law to renew and establish new principles for the protection and conservation of cultural heritage, in response to the pressures imposed by commodification.

## Introduction

This paper focuses on some of the effects of globalization on cultural heritage and, more specifically, on legislation enacted to protect cultural heritage.

Discussing this topic involves many questions, which include:<sup>1</sup>

- What is globalization?
- Is it diminishing the power and the responsibilities of the state (or of public authorities) to guarantee and to ensure the protection of cultural heritage, or is it merely changing the ways in which this power and these responsibilities are exercised?
- Does globalization raise new legal concepts regarding the protection of heritage, or is it just transforming existing issues?
- Are the effects of globalization on heritage legislation purely negative, or does globalization also facilitate efforts to implement heritage legislation around the world?

The interconnection and interdependence of global economic, political and social processes make it difficult to answer these questions and evaluate the impact of globalization on heritage legislation. Globalization could provide opportunities for better implementation of heritage legislation. It could also oblige the stakeholders to take up new challenges.

## What is globalization?

There is still disagreement on exactly what the term covers. “In its most literal sense the term ‘globalization’ refers to a ‘process’ (or processes) that transforms local or regional features, issues or phenomena into global ones” (Askola, 2010, p. 102).

In fact, what most commentators tend to mean by globalization is the ‘intensification’ of this process (Held, 2002) since the Second World War or, even more recently, since the end of the Cold War. In economic terms, the term globalization tends to be used to mean increasing economic integration and interdependence between countries – through trade, foreign direct investment, capital flows and so on – leading to the emergence of a global market for goods and services and capital (Askola, 2010; Held *et al.*, 1999).