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Cultural Property, Human Rights, and Sustainable Development: The Case of the Ancient City of Durrës

*Helga Turku**

Introduction

2018 has been declared the European Year of Cultural Heritage.¹ As such, hundreds of events are being organized across Europe to celebrate each country's unique cultural heritage.² Unfortunately, Albania has not been as successful in protecting its cultural heritage. For example, since the fall of communism, the ancient city of Durrës (Dyrrah) has experienced rapid and intense development, which favors concrete over sand along the coastline, destruction and over-restoration of landmark buildings, and willful or negligent destruction of ancient ruins in this open-air museum city.³ This article argues that individuals working toward cultural heritage protection in Albania and elsewhere should capitalize on the important link between cultural and natural heritage protection. Legal challenges to development that focus only on cultural rights will not have the same rhetorical or legal power than if they were combined with environmental and human rights challenges to government policies that threaten cultural heritage sites. This article highlights the protective measures international law provides for cultural heritage, environmental heritage, and human rights. These three legal frameworks overlap and should be used to ensure greater legal and political success.

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1. *Our heritage: where the past meets the future*, EUROPEAN YEAR OF CULTURAL HERITAGE (last visited Oct. 25, 2018), <https://perma.cc/R4U-YQY5>.

2. *Events around Europe*, EUROPEAN YEAR OF CULTURAL HERITAGE (last visited Oct. 25, 2018), <https://perm.a.cc/DF5P-XUDX>.

3. Fatjona Mejdini, *Albanians Fear Durrës Landmark Will Damage Ancient Remains*, BALKAN INSIGHT (Feb. 10, 2017), <https://perma.cc/23YM-TYLZ>.

I. Looking at development and cultural heritage in Albania, including the Venetian Tower in Durrës and Project Veliera

In late 2016, the municipality of Durrës started a six million-dollar project called “Veliera” on the border of a Venetian Tower and the ruins of a Byzantine wall.⁴ This ambitious project envisioned a large concrete structure (60 meters high) in the form of a sail. Durrës, known in antiquity as Epidamnus and Dyrrachium (Dyrrah), was built in the seventh century BCE and contains a wealth of ancient sites that showcase its layered history and vibrant civilization.⁵ Gaius Valerius Catullus, a Roman poet, described Dyrrachium as *Durrachium Hadriae tabernam*, “the tavern of the Adriatic,” because one could stop during their travels to enjoy the city, as Catullus himself did in 56 CE.⁶ As the oldest city in the Eastern Adriatic, Dyrrachium is known among historians as the site of the revolution that preceded and catalyzed the outbreak of the Peloponnesian War.⁷ This ancient city is also the site of a major battle between Pompey and Julius Caesar over control of Rome.⁸ Moreover, Dyrrachium was the site of the 1081 battle between the Norman and Venetian fleets, as the two sought control of the Adriatic.⁹ For centuries this city served as a point of connection between Rome and Constantinople on the Via Egnatia, an ancient trade route.¹⁰ The long and rich history of Dyrrachium explains the city’s large protective walls and diverse

4. See Kryebashkiaku i Durrësit Vangjush Dako prezanton një tjetër projekt madhor, “veliera” shesh i ri publik në hyrje të portit, BASHKIA DURRËS (Apr. 22, 2016), <https://perma.cc/K7HZ-XCXH>; Sokol Cobo, *Projekti 4 milionë USD, ja si do jetë sheshi para Portit të Durrësit (Foto)*, SHQIP (Aug. 23, 2016), <https://perma.cc/NS9L-5FXE/> (presenting a different tender amount for the project than presented by the mayor of the Durrës Municipality).

5. Jack L. Davis et al., *The Durrës Regional Archeological Project: Archeological Survey in the Territory of Epidamnus/Dyrrachium in Albania*, 72 HESPERIA 41, 41–119 (2003), available at <https://perma.cc/6N3C-J22P>.

6. M. Gwyn Morgan, *Catullus and the “Annales Volusi,”* 4 QUADERNI URBINATI DI CULTURA CLASSICA 59, 59–67 (1980), available at <https://perma.cc/Y5UQ-YUSQ>.

7. Davis et al., *supra* note 5, at 41; 1 THUCYDIDES, THE PELOPONNESIAN WAR, 24–29, <https://perma.cc/HC62-5T8Q>.

8. Davis et al., *supra* note 5, at 42; see also Bill Yenne, JULIUS CAESAR: LESSONS IN LEADERSHIP FROM THE GREAT CONQUEROR 161 (2012).

9. GEORGIOS THEOTOKIS, THE NORMAN CAMPAIGNS IN THE BALKANS, 1081-1108 (2014).

10. Gjergj Frashri, *Dy Pagezimet e Lashta te Durrësit – Epidam dhe Dyrrah*, BALKANWEB (Dec. 17, 2015), <https://perma.cc/C8AJ-66XP/>.

architecture that lies in its ruins. Archeologists agree that present day Durrës “has been built over ancient remains.”¹¹

Discoveries can be found throughout the city, but the proposed project location is also one of the richest sites due to three major monuments situated in close vicinity: a well-preserved roman amphitheater, a byzantine protective wall, and the Venetian Tower. In the project’s early stages, city workers digging with heavy machinery, pickaxes, and shovels encountered a protective wall from the early fourth century¹² and an eighteenth-century cannon.

In February 2017, a local NGO, Shoqata Menv Group, filed a complaint with the administrative court in Durrës.¹³ They sought a permanent injunction claiming that 40% of the territory where project Veliera was being built was a type A archeological zone, and the remaining portion was a type B archeological zone.¹⁴ Both of these zones are protected by national cultural heritage law, which classifies Durrës as an archeological park, museum city, historical ensemble, and historical site.¹⁵ The Durrës Administrative Court ordered a temporary injunction after archeological material was discovered. Yet, municipality workers continued digging with heavy machinery in direct defiance of the court’s injunction.¹⁶

This issue was also brought up in the Durrës District Court where the prosecutor sought the seizure of the cultural property in question, an injunction on all further construction work, and charges of illegal construction and abuse of power by the Durres municipality.¹⁷ The District Court ordered the preventive

11. Davis et al., *supra* note 5, at 42; Moikom Zeqo, *Masakra arkeologjike në Durrës, duhet moratorium për ndërtimet*, KOHA JONE (Feb. 15, 2017), <https://perma.cc/4NVL-WKXZ>.

12. Gjergj Frashri, ‘*Veliera po e le Durrësin pa anikitetin e tij*’, *Frashri: E keqja te Ministria e Kultures*, FAX.AL (Feb. 2, 2017), <https://perma.cc/ECL2-H5KJ>.

13. Shoqata Menv Group v. Bashkia Durrës, *Perpara Gjykates Administrative te Shkalles se Pare, Durrës*, Decision No. 82-2017-152 (Feb. 16, 2017).

14. *Id.* at 2.

15. Law No. 9048, for Cultural Heritage (Apr. 7, 2003). Under Art. 28, a Type A archeological zone is a site of outstanding value and of special importance for cultural heritage. As such, it is protected in its entirety, architectural and technical components may not be modified, and new construction near such area must respect the borders of the protected zone. Art. 27 specifies that a Type B archeological zone is an area that is also part of a historical site but is not categorized as type A by the ministry of culture; Decision of Council of Ministers No. 237 (Mar. 23, 2011) (on the adoption of the regulation for the administration of the archaeological site “A” and “B” of the city of Durrës).

16. Shoqata Menv Group v. Bashkia Durrës, *Perpara Gjykates Administrative te Shkalles se Pare, Durrës*, No. 31025-00176-82-2017 (Feb. 2, 2017) at 1; *Video/Bashkia Durrës rifillon puniment ne projektin ‘Veliera’*, GAZETA OPINION (Feb. 20, 2017), <https://perma.cc/79KD-U2CF>.

17. Prosecutor v. Bashkia Durrës, District Court of Durrës, Decision No. 103 (Mar. 3, 2017).

seizure of the immovable property, an injunction on further work, and allowed further investigation of potential criminal acts.¹⁸ Although the municipality of Durrës appealed the case, the Appeals Court upheld the lower court's decision.¹⁹ Unfortunately, despite extensive evidence to the contrary, the District Court held that there was no illegal construction or abuse of power by the municipality and that the procedures to implement project Veliera were done according to the law.²⁰

After a wide condemnation of the project by the press and the general public, the Minister of Culture testified in front of the Parliamentary Commission on Education in February 2017.²¹ The Minister claimed the project plan was presented to the Ministry in September 2016 and construction over portions classified as archeological zone type A were supervised by specialized institutions.²² Despite these statements, it does not take an archeologist to question whether it is wise to use heavy machinery in a known archeological area. Moreover, multiple sources reported that the digging continued even after municipal workers encountered archeological material and, at times, no specialist was in sight.²³

The battle for the preservation of the site continued in the Administrative Court of Appeals.²⁴ Media sources claim that a decision issued on February 13, 2018—after a year of postponed hearings—was read behind closed doors.²⁵ While the decision has not yet been made public, it is reported that both parties plan to appeal the decision.²⁶ In various interviews, individuals present at the

18. Prosecutor v. Bashkia Durrës, District Court of Durrës, Decision No. 103 (Mar. 3, 2017).

19. Prosecutor v. Bashkia Durrës, Durrës Court of Appeals, Decision No. 10-2017-656, 59 (Mar. 27, 2017).

20. Prosecutor v. Bashkia Durrës, District Court of Durrës, Decision No. 11-2018-4916 (Oct. 9, 2018).

21. Eno Shkemi, *Dako dhe Kumbaro raportojne per zbulimet arkeologjike ne sheshin 'Veliera'*, GAZETA SHEKULLI (Feb. 13, 2017), <https://perma.cc/98NL-4TUH>.

22. *Id.*

23. *Pa praninë e arkeologëve vazhdojnë punimet në projektin 'Veliera'*, FAX.AL (Apr. 24, 2017), <https://perma.cc/SCR9-7H7S>; Gezim Kabashi, *'Veliera' zgjon nga gjumi durrsakët në mbrojtje të trashëgimisë*, REPORTER.AL (Feb. 16, 2017), <https://perma.cc/X3AJ-LLKB> (Arguing that safeguards installed after the matter was brought to court were too little too late. Despite this, the opposition among the people of Durrës, expressed in civil society, media, and by the constituents, shows a strong desire to preserve cultural heritage.)

24. *Gjykata Administrative e Apelit shtyn vendimin, fati i 'Velierës' vendoset në 24 shtator*, SHQUIPTARJA (Sept. 14, 2018), <https://perma.cc/263F-SHBF>.

25. Klodjana Haxhiaj, *Bashkia e Durrësit apelon vendimin per sheshin "Valeria": Dako i Prere*, BALKANWEB (Mar. 31, 2018), <https://perma.cc/J9DM-AUEP>.

26. *Id.*

hearing reported that the decision gave the green light for a modified version of the project that protects a significantly reduced area classified as a type A archeological site. Furthermore, the Administrative Court of Appeals declined to hold those in charge of the project criminally responsible for destruction of cultural heritage.²⁷

Building concrete structures of this type fundamentally changes the character of a city and its historic environment. For example, project Veliera is likely to have a negative impact upon the contemporary landscape of Durrës, both below and above ground.²⁸ The proposed concrete “sail” will obscure the view provided by the city’s main avenue, a 1930s Italian-designed street with unique architectural buildings.²⁹ The avenue was planned as an integral element of the city, with dock gates and buildings that add to the layered history of Durrës.³⁰ The Veliera project is designed by an Italian architect, which is ironic given the inorganic and incoherent nature of this proposed cement structure.³¹ Erecting Veliera on this archeological site will not only damage the underground archeological treasures of this city, but also upstage the Venetian Tower and harm the city’s broad cultural heritage.

As the battle between preservationists and the project’s supporters continues, the residents of Durrës remain outraged at the pitiful conditions of the site.³² Indeed, prior to ceasing all work due to court orders, workers excavated a large hole, which was later partially filled with dirt and surrounded by wires in an important area of the city that is now a gaping eyesore.³³ Fortunately, Albania is a signatory to most international instruments that govern and protect cultural and environmental heritage.³⁴ The following sections highlight important legal principles that apply to the protection of cultural and environmental heritage.

27. Leonidha Musaj, ‘*Veliera*’, *Gjykata vendosi pro projektit 6 million USD*, GAZETA PANORAMA (Feb. 14, 2018), <https://perma.cc/6M3N-RGRJ>.

28. Julia Vrapı, *Moikom Zeqo: Ministria e Kulturës nuk e ka idenë se çfarë është arkeologjia*, “*Veliera*” *një nga skandalet më të mëdha*, SOT NEWS (Feb. 16, 2017), <https://perma.cc/5BNZ-WG8S>.

29. Meri Semini, Loreta Çapeli, & Florian Nepravishta, Overview of the Italian Architecture in Durrës from 1920 to 1944, 5 INT’L J. SCI. & RES., no.7 (2016), at 855, 855-891.

30. *Id.*

31. *E njëjta dorë*. *Arkitekti i stadiumit, i kontraktuar edhe nga Vangjush Dako për projektin “Veliera” në Durrës*, RES PUBLICA (Apr. 25, 2016), <https://perma.cc/Y2C5-UCZW>.

32. ‘*Veliera*’, *e bllokuar në gjykatë. Beton dhe inerte në qendër të Durrësit*, TOP CHANNEL (Feb. 25, 2018), <https://perma.cc/CH5C-7HE6>.

33. *Id.*

34. *Ratified Conventions – Albania*, UNESCO, <https://perma.cc/Z7KS-HEJ9>.

II. International law dictates the protection of cultural heritage sites during times of peace

The basis for protection of cultural and natural heritage during times of peace is the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (“UNESCO 1972”).³⁵ This Convention was the first international instrument to recognize that common cultural and natural heritage sites are equally important to all human kind. Specifically, its Preamble establishes, “that parts of the cultural and natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole.”³⁶ The Preamble goes on to recognize that the “deterioration or disappearance of any item of the cultural and natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world.”³⁷ The Convention is unique and avant-garde for its time because it recognizes the congruent nature of cultural and national heritage protection.

The final text of the 1972 UNESCO World Heritage Convention is the result of two different drafts.³⁸ One was drafted by the International Council on Monuments and Sites (“ICOMOS”) and focuses on cultural heritage.³⁹ The other was drafted by the International Union for Conservation of Nature (“IUCN”) and aims to protect natural heritage.⁴⁰ In creating “a common regime”⁴¹ to protect cultural and natural heritage, the Convention recognizes the symbiotic link between culture and nature. This legal structure of the Convention allows for the much-needed comprehensive protection of culture and natural heritage. Francesco Francioni notes that “[t]his dynamic character of international law in the areas of natural and cultural heritage . . . has facilitated the development of interpretative criteria that permit(s) the adaptation of existing law to new realities and risks.”⁴² In fact, the principle of sustainable development is embodied in “the textual meaning or the original intent of the parties [which point] to the necessity of reconciling the treaty commitment with new requirement(s) and legitimate

35. Convention concerning the Protection of the World Cultural and Natural Heritage pmbl., U.N. LIBRARY OF INTERNATIONAL LAW (Nov. 16 1972), <https://perma.cc/SL59-AHBD> [hereinafter “UNESCO 1972”].

36. *Id.* at 1.

37. *Id.*

38. Janet Blake, International Cultural Heritage Law 114 (Aug. 11, 2015).

39. UNESCO Final Rep., SCH/CS/27/8 (Dec. 31, 1968), <https://perma.cc/3MTE-QEJ6>.

40. Int’l Union for Conservation of Nature [IUCN], CONVENTION ON CONSERVATION OF WORLD HERITAGE (Oct. 1971), <https://perma.cc/U8GE-ZZ4H>.

41. FRANCESCO FRANCONI ET AL., THE 1972 WORLD HERITAGE CONVENTION – A COMMENTARY (2006).

42. *Id.* at 6.

objectives of the international community.”⁴³ Yet the Convention is as flexible as the international and domestic legal system will allow and more needs to be done to overcome the institutional and legal limitations.

Fortunately, the idea that protecting cultural and natural heritage as key to sustainable development is well supported in international forums. For example, in Goal 4 of the 2030 Agenda for Sustainable Development of the U.N. General Assembly, member states pledge to “ensure that all learners acquire the knowledge and skills needed to promote sustainable development . . . through education . . . and appreciation of cultural diversity and of culture’s contribution to sustainable development.”⁴⁴ Furthermore, Goal 11.4 of the 2030 Agenda also calls upon states to “[s]trengthen efforts to protect and safeguard the world’s cultural and natural heritage.”⁴⁵

ICOMOS, which is a technical Advisory Body of the World Heritage Committee, has advocated in “Cultural Heritage, the U.N. Sustainable Development Goals [SDGs] and the New Urban Agenda [NUA]” for progressive integration of cultural heritage into urban development policies in order to “enhance sustainability of urban areas through heritage, in the context of Agenda 2030”⁴⁶ Considering the rate of urbanization, development, and ever changing socio-economic, environmental, and political conditions in a globalized world, there is an “emerging need for a paradigm shift in the concept of development in more humanistic and ecological terms [which means] that culture and cultural heritage/landscape play a critical role in the achievement of this new humanistic and ecological paradigm of a sustainable city.”⁴⁷ In fact, both cultural heritage and natural resources are finite, which makes their integrated protection even more important in and ever-expanding globalized/industrialized world.

Although more needs to be done to foster interconnectivity in the law for cultural and natural heritage protection, it is important to note that states already have the responsibility to integrate general guidelines for sustainable development and protection of cultural and natural heritage into their state laws and policies. Under the UNESCO 1972 Convention, state parties are required to protect and transmit to future generations the importance of cultural heritage in their territories⁴⁸ by recognizing the need for protection, preservation, and

43. FRANCESCO FRANCONI ET AL., *THE 1972 WORLD HERITAGE CONVENTION – A COMMENTARY* (2006) at 6.

44. G.A. Res. 70/1 (Sept. 25, 2015) at Goal 4.

45. *Id.* at Goal 11.4.

46. Council on Monument Sites [ICOMOS], *Cultural Heritage, the UN Sustainable Development Goals, and the New Urban Agenda*, International (Feb. 15, 2016) at 2, <https://perma.cc/8HBZ-2PRT>.

47. *Id.*

48. UNESCO 1972 at art. 4.

diffusion of knowledge.⁴⁹ Each state party also recognizes their obligation to “do all [they] can” both with their own resources and international assistance to obtain this goal.⁵⁰

In order to adhere to Article 4, the 1972 Convention lays out specific obligations to help protect cultural property in each member state’s territory. Under Article 5, member states must take “effective and active measures” to protect, conserve and preserve its cultural heritage in a way that is appropriate for each country.⁵¹ While the Convention acknowledges respect for state sovereignty, member states also recognize the importance of world heritage and the duty of the international community as a whole to protect it.⁵² More importantly, each state agrees to not intentionally or unintentionally take measures that damage the cultural heritage referred to in Article 1.⁵³

As expressed in Article 4 of the Convention, the duty to protect and preserve cultural heritage is an obligation owed to all parties to the Convention.⁵⁴ As such, all member states can, “jointly or severally . . . compel performance . . . by way of judicial proceedings, where possible, or even countermeasures.”⁵⁵ Furthermore, under the International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts, “[a]ny State other than an injured State is entitled to invoke the responsibility of another State . . . if the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group.”⁵⁶ Article 48(2)(a) gives state parties the right to claim “cessation of the internationally wrongful act.”⁵⁷ At present, UNESCO 1972 has 193 member states,⁵⁸ confirming that these principles are universally accepted.⁵⁹

Other international conventions on the protection of cultural heritage also recognize its universal value.⁶⁰ The expansion of the body of law to protect

49. See generally UNESCO 1972.

50. *Id.* at art. 4.

51. *Id.* at art. 5.

52. *Id.* at art. 6(1).

53. *Id.* at art. 6(3).

54. Roger O’Keefe, *World Cultural Heritage: Obligations To The International Community As A Whole*, 53 INT’L & COMP. L.Q., 189, 190 (2004).

55. *Id.*

56. G.A. Res. 56/83, annex, art. 48(1)(a), *Articles on Responsibility of States for Internationally Wrongful Acts* (Dec. 12, 2001).

57. *Id.* at art. 48(2)(a).

58. UNESCO, *States Parties Ratification Status to the World Heritage Convention* (last visited Feb. 27, 2017), <https://perma.cc/D9MF-T5SF>.

59. Roger O’Keefe, *supra* note 54, at 207.

60. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict pmb., May 14 1954, 249 UNTS 215.

cultural heritage demonstrates wide acceptance among states that cultural heritage deserves protection as the common heritage of humanity. This principle is present during both armed conflict and times of peace. For example, the preamble to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict highlights that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind” because “each people makes its contribution to the culture of the world.”⁶¹ Subsequent U.N. documents also recognized that the purpose of the Convention was to protect the cultural heritage of all people for future generations.⁶² The states are not only the custodians of cultural heritage in their own territories, but also have a normative duty to others to protect humanity’s heritage.⁶³ As such, UNESCO’s *Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage* states that “every country in whose territory there are components of the cultural . . . heritage has an obligation to safeguard this part of mankind’s heritage and to ensure that it is handed down to future generations.”⁶⁴

Cultural heritage also plays a vital role in state identity and preservation.⁶⁵ This is reflected in the Preamble to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“UNESCO 1970”),⁶⁶ which states that “cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information

61. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict pmb., May 14 1954, 249 UNTS 215.

62. First Meeting of the High Contracting Parties to The Hague Convention, 61 UNESCO Doc. CUA/120 (Sept. 3 1962), <https://perma.cc/2G4V-Z6VT>.

63. Sharon Williams, *The International and National Protection of Movable Cultural Property: A Comparative Study*, 51 BRITISH Y.B. INT’L L. 300-01, no. 1 (Jan. 1, 1978).

64. 1972 Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage, UNESCO Doc. 17C/Res. 30, pmb.; 1997 Declaration on the Responsibilities of the Present Generations towards Future Generations, UNESCO Doc. 29C/Res 44, art. 7. (Declaring that “the responsibility to . . . protect and safeguard the . . . tangible cultural heritage and to transmit this common heritage to future generations” applies not just states, but to society as a whole.).

65. *See generally* Andrzej Jakubowski, STATE SUCCESSION IN CULTURAL PROPERTY (2015) (reviewing international law on cultural property during state succession and highlighting the importance that states place on retrieving their cultural property from the prior political entity).

66. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 UNTS 231 (hereinafter “UNESCO 1970”).

regarding its origin, history and traditional setting.”⁶⁷ The Convention highlights that member States have a moral duty to respect their own cultural heritage and that of others.⁶⁸ While this principle is legally binding to its 137 member parties,⁶⁹ the general applicability of it is well accepted in customary international law.

The duty to protect and preserve cultural heritage is not only relevant to international relations, but also in a domestic context where the issue of protecting cultural heritage is raised within a state’s own territory.⁷⁰ For example, the Taliban’s destruction of the great Buddhas of Bamyian led to the Declaration of Intentional Destruction of Cultural Heritage (“UNESCO Declaration 2003”), which aims to prohibit intentional state destruction of cultural heritage.⁷¹ In its preamble, the Declaration states that “cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights.”⁷² The Declaration also reiterates the importance of cultural heritage for succeeding generations,⁷³ and calls on states to “take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located.”⁷⁴ States who intentionally destroy or fail to take adequate measures to prohibit, prevent and stop such destruction of cultural heritage (whether or not the site is recognized as a UNESCO World Heritage Site) bear the responsibility for their destruction to the extent outlined by international law.⁷⁵ States also have an obligation to prosecute individuals who commit or order acts of intentional destruction of cultural heritage.⁷⁶ The Declaration underlines that states must respect international norms on human rights and international humanitarian law, especially when cultural heritage is being attacked in concert with other human rights violations.⁷⁷

As illustrated by international documents on cultural heritage, culture holds an intrinsic value for the identities of people, nations, and states. This is why it

67. UNESCO 1970, at pmb1.

68. *Id.*

69. UNESCO, *States Members* (Nov. 14, 1970), <https://perma.cc/464H-9SXT>.

70. Francesco Francioni, *Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity*, 25 MICH. J. INT’L L. 1209, 1214 (2004).

71. UNESCO Res. 32/33, UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage (Oct. 17, 2003), at 62.

72. *Id.*

73. *Id.* at Art I.

74. *Id.* at Art III.

75. *Id.* at Art VI.

76. *Id.* at Art VII.

77. *Id.* at Art IX.

deserves special protections in law and policy. The 1968 UNESCO *Recommendation on Cultural Property Endangered by Public Works*⁷⁸ describes cultural heritage as “the product and witness of the different traditions and of the spiritual achievements of the past and thus is an essential element in the personality of the peoples of the world.”⁷⁹ Universal interest in preserving cultural heritage creates the basis for its protection and the strong condemnation of those who act to damage or destroy it.

III. An outlook on human rights and development

A. When should property be called cultural property or heritage?

While international instruments adopted by UNESCO (and other related conventions) outline the meaning of cultural property and cultural heritage and why it should be protected, critics outline the difficulties in translating universal norms, local values, and legal applications in a consistent and meaningful way.⁸⁰ Laurajane Smith uses the phrase “the Authorized Heritage Discourse” (AHD),⁸¹ to identify expert rhetoric to articulate the fluidly defined idea of heritage. As such, the definition of heritage, and its protection, has become a highly regulated and dichotomized field where experts strive to protect heritage for future generations while “disengag[ing] the present (or at least certain social actors in the present) from an active use of heritage.”⁸²

Given that heritage is not bound to an object or physical space, but it has layers of meaning in space, time and identity, the legal term to describe culture and cultural objects has evolved over the years. Moreover, the discourse on human rights increasingly overlaps with most aspects of development, environmental sustainability, and security, which creates the need to use the term “heritage” in order to capture the material and immaterial dimensions of culture. The material/tangible and immaterial/intangible elements of heritage are in many ways two sides of the same coin. This is because “[h]eritage only becomes ‘heritage’ when it becomes recognizable within a particular set of cultural or social values, which are themselves ‘intangible.’”⁸³ Objects, buildings, and places become tangible cultural heritage when polity, constituents, and laws assign

78. UNESCO Res. 15/B, Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (Nov. 19, 1968), at 139.

79. *Id.*

80. LAURAJANE SMITH, *USES OF HERITAGE* (New York: Routledge, 2006) at 29.

81. *Id.*

82. *Id.*

83. LAURAJANE SMITH & NATSUKO AKAGAWA, *INTANGIBLE HERITAGE 6* (New York: Routledge, 2009).

special value to them.⁸⁴ Given that objects themselves do not possess an inherent value that elevates them to cultural heritage status, it is the social construction of these values that creates heritage.

It may be useful to conceptualize all heritage as intangible,⁸⁵ since heritage is a social construction and impacts society's knowledge, understanding, and collective memory. In a 1979 study, U.N. Special Rapporteur Francesco Capotorti argued that "culture" must be broadly interpreted to encompass traditions, customs, morals, as well as the arts, cultural institutions, and education.⁸⁶ In line with this ideology, the Office of the High Commissioner for Human Rights endorsed an expansive conceptualization of culture to include, "a particular way of life associated with the use of land resources, especially in the case of indigenous peoples."⁸⁷ Special Rapporteur, Karima Bennouna, has also proactively expanded the meaning of cultural rights in a development context.⁸⁸ She states that "(c)ultural heritage is to be understood as the resources enabling the cultural identification and development processes of individuals and groups which they, implicitly or explicitly, wish to transmit to future generations."⁸⁹

B. The right to a cultural life

Cultural heritage is a recognized human right.⁹⁰ As such, states have a duty to safeguard and ensure respect for cultural heritage.⁹¹ In March 2011, a report

84. LAURAJANE SMITH & NATSUKO AKAGAWA, *INTANGIBLE HERITAGE* 6 (New York: Routledge, 2009).

85. Smith, *supra* note 80, at 2.

86. Francesco Capotorti (Special Rapporteur of the Sub-Commission on Prevention of Discrimination), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, U.N. Doc. E/CN.4/Sub.2/384/Rev.1, at 99–100 (1979).

87. Office of the High Commissioner for Human Rights, CCPR General Comment No.23, ¶ 7, U.N. Doc.HRI/GEN/1/Rev.1, 38 (Apr. 8, 1994).

88. Karima Bennouna, *Report of the Special Rapporteur in the Field of Cultural Rights*, U.N. Doc. A/HRC/31/59 (Feb. 3, 2016).

89. *Id.* ¶ 47.

90. UNESCO Res. 31/25, Universal Declaration on Cultural Diversity, Article 4 (Nov. 2, 2001); *see also* UNESCO Res. 31/25, Article 1 ("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."); *see also* UNESCO Res. 33, preamble (Oct. 20, 2005) ("[C]ultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all.").

91. UNESCO Res. 32, Article 1, Convention for the Safeguarding of Intangible Cultural Heritage (Nov. 17, 2003) (outlining the purpose of the convention); *see also*

adopted by the Human Rights Council, officially endorsed cultural rights as human rights. The 2011 report states:

As reflected in international law and practice, the need to preserve/safeguard cultural heritage is a human rights issue. Cultural heritage is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes.⁹²

Other international instruments have also recognized this human right. The 1948 Universal Declaration of Human Rights, which forms the basis of international human rights law, states that “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts.”⁹³ Under Article 15(1)(a) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), state parties “recognize the right of everyone . . . to take part in cultural life.”⁹⁴ Member states have an obligation to “take steps . . . to achiev[e] progressively the full realization of the rights recognized in the Covenant.”⁹⁵ According to the Committee for Economic, Social and Cultural Rights (“The Committee”), the right to partake in cultural life is “associated with the use of cultural goods.”⁹⁶ U.N. Special Rapporteur on Cultural Rights, Farida Shaheed, stated that “access to and enjoyment of cultural heritage as a human right is a necessary and complementary approach to the preservation/safeguard[ing] of cultural heritage.”⁹⁷

The Committee established in May 1986 by the Economic and Social Council⁹⁸ has further clarified the nature of state parties’ obligation under Art.

JANET BLAKE, *CULTURAL HERITAGE AND HUMAN RIGHTS* (Oxford: Oxford University Press, 2015), 271.

92. Farida Shaheed, *Report of the Independent Expert in the Field of Cultural Rights*, ¶ 77, U.N. Doc. A/HR/C/17/38 (Mar. 21, 2011); ANDRZEJ JAKUBOWSKI, *CULTURAL RIGHTS AS COLLECTIVE RIGHTS: AN INTERNATIONAL LAW PERSPECTIVE* (Leiden: Brill, 2016).

93. G.A. Res. 217 (III) A, Article 27, Universal Declaration of Human Rights (Oct. 12, 1948).

94. Roger O’Keefe, *The Right to Take Part in Cultural Life*, 47 INT’L & COMP. L.Q. 877, 904 (1998).

95. G.A. Res. 2200 (XXI) A, Article 2(1), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

96. Comm. on Economic, Social and Cultural Rights, General Comment No. 21, ¶ 15(b), U.N. Doc E/C12/GC/21 (Dec. 21, 2009).

97. Shaheed, *supra* note 92, ¶ 2.

98. Economic and Social Council Res. 1985/17, U.N. Doc. E/1985/85, at 15-16 (May 28, 1985).

2(1) of the ICESCR. Notably, Article 15 of the ICESCR is “not simply a non-discriminatory provision.”⁹⁹ Member states must take steps to progressively achieve the full implementation of the rights recognized in the Covenant.¹⁰⁰

Therefore, just “removing any formal barriers to the equal participation”¹⁰¹ of citizens in cultural life does not satisfy the member states’ obligation to “recognize the right of everyone to take part in cultural life.”¹⁰² This provision is not solely about form but also about substance. A community must have the ability to substantively partake, enjoy, create, and benefit from works of art and related fields.¹⁰³ Member states have a duty to proactively foster meaningful “participation in, and access to, cultural life,”¹⁰⁴ by providing information to promote popular participation, ensuring affordable access (both financial and physical) to local cultural activities, and promote the use of the Internet for access to the cultural heritage of mankind.¹⁰⁵

Recognizing that “full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time,” the Committee used the term “progressive realization” to emphasize state parties’ obligation both in conduct and result.¹⁰⁶ This hybrid implementation allows for accountability for states with developed and developing economies, that is, the duality of measurement for both conduct and result fosters a more rigorous implementation of state obligations under this Covenant regardless of their resources.

Furthermore, 2008 Guidelines on Treaty-Specific Documentation require member states to “indicate the measures taken to protect cultural diversity [and] promote awareness of . . . cultural heritage.”¹⁰⁷ In addition to creating measures for meaningful accessibility, member states have an obligation to protect,

99. O’Keefe, *supra* note 94, at 905.

100. Comm. on Economic, Social and Cultural Rights, General Comment No. 3, ¶ 9, U.N. Doc E/1991/23 (Dec. 14, 2009) [hereinafter *General Comment No. 3*].

101. O’Keefe, *supra* note 94, at 906.

102. G.A. Res. 2200 (XXI) A, Article 15(1)(a), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

103. O’Keefe, *supra* note 94, at 906.

104. U.N. Secretary-General, Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, ¶ 67, U.N. Doc. E/C12/2008/224 (Mar. 2009) [hereinafter *Treaty-Specific Documents*].

105. *Treaty-Specific Documents*, *supra* note 104.

106. General comment No.3, *supra* note 100, ¶ 1.

107. *Treaty-Specific Documents*, *supra* note 103, ¶ 68; *See also* U.N. Secretary-General, Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, ¶ 73, U.N. Doc. HRI/Gen/2/Rev. 6 (June 3, 2009).

promote, conserve, and diffuse development of culture and science.¹⁰⁸ These reports are meant to be meaningful, thus positively impacting people's life and not just legislation on paper.¹⁰⁹

In discussing the substantive issues surrounding the implementation of ICESCR, the Committee noted in General Comment No. 9 that "the Covenant adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account."¹¹⁰ However, this flexibility is limited only to the particular legal and administrative system of a member state, while adherence to the principles of international human rights law must remain constant.¹¹¹ The Committee noted that:

the Covenant does not formally oblige States to incorporate its provisions in domestic law, [but] such an approach is desirable [because] ... incorporation avoids problems that might arise in the translation of treaty obligations into national law, and provides a basis for the direct invocation of the Covenant rights by individuals in national courts.¹¹²

As such, the Committee "strongly encourag[ed] the formal adoption or incorporation of the Covenant in national law."¹¹³ In comment No. 9, the Committee also advised domestic courts to:

take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.¹¹⁴

Moreover, in interpreting domestic law that conflicts with the principles in the Covenant, courts are advised to adhere to international law.¹¹⁵

108. Treaty-Specific Documents, *supra* note 103, ¶ 70.

109. O'Keefe, *supra* note 94, at 905–906.

110. Comm. on Economic, Social and Cultural Rights, General Comment No. 9, ¶ 1, U.N. Doc E/C.12/1998/24 (Dec. 3, 1998) [hereinafter *General Comment No. 9*].

111. *Id.* ¶¶ 2, 3.

112. *Id.* ¶ 8.

113. *Id.*

114. *Id.* ¶ 14.

115. *Id.* ¶ 15.

The Committee has also commented on a member state's specific obligations in the context of development and business activities.¹¹⁶ General comment No. 24 points out that at times states fail to ensure compliance with internationally recognized human rights, norms, and standards when they face economic pressures and rapid expansion of business activities.¹¹⁷ The Committee highlighted that the states' obligation to respect cultural rights "is violated when State parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights."¹¹⁸ State members also violate their obligations when corruption is allowed to flourish at the highest levels of government. Corruption "undermines a State's ability to mobilize resources for the delivery of services essential for the realization of economic, social and cultural rights. It results in discriminatory access to public services, in favor of individuals with the power to influence authorities, including offering bribes or resorting to political pressure."¹¹⁹ States' obligations are also violated when states fail to take the necessary steps, "to the maximum of their available resources"¹²⁰ to foster the full realization of the rights protected by this Covenant.

As mentioned in comment No. 9, judicial and non-judicial remedies are available under this Convention. In comment No. 24, the Committee reiterated that violations of the Convention:

will often be remedied by an individual claim against the State, whether on the basis of the Covenant itself or on the basis of domestic constitutional or legislative provisions that incorporate the guarantees of the Covenant. However, where the violation is directly attributable to a business entity, victims should be able to sue such an entity either directly on the basis of the Covenant in jurisdictions which consider that the Covenant imposes self-executing obligations on private actors, or on the basis of domestic legislation incorporating the Covenant in the national legal order.¹²¹

116. Comm. on Economic, Social and Cultural Rights, General Comment No. 24, U.N. Doc. E/C.12/GC/24 (Aug. 10, 2017) [hereinafter *General Comment No. 24*].

117. *Id.* ¶ 1.

118. *Id.* ¶ 12.

119. *Id.* ¶ 20; *See generally* Human Rights Council Res. 23/9, U.N. Doc. A/HRC/RES/23/9 (June 20, 2013); *see generally* G.A. Res. A/RES/69/199 (Feb. 5, 2015).

120. General comment No.24, *supra* note 116, ¶ 23.

121. *Id.* ¶ 51.

IV. Cultural rights and environment

Despite the well-recognized right to a cultural life, cultural heritage is constantly under threat both from natural elements and human impact, despite existing legal protections.¹²² Modernization and development has accelerated this process—especially in developing countries, as is the case in Albania—due to rapid expansion and often poorly planned urbanization.¹²³ The World Bank has directly linked poorly planned (or unregulated) development projects to the degradation of habitat, environmental pollution, and, or deterioration of a traditional way of life.¹²⁴ Due to ill preparation or overly zealous developers, cultural heritage may be damaged “before (through destruction of sites prior to project startup), during (by the construction itself), and after the project (due to physical changes and changes in settlement patterns).”¹²⁵ Unfortunately, a general trend has developed that prioritizes private interests over public values, causing more severe consequences when there are limited financial and professional resources.¹²⁶

The very nature of modernization and development, like large civil engineering projects (which un-harmoniously divide cultural and archeological landscapes), unplanned urban growth or heavy industrialization, and increased air pollution which constantly damages old structures, are all byproducts that put cultural heritage in further risk.¹²⁷ The Getty Conservation Institute points out that:

In the current climate of globalization, technological advancement, population mobility, and the spread of participatory democracies and market economies, it has become quite clear to the broad conservation community that these and other societal trends are profoundly and rapidly changing cultures and communities. The future of the

122. Centre for Global Heritage and Development, “Heritage & Environment,” <https://perma.cc/Z6H8-BKD6>.

123. The World Bank, Environmental Department, *Cultural Heritage in Environmental Assessment*, ENVIRONMENTAL ASSESSMENT SOURCEBOOK UPDATE NO. 8 (Sept. 1994) at 1, <https://perma.cc/T8BG-68TQ>.

124. *Id.*

125. *Id.*

126. Hans-Rudolf Meler, Michael Petzet & Thomas Will, *Cultural Heritage and Natural Disasters: Risk Preparedness and the Limits of Prevention*, HERITAGE AT RISK, 9-20 (Hans-Rudolf Meler, Michael Petzet & Thomas Will eds., TUDpress Special Ed. 2007).

127. Erica Avrami, Randall Mason & Marta de la Torre, VALUES AND HERITAGE CONSERVATION 3-4 (Getty Conservation Inst., 2000).

conservation field will stem not only from heritage objects and sites themselves but from the context in which society embeds them.¹²⁸

The idea that cultural heritage is an open concept that encapsulates human environment has long circulated in academic and policy platforms. The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage explicitly addresses these two related aspects in unity.¹²⁹ In Article 1 of the Convention, cultural heritage is defined as monuments, groups of buildings, and sites “which are of outstanding universal value from the historical, aesthetic, ethnological or anthological point of view.”¹³⁰ Given that humanity is dynamically interconnected with the environment,¹³¹ it is useful for both policy and practical purposes to consider cultural heritage protection law not as a separate concept but as an integral part of environmental law as a whole.¹³²

Legal regimes that protect cultural and natural heritage are symbiotic because they work similarly toward a “sustainable heritage, akin to the already accepted human right to clean health and sustainable environment.”¹³³ Being able to integrate the different legal protections that safeguard cultural and natural heritage will allow for more comprehensive protections of human rights. The systemic nature of these deeply interrelated fields can lead to a positive circular pattern where the protection of human rights, cultural, and environmental heritage, leads to a more comprehensive platform for sustainable development.

In discussing challenges that world heritage and cultural diversity face in an ever-changing social and environmental dimensions, the former Director-General of ICCROM Mounir Bouchenaki noted that:

we have become aware over recent decades, since the adoption of the 1972 Convention, that culture and nature cannot be separated in our approach to ‘heritage’ if we are to render a true account of the diversity of cultural manifestation and expressions, and in particular those in which a close link is expressed between human beings and their natural environment.¹³⁴

128. Erica Avrami, Randall Mason & Marta de la Torre, VALUES AND HERITAGE CONSERVATION 3–4 (Getty Conservation Inst., 2000).

129. Convention Concerning the Protection of the World Cultural and Natural Heritage (last visited Oct. 18, 2018), <https://perma.cc/2ZVS-DC2J>.

130. *Id.* at art. 1.

131. UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention, U.N. Doc. WHC.17/01, ¶ 90 (July 12, 2017).

132. Janet Blake, INTERNATIONAL CULTURAL HERITAGE LAW 117 (Aug. 11, 2015).

133. *Id.* at 122.

134. Mounir Bouchenaki, *World Heritage and Cultural Diversity: Challenges for University Education*, in WORLD HERITAGE FOR CULTURAL DIVERSITY 25 (Dieter

The interdependent dynamics between human rights, cultural and environmental heritage, and sustainable development are too important to ignore. While there are numerous bodies of law both internationally and domestically that protect these three areas, there are still ongoing battles to protect cultural sites from aggressive overdevelopment (e.g., Veliera project). This shows that the current legal framework is not fully developed to encompass these three core elements of sustainability.

V. Conclusion

According to current international law, cultural, and environmental heritage in all sovereign states is important for all humanity.¹³⁵ As such, it should be protected against the wishes of that state. This new configuration of the power of international law and state sovereignty:

entails that, today, States are bound to tolerate scrutiny and intervention, especially by competent international organizations, when they willfully engage in, or intentionally fail to prevent, the destruction of, or serious damage to, cultural heritage of significant value for humanity.¹³⁶

However, the threshold for what “value” is great enough to demand international attention or be on the level of common heritage for all humanity is a matter for debate. Yet, the growing lists of international organizations, forums, registries, and inventories dedicated to protection of cultural property illustrate an interest in preserving and protecting cultural heritage, and, at times over national sovereignty.¹³⁷

Whether we look at Albania’s cultural heritage from a global interest or from a national perspective, it is undeniable that the example discussed in this article is of great interest to humanity. The ruins of the oldest city in the Eastern Adriatic, with its unique historical background, adds to the nation’s unique characteristic and deserves to be protected and preserved both for the interest of the nation and humanity as a whole.

Offenhäuser, Walther Ch. Zimmerli & Marie-Theres Albert eds., German Commission for UNESCO, 2010).

135. *See generally* UNESCO 1972.

136. Francesco Francioni, *Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity*, 25 MICH. J. INT’L L. 1209, 1220 (2004).

137. *Id.*

Unfortunately, the present administration in Albania prioritizes new construction at the expense of cultural heritage and environmental rights.¹³⁸ Even though Albania is a signatory to all major international treaties pertaining to cultural heritage protection, legal obligations on paper are meaningless if they are not properly applied in courts. In responding to Albania's second and third periodic reports on the implementation of the ICESCR at meetings held on November 6, 2013, the Committee commented on the applicability of this Convention in domestic courts:

The Committee regrets the absence of information about the cases of direct applicability of the Covenant before the courts in the State party and the availability of remedies. The Committee is concerned that the State party's Constitution affords protection to the rights contained in the Covenant in two distinct chapters, while the implementation of one of them (the fifth chapter) cannot be claimed directly in courts.

The Committee requests that the State party collect and make available information on the justiciability of all the rights enshrined in the Covenant, including the cases of direct application of the Covenant before domestic courts as well as information on the available remedies for individuals claiming a violation of their economic, social and cultural rights, as contained in the Covenant. In this respect, the Committee draws attention to its general comment No. 9 (1998) on the domestic application of the Covenant. The State party should ensure that the division of the Covenant's provisions into different chapters of the Constitution does not impact their direct applicability and enforceability in domestic courts.¹³⁹

Further, the Committee expressed concern on the lack of judicial independence and proper training of the judiciary. The Committee recommended that, "the State party take necessary legal, policy and other measures to ensure the independence and training of the judiciary as a means of safeguarding the enjoyment of human rights, including economic, social and cultural rights."¹⁴⁰

138. Juxhin Mstafaraj, *Apeli i Mirush Kabashit: Shembja e Teatrit për interes të mafies, do ishte mjerim për shoqërinë tonë*, PANORAMA (Mar. 22, 2018), <https://perm.a.cc/24VZ-QRSC>.

139. Comm. on Economic, Social and Cultural Rights, *Concluding Observations on the Combined Second and Third Periodic Reports of Albania*, ¶ 7, U.N. Doc. E/C.12/A/LB/CO/2-3 (Dec. 18, 2013).

140. *Id.* at 9.

As has been expressed continually in international law and forums, the protection of cultural heritage is undivided from the protection of humanity.¹⁴¹ The destruction or alteration of cultural heritage sites and buildings affects the character, history, and identity of Albania's small but proud nation. Dissecting and eroding cultural heritage through overzealous construction, may cause even greater consequences for the future foundation of society than the current administration understands or cares to understand. Cultural and environmental heritage are assets that contribute to the multidimensional values of a nation. It is important to use an integrated legal framework based on human, cultural, and environmental rights to create more powerful legal and political arguments for sustainable development.

141. Serge Brammertz, Kevin C. Hughes, Alison Kipp & William B. Tomljanovich, *Attacks Against Cultural Heritage as a Weapon of War*, J. OF INT'L CRIMINAL JUSTICE, 1143, 1162 (2016).
