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# Preservation of Historical Buildings through the Lens of International Law

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**Abstract:** Historical buildings deserve preservation not only for their aesthetic features but also as guardians of cultural and spiritual values. This is now acknowledged by several international law norms. Nonetheless, the legal discourse about their preservation carries a set of problematic implications because it is hard to adopt regulations that combine protection, promotion and valorisation with economic investments and market strategies and with everyday urban life. This is particularly evident with regard to immovables located within historical cities or towns whose economy depends on marketing the cultural identity, authenticity and history of the place to outsiders. This paper highlights the approach adopted by the most relevant international legal instruments which focus on the protection of what belongs to the historical city's cultural heritage as being of crucial significance for individuals and communities in relation to their cultural identity. In this perspective, the safeguard of historical buildings can be linked to the right of access to and enjoyment of cultural heritage: a specific human right recognized under international law. The issue at stake is how to comply with principles and rules of international law while at the same time respond to the needs of modern life and economy. This paper identifies the rules and principles of international law that have gained legal relevance and can provide valid tools to states and local administrations to implement and fulfil protectionist policies for historical buildings.

**Keywords:** historical buildings; preservation; cultural heritage; architectural heritage; integrated heritage conservation; UNESCO recommendations; Council of Europe; Faro Convention; dispute resolution



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## 1. Introduction

In the course of the past half-century, urban heritage conservation has emerged as an important sector of public policy worldwide. As a consequence, a shift has taken place within the field of international cultural heritage law from an emphasis on the conservation of the monuments and the main historical buildings of cities and towns towards a broader protection of what belongs to the cities' cultural heritage as being of crucial significance for individuals and communities in relation to their cultural identity. The fundamental transformation of the conceptual attitudes—from a pure conservation-led approach towards a value-led approach—includes the recognition of the importance of the social, cultural and economic processes in the preservation of urban values. This is reflected in a number of international legal instruments approved at both universal and regional levels, especially in those promoted by UNESCO and the Council of Europe, among other international intergovernmental organizations [1].

As a matter of fact, preservation of historical buildings is related to the conservation of the place in which they are located. Indeed, this represents more than a simple aesthetic concern: it is vital to the functioning of civic life and serves to nurture cultural traditions and the sense of belonging to a community. It is worth noting that the term 'preservation' encompasses the idea of an inheritance received in a certain condition from the previous generation to be safeguarded by the current one and handed on to following generations in a condition at least as good as that in which it was received [2]. This idea of an inheritance has gathered further meaning over the years, in particular with the adoption of the concept

of sustainable development, which includes the central concept of inter-generational equity and the duty of the current generation to safeguard the cultural and natural wealth of this planet for the future [3]. At the Rio + 20 United Nations Conference on Sustainable Development, cities were identified as a major player in progressing the sustainable development agenda. They were expected to contribute to the Sustainable Development Goals, with one of the goals specifically designed for urban destinations [4]. In the *Resolution Transforming Our World: The 2030 Agenda for Sustainable Development*, the United Nations General Assembly declared that Goal 11 'Sustainable Cities and Communities' is to 'make cities inclusive, safe, resilient and sustainable' [5]. In this context, the assessment of the environmental sustainability of historical buildings may help to recognize potential ways of enhancement [6].

The pledge of intergovernmental organizations active in the field of cultural heritage protection has produced a multifaceted body of law composed of different sources (the so-called *corpus juris culturalis*) [2]: a large number of resolutions, recommendations, final declarations, multilateral treaties, charters and other types of acts have considered the issue of protection of historical buildings. Through the analysis of the relevant sources of international law covering the issue at stake, this paper aims to identify the elements from which the rules of international law governing preservation can be inferred. The most important instruments for such an analysis are those instruments that have obligatory value for the participating states, i.e., multilateral and regional treaties and conventions after their entry into force. In fact, the latter, unlike recommendations, declarations, codes of conducts and charters, are the only source of immediate obligations for states. They are part of the so-called hard law as opposed to the so-called soft law. Notably, the term 'soft law' is used to denote acts with a wide range of designations that are not legally binding as such, whereas 'hard law' generally indicates instruments that set up obligations that are binding on the parties involved and can be legally enforced. Only the latter are a source of fully fledged legal obligations that, as such, are to be complied with or may be infringed upon [7] (p. 122). More specifically, each contracting state of a multilateral convention undertakes to fulfil the duties described in the treaty provisions. Although the realization of the treaty's obligations is generally due over time, or progressively, states are usually reluctant to bind themselves too much in this sense. This explains why soft law instruments are predominant in the field of preservation: states prefer the non-treaty obligations as a simpler and more flexible foundation for their commitments [8] (p. 499).

Despite their non-binding nature, the idea that soft law acts can contribute to the reconstruction of general international law and its progressive development is gaining ground in doctrine and practice [9] (p. 50); [10]. Particularly, the final acts of intergovernmental conferences and the resolutions adopted by international organizations, under certain conditions and especially when approved by consensus, may provide evidence for determining the existence of a rule of customary law binding on all states, or contribute to its development as evidence of a general practice that is accepted as law (*opinio juris*) [10] (Conclusion 12 at p. 147); [11] (p. 12).

In the light of the above, this paper aims to offer a normative analysis of the existing international legal framework by focusing on some of the main instruments regarding preservation adopted by intergovernmental organizations that have gained legal relevance (it will also consider acts adopted by nongovernmental organizations but only to the extent to which the latter corroborate or reflect the position established in the first). The said instruments can provide valid tools to states and local administrations to implement and fulfil protectionist policies.

To begin with, this paper will provide a survey on the main recommendations adopted by the UNESCO General Conference as they offer an authoritative example of 'soft law' that contributed to establish rules on preservation before such rules were confirmed in treaty-law provisions (paragraph 2). Next, it will consider the situations in which preservation policies have to be balanced with everyday urban life and the flux of tourists (paragraph 3). Such an issue is related to the assessment of the human rights dimension of preservation,

an aspect connected to the human right of access to and enjoyment of cultural heritage and to the respect of cultural identity (paragraph 4). Then, it will examine the legal instruments adopted at the regional level in the European continent, which have contributed to establishing fundamental principles governing preservation (paragraph 5). It will evaluate the economic implications of the adoption of a protectionist policy with reference to a case study (paragraph 6). It will conclude that such legal instruments, although not always binding on states, have contributed to preservation by assessing the progressive recognition and acceptance of the all-inclusive nature of the historic environment of urban heritage areas, where tangible and intangible values embodied by the historic patrimony are no longer perceived as separate from one another [12].

## 2. The Relevance of UNESCO Recommendations

A number of recommendations adopted by UNESCO's General Conference state that historical cities are a capital of irreplaceable cultural, social, environmental and economic value while at the same time acknowledge that dangers resulting from certain forms of activities of present-day life are threatening their integrity. In general terms, UNESCO's recommendations recognize the important role of urban historic areas in modern societies. They also identify a number of specific threats to the conservation of urban areas and provide general principles, policies and guidelines to meet such challenges. For example, the Recommendation on the Safeguarding of the Beauty of Landscapes and Sites adopted in 1962 emphasizes, among other things, that 'special provisions should be made to ensure the safeguarding of certain urban landscapes and sites which are, in general, the most threatened, especially by building operations and land speculation' (Article II, para. 5). It also stresses that 'preventive measures should include, in particular, the supervision of works and activities likely to damage landscapes and sites'. The subsequent Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works of 1968 acknowledged that 'prehistoric, protohistoric and historic monuments and remains, as well as numerous recent structures having artistic, historic or scientific importance are increasingly threatened by public and private works resulting from industrial development and urbanization'. Therefore, 'Member States should enact or maintain on the national as well as on the local level the legislative measures necessary to ensure the preservation or salvage of cultural property endangered by public or private works in accordance with the norms and principles embodied in this recommendation' (Article III, para. 14). Noting that 'the absence in many cases of a legislation effective and flexible enough concerning the architectural heritage and its interconnection with town-planning, territorial, regional or local planning', the Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (1976) declares that '[h]istoric areas and their surroundings should be actively protected, against damage of all kinds, particularly that resulting from unsuitable use, unnecessary additions and misguided or insensitive changes such as will impair their authenticity, and from damage due to any form of pollution'. It also underlines that 'great attention should be paid to the harmony and aesthetic feeling produced by the linking or the contrasting of the various parts which make up the groups of buildings and which give to each group its particular character' (para. 4). The same act further considers that 'In each Member State [...] measures may be taken by the national, regional or local authorities with a view to safeguarding historic areas and their surroundings and adapting them to the requirements of modern life' (para. 7). Along this line, the Recommendation on the Historic Urban Landscape approved by the UNESCO's General Conference on 10 November 2011 speaks of a 'historic urban landscape approach'. In so doing, it moves beyond the concept of preservation of the physical habitat while focusing on the entire human environment with all of its tangible and intangible qualities, with the aim to increase the sustainability of planning and design interventions [13].

Recommendations are a less authoritative instrument than conventions. Recommendations invite, but do not oblige, the recipients to comply with what is provided therein. However, they often are the result of a process of ascertainment of the legal relevance of a

given principle or rule [7] (p. 122). As such, they may be used as guidelines for enacting sound legislation at the national and especially at the local level. Local governments, even when they are not bound to do so under their domestic law or when the state has not subscribed to a specific treaty on the issue, can act autonomously and independently to this effect. As in the field of human rights protection, ref. [14] local authorities hold the potential to address some of the most pressing and practical challenges regarding preservation, both because of their key role in urban planning and because of their closeness to the population. If, when dealing with urban and local governance issues involving historical buildings, local authorities follow what is stated in the UNESCO recommendations, they act lawfully as their conduct will comply with international law. In this way, local governments in their field of competences are rendered directly responsible to ensure that internationally established rules are respected locally, as in the sector of human rights protection [15]. Indeed, local administrations hold important potential to address some of the most pressing challenges of human rights law, ref. [16] in line with the human-rights-based approach recommended, inter alia, by the UN Human Rights Council [17], (paras. 17–26, para. 42). The connection between human rights and local government is particularly strong in the domain of social and economic policies [14] (p. 615); [18]. Furthermore, the newly recognized right of access to and enjoyment of cultural heritage of the local population can be safeguarded (see para. 4 below).

### **3. Competing Interests in Valuing and Protecting Buildings in Urban Historical Areas and the Problem of Overtourism**

In practice, however, it is not easy to adopt legislative measures that, in order to comply with international law standards and obligations, combine the preservation, promotion and valorisation of historical buildings with economic investments and market strategies, and also with everyday urban life and human rights issues. The UN New Urban Agenda, which ‘sets a new global standard for sustainable urban development, and will help us re-think how we plan, manage and live in cities’, has highlighted the role of local authorities in this respect [19] (para. 12). Indeed, governing historical places in accordance with national, regional and international law is not a simple task for local administrators. The problem arises in particular, but not only, with regard to those touristic hotspots whose economy depends on marketing their cultural identity, authenticity and history to outsiders. The question of to what extent and whether historical cities and towns should be kept ‘frozen in time’ or respond to modern needs and economic integration does point to some important tensions that underlie this area of law. There are situations of so-called overtourism (i.e., excessive growth of visitors leading to overcrowding and the consequential suffering of residents) [20]. Overtourism is a complex phenomenon ‘associated with the liveability of a place, the well-being of residents, visitor experience and the extent to which stakeholders have a direct or indirect involvement in tourism’ [21] (p. 413). Such phenomena reignited the debate about the benefits and negative impacts of tourism development in some destinations and the need for a balanced approach. Sustainable development and sustainable tourism practices have thus become a big challenge [22,23]; [24] (p. 11). City destinations and the tourism industry are thus expected to make efforts to become more sustainable, with cities expected to contribute to Sustainable Development Goals (Goal 11, see paragraph 1 above).

Sustainability in urban tourism destinations is an under-researched area of study, which, however, falls outside the scope of this paper, but the following situations which happened in Italy in some very famous tourist destinations may give an example of the difficulties met by public administrations in finding a balance among the different interests at stake, while at the same time trying to comply with national legislation and international obligations on the preservation of historical cities and the proper uses of the premises and sites therein coping with overtourism phenomena [25].

A case in which the debate over the legitimate use of the city’s spaces and buildings intensified was when the administration of Lucca approved a municipal law that prohibited

the opening of new ethnic eateries within the medieval walls in an effort to maintain public decorum. It was controversial whether the ban was a legitimate act of cultural heritage conservation or rather a discriminatory act of exclusionary policy [26]. Many new eateries have opened in the centre of Florence, too. Consequently, the local administration, in January 2016, adopted the so-called UNESCO Regulation. It is a municipal law which envisages a series of measures for the protection and dignity of the city's cultural heritage and territorial identity, including the local culinary tradition. The Historic Centre of Florence has been included in the UNESCO's World Heritage List since 1982. Under this municipal regulation, the premises located within the UNESCO area shall not cause damage to the image of the city. Accordingly, mini-markets selling alcohol 24 hours a day, Internet points, and takeaway and ethnic street food shops sized below 40 square meters with no toilet or access for people with disabilities have to shut down if they do not adjust their premises. New restaurants, groceries and even sandwich shops that open in the historic centre have to sell at least 70% of typical Tuscan products. Similar decisions were adopted in Venice and in other Italian historic towns. From a legislative point of view, initiatives of this kind are lawful under domestic law. A Legislative Decree (Decreto legislativo no. 222 of 25 November 2016) enables municipalities, in agreement with the regions and the Italian Ministry of Culture, to identify areas of particular archaeological, historical, artistic and landscaping interest where certain commercial activities can be prohibited if they are deemed not compatible with the safeguard and enhancement of historic centres [27].

In Venice, overtourism has caused an immense strain on the city's infrastructure and even put its UNESCO World Heritage status at risk. The site 'Venice and its Lagoon' was added to the World Heritage List in 1987 [28]. Since 2014, the World Heritage Committee had requested for Italy 'to prohibit the largest ships and tankers to enter the Lagoon' and to urgently adopt regulatory measures to this end, [29] (para. 7), even threatening to include Venice in the List of World Heritage in Danger, [30] (p. 327) because of the possible occurrence of accidents with disastrous consequences [31]. To comply with the World Heritage Convention's obligations, on 1 April 2021, the Italian government has enacted the Law-Decree (Decreto legge) No. 45/2021 [32] that prohibits navigation of large cruise ships through the Giudecca Canal. The ban has reignited the debate on the navigation of large vessels in the historic centre of Venice, and more generally in the Lagoon.

As a matter of fact, the insertion in the World Heritage List exerts a major influence over the national policies concerning the management of a site, but, on the other side, the UNESCO label attracts more tourism. In order to limit the number of visitors, the Venice administration has recently introduced new rules. Starting from the end of April 2024, people visiting the historic centre who only spend the day in the city are required to sign up online and pay a fee. Along the same line, to help manage some of the problems of the historic city, such as the occupation of public spaces and the fruition of services by residents, from June 2024, tour groups will be limited to 25 people and loudspeakers will also be banned. The Venice administration said these measures are useful also to gather more precise data about visitors to effectively address overtourism in the future. However, one may wonder whether limiting access to the historic centre is a sound way to find a balance between making money and protecting heritage. It may be that the new tax allows for a better maintenance of the old city and its buildings, but certainly it does not contribute to the enhancement of the site, for its part very vulnerable in nature [33] (p. 7).

#### **4. Preservation of Historical Buildings as a Means to Implement the Human Right of Access to and Enjoyment of Cultural Heritage**

Many historical buildings are part of cultural heritage. Thus, they are protected (to different extents) under the relevant provisions of international cultural heritage law. We cannot delve into this topic in this paper; suffice it to note that in international law a shift has taken place from the mere conservation of the various cultural heritage elements, including historic buildings, as such, i.e., on the basis of a historic or artistic objective value,



towards the protection of what is of crucial relevance for individuals and communities in relation to their own cultural identity [34]; [2] (p. 195).

In this regard, the Framework Convention on the Value of Cultural Heritage for Society concluded in Faro in 2005 (hereinafter the Faro Convention) is particularly emblematic. The Convention was adopted by the Committee of Ministers of the Council of Europe on 13 October 2005 and opened for signature to member states in Faro (Portugal) on 27 October of the same year. It entered into force on 1 June 2011. To date, 25 member states of the Council of Europe have ratified the Convention [35]. It is an innovative treaty because it speaks openly of a right to cultural heritage (Article 4), conceived as an inherent part of the right to participate in cultural life of the community (Article 1) and the right to education. In this context, 'cultural heritage includes all aspects of the environment resulting from the interaction between people and places through time' (Article 2). To this extent, the Convention is consistent with new trends which underline the growing importance of cultural values in the environment, territorial identity, the character of landscape and the environmental dimensions of cultural heritage. This specificity clearly distinguishes the Convention from earlier international law instruments of both the Council of Europe and UNESCO. While previous instruments have focused on the need to 'conserve' that heritage and how it should be protected, the Convention in question identifies a range of ways of actively 'using' the elements of cultural heritage and concentrates on why they should be accorded value. The Faro Convention also provides the basis for the concept of a 'cultural environment' where elements of the cultural heritage are not protected for being a value in themselves but rather for 'being instrumental in contributing to the lives of the peoples and communities' [36] (p. 3 at para. 5). However, as its title suggests, this international treaty is just a framework convention. It means that it sets out principles and identifies broad objectives and areas for action in which the states parties agree to progress but, unlike ordinary conventions, does not create obligations to specific actions. As expressly stated in the Explanatory Report accompanying the Convention's text 'No provision of this Convention is capable of conveying rights to individuals solely through national ratification without legislative action by individual States Party' [36] (p. 1). In other words, law implementation at the domestic level is vital for the enforcement of the rights and principles enshrined in the Faro Convention. Consequently, measures and regulations adopted by states parties or their local administrations to foster preservation of historical buildings that are in line with the objectives established by the Faro Convention are legitimate.

The issue of the legitimate uses of historical buildings can be broached from a human rights perspective. In fact, it is related to the right of access to and enjoyment of cultural heritage. As clarified in the Report on the Right of Access and Enjoyment of Cultural Heritage elaborated by the UN independent expert in the field of cultural rights, nowadays such a right is a recognized individual human right [37] (p. 7). Its legal basis can be found in the wording of Article 15, para. 1a) of the International Covenant on Economic, Social and Cultural Rights which codifies the right of all individuals (of 'everyone') to take part in cultural life [38], (Part I, paras. 1–4.). The wording of this provision demonstrates that the obligation to protect cultural heritage and the obligation to respect human rights are closely interconnected [39,40]. Indeed, as remarked in the Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (Preamble), the well-being of all peoples depends, inter alia, on the existence of a favourable and stimulating environment. The preservation of historical buildings is a means to contribute to creating such an environment in accordance with international law.

## **5. Preservation of Historical Buildings as Part of a Wider Obligation to Protect the Architectural Heritage**

### *5.1. Principles Governing Preservation Developed in Europe through Soft Law Instruments*

Preservation of historical buildings is part of the wider obligation to protect the architectural heritage. In this respect, considerable efforts have been made in Europe to

make the public more aware of the irreplaceable cultural, social and economic values represented by buildings located within historical cities that can be jeopardized by the development of roads, pipelines, urban centre renewals, expansion, overtourism and even armed conflicts.

Those concerns have been clearly expressed in a series of soft law acts adopted under the auspices of the Council of Europe which have contributed to the consolidation some basic principles in the field. The relevant ones were adopted in 1975, which was declared the European Architectural Heritage Year. It is worth recalling the adoption of the European Charter of the Architectural Heritage that proclaims some principles drawn up by the Council of Europe's Committee on Monuments and Sites with the aim to raise awareness on the problem of preserving and maintaining the historic heritage in European cities and towns. Although an in depth-analysis of these principles is beyond the scope of this paper, it is worth recalling the first one, according to which: 'the European architectural heritage consists not only of our most important monuments: it also includes the groups of lesser buildings in our old towns and characteristic villages in their natural or manmade settings'. The related comment explains that, for many years, only major monuments were protected and restored without reference to their surroundings. More recently, it was realized that, if the surroundings are impaired, even those monuments can lose much of their character. Entire groups of buildings in historic cities, even if they do not include any example of outstanding merit, may have an atmosphere that gives them the quality of works of art, welding different periods and styles into a harmonious whole. Furthermore, the European Charter acknowledges the fact that the structure of historic centres is conducive to a harmonious social balance and that by offering the right conditions for the development of a range of activities old towns can become a favourable environment for social integration and development. The Charter also emphasizes the concept of integrated heritage conservation, stressing that all areas of towns form part of the architectural heritage and that there is a responsibility to protect them against the threat posed by neglect, degrade, demolition, incongruous new constructions and excessive traffic [41] (p. 5–6). In the same year, the same concerns have been expressed in the Amsterdam Declaration, adopted at the Congress of European Architecture in October 1975 [42]. Although this is clearly a soft law instrument, it defines itself as 'an important landmark in the evolution of European thinking about the conservation of the architectural heritage' (Preamble). While previous documents of this kind (such as the 1931 Athens Charter [43] and the 1964 Venice Charter [44]) focused only on the preservation of historical monuments and their immediate surroundings, the Amsterdam Declaration expands the scope of preservation like the European Charter of the Architectural Heritage. First, the Amsterdam Declaration specifies that the architectural heritage includes 'not only individual buildings of exceptional value and their surroundings but also all areas of towns and villages of historic or cultural interest' (para 3, let. b). Then, it considers that 'conservation of these architectural complexes can only be conceived in a wide perspective, embracing all buildings of cultural value, from the greatest to the humblest—not forgetting those of our own day together with their surroundings. This overall protection will complement the piecemeal protection of individual and isolated monuments and sites'. It further emphasizes that 'integrated conservation involves the responsibility of local authorities and calls for citizens' participation'; it stresses the fact that local authorities should have a specific role in applying the principles of integrated conservation and should take into account the continuity of existing social and physical realities in urban and rural communities [42].

Along the same lines, but with a broader perspective, the Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas adopted a year later by the UNESCO General Conference recognizes, among other things, that 'Every historic area and its surroundings should be considered in their totality as a coherent whole whose balance and specific nature depend on the fusion of the parts of which it is composed and which 'include human activities as much as the buildings', the spatial organization and the surroundings. All valid elements, including human activities, however modest, thus have

a significance in relation to the whole which must not be disregarded' (General Principle no. 3, emphasis added).

The above-mentioned instruments, as well as several others in this field, only contain 'soft law' provisions, in the sense that they do not impose on states obligations that are of immediate effect. Rather, they are drafted in terms whereby states commit themselves to 'take steps' in the prescribed direction with a view of progressively achieving the proposed results. As already explained, 'soft law' rules, as such, are not legally binding on states and do not require immediate action. However, they serve as a useful guidance in the adoption of sound domestic regulations on the preservation of historical buildings. The above-mentioned declarations and recommendations may well play a relevant role in the drafting of subsequent treaties containing mandatory provisions binding states on the same topic. In addition, the principles about preservation expressed therein do experience application in practice. They inspire domestic regulations and administrative decisions. They even become part of a process of creation of new customary rules, as evidence of the *opinio juris* of those states voting in favour of the resolution or recommendation, thus speeding up the process for the formation of binding international rules of general application for all states.

### *5.2. Principles Governing Preservation Developed through Hard Law Instruments: The Importance of Integrated Heritage Conservation*

The idea of integrated heritage conservation has been declined in the domain of 'hard law', that is, binding international legislation, through the adoption of multilateral conventions, especially in Europe. The concept is clearly expressed in Article 5 of the European Convention on the Protection of the Archaeological Heritage (1969, revised in 1992). The 46 states parties to this international treaty [45] have recognized that the growth of major urban development projects has made it necessary to find ways of protecting historical towns through integrated conservation methods. To this end, states parties undertake to implement measures to protect the archaeological heritage satisfying certain minimum conditions laid down in the treaty provisions.

As a matter of fact, integrated conservation is an important factor in the improvement of the quality of life and economic development as acknowledged by the Convention for the Protection of the Architectural Heritage of Europe (Granada 1985), ratified by 42 states [46]. The Granada Convention provides for a system of prior authorisation for the various types of work liable to affect the architectural heritage, which include proposals for altering or demolishing protected monuments or monuments in respect of which protection procedures have been instituted and plans which affect the immediate environment or area within sight of such monuments (see Article 4, para. 2, let. a and let. b). It further specifies that 'in order to be most effective, the conservation of historic towns and other historic urban areas should be an integral part of coherent policies of economic and social development and of urban and regional planning at every level'. The Granada Convention properly considers the principles that were established in a previously adopted soft law instrument, namely the Charter for the Conservation of Historic Towns and Urban Areas, approved by the General Assembly of International Council on Monuments and Sites (ICOMOS) in Washington, DC, in October 1987 and transforms them into hard law. The transformation means that, by becoming a party to the Convention, each state undertakes to adapt its domestic laws and regulations to the requirements of integrated conservation (Article 6, let. a). Furthermore, it must be stressed that the principle of 'integrated conservation' implies the obligation of state authorities at all levels to include a cultural heritage impact assessment in town planning and development policies as well as in legislative reforms. It follows that the possibility of allowing new uses for historic buildings is generally acceptable as long as it helps to maintain the long-term preservation of the assets (Article 11 of the Convention) [47] (p. 9).

Integrated conservation is also linked to sustainable development goals (see para. 1 above). The need to better integrate and frame urban heritage conservation strategies



within the larger goals of overall sustainable development in order to support public and private actions aimed at preserving and enhancing the quality of the human environments is highlighted by the UNESCO 2011 Recommendation on the Historic Urban Landscape. This document also suggests using a 'landscape approach' for identifying, conserving and managing buildings located in historic areas within their broader urban contexts by considering the interrelationships of their physical forms, their spatial organization and connection, and their natural features and settings with their social, cultural and economic values. The UNESCO 2011 Recommendation has contributed towards promoting a holistic approach to managing historic urban areas [48].

## 6. Preservation of Historical Buildings vis-à-vis Economic Investments

Improvement of historical areas can be achieved through urban construction projects financed by enterprises that boost economic activities. In so doing, the cultural heritage impact assessment of such projects must be considered. As it happens, problems may arise when the city administration adopts cultural policies for the preservation of the local historic heritage that interfere with investment agreements aiming at developing infrastructures in the urban area. In such cases, preservation of historical buildings and their environment can give rise to crucial legal and policy issues. This occurred, for instance, in the case *Parkerings Compagniet AS v. Lithuania* [49], concerning a dispute between the municipality of Vilnius (Lithuania) and a Norwegian enterprise which won a bid to build parking areas under the old city centre. Vilnius Historic Centre is included in the UNESCO's World Heritage List (the List) and thus accorded the highest level of protection under the UNESCO 1972 Convention on the Protection of the World Cultural and Natural Heritage. This site was selected by the World Heritage Committee (Decision 36 COM 8B.61) because it was deemed to represent 'an outstanding example of the blending of the cultures of eastern and western Europe, and also constitutes one of the most easterly examples of Gothic, Renaissance, and Baroque architecture in Europe' [50]. As is well known, with the insertion of a site in the List, the state in the territory of which the site is located undertakes the obligation to ensure the 'protection, conservation, presentation and transmission to future generations' of the selected heritage 'to the utmost of its own resources and, where appropriate, with any international assistance and co-operation' (Article 4 of the 1972 UNESCO Convention). Accordingly, for each site included in the List, the state party must guarantee that its 'outstanding universal value', including the conditions of integrity and authenticity at the time of inscription, are sustained or enhanced over time, through the implementation of appropriate measures of protection and management of the site at the national level [30,51]. As further clarified in the Operational Guidelines for the Implementation of the World Heritage Convention elaborated and periodically revised by the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage: '[a]ll properties inscribed on the World Heritage List must have adequate long-term legislative, regulatory, institutional and/or traditional protection and management to ensure their safeguarding. This protection should include adequately delineated boundaries. Similarly States Parties should demonstrate adequate protection at the national, regional, municipal, and/or traditional level for the nominated property' [52] (p. 33, para. 97). Noncompliance with the obligations of the World Heritage Convention may result in the deletion of the selected site from the List [53], (paras. 6–9).

In the light of the above, Lithuanian law required a cultural heritage impact assessment on every proposed project affecting the Old Town. In the case at stake, the assessment revealed that the project submitted by the Norwegian investor could jeopardize the historic centre because it included excavation under the old cathedral, the Basilica of Saints Stanislaus and Ladislaus with a bell tower that dates back to the 13th century. Consequently, a number of objections were raised by stakeholders and residents who expressed concern about the cultural impact of the project on the city's Old Town. The growing of public opposition and a number of technical difficulties led the State Monument Protection Commission of the Republic of Lithuania to declare that 'Projects of such type and scale like

the project of the construction of planned underground garages in the Old Town of Vilnius should be developed concurrently taking into consideration the possible direct and indirect environmental impact of planned works and also the impact on cultural properties. In the opinion of the State Monumental Protection Commission, the planned garages [...] would change the character of the Old Town of global value; destroy large areas of unexplored cultural layer. Also, the intensity of traffic and air pollution in the Old Town is likely to increase. The Old Town might become less attractive in terms of tourism and to the residents and visitor, and this would be a great loss' [49], (para. 385). In a subsequent document, the same Commission stated that 'In case construction of underground garages in the old city of Vilnius embarked now, it can be stated that Lithuania failed to perform obligation undertaken upon signing in November 1999 of the Convention for the Protection of the Architectural Heritage of Europe and the European Convention on the Protection of the Archaeological Heritage. All legal acts concerning regulation of territorial planning, land relationship, heritage protection, environment protection and construction would be infringed [...]. Upon installation of garages, a big portion of archaeological heritage of the old city of Vilnius will be destroyed; use of multiple up-to-date materials and technologies will damage the authenticity of the old city of Vilnius' [49] (para. 388). Further objections were raised by the Urban Development Department of the Vilnius Municipality [49] (para. 386). Hence, in the light of the results of the impact assessment, the Municipality of Vilnius decided to terminate the contract with the Norwegian company on grounds of preservation of the historical buildings and site, even if this meant breaching obligations previously assumed under both the bilateral investment treaty and applicable general rules governing international investment law [54] (p. 128–129). Eventually, the Municipality signed another contract with a Dutch company for the completion of the parking by approving a project which did not include excavations under the cathedral. As a consequence, the Norwegian investors activated the ICSID Arbitral Tribunal. The ICSID Tribunal is the arbitral court that, under most investment treaties, has jurisdiction over disputes between private investors and host states. In the case at hand, the Tribunal had to decide whether or not it was legitimate for the Municipality to prefer another contractor in order to limit the perceived risk of damaging the old town's cultural heritage. The award issued by the Tribunal confirmed that the protection of the buildings within the Old Town of Vilnius—a site included in the UNESCO World Heritage List—is so important to justify the termination of a contract with a foreign investor. The Tribunal deemed that 'the city of Vilnius did have legitimate grounds to distinguish between the two projects [...] especially in terms of historical and archaeological preservation' [49] (para. 396). The Tribunal not only paid due attention to the cultural heritage matters, but it also stated that the compliance with the obligations flowing from international law conventions on the protection of cultural heritage justified the refusal to carry out the first project. In sum, the Tribunal found that Lithuania had not breached the bilateral investment treaty and dismissed all claims, holding that 'The historical and archaeological preservation and environmental protection could be and in this case were a justification for the refusal of the project' [49] (para. 392).

## 7. Conclusions

In the past decades, several resolutions, recommendations and treaties have been adopted in multilateral international fora. In general terms, they have stressed that historical buildings merit protection and a wider recognition of their value. Indeed, preservation of historical buildings is a complex process which must include implementation of international law rules and principles. Local administrations have an important role to play to implement them.

Historical buildings are elements of cultural heritage that provide the area in which they are located with a unique identity that creates powerful narratives of the history of the place which helps us to understand the relevance of the past to contemporary life. They are a key component of the cultural identity and a strategic resource for a sustainable and peaceful environment, as recognized by the Faro Convention on the value

of cultural heritage for society. However, maintaining the status of historical buildings in accordance with the principles and obligations arising from international law while at the same time protecting the cultural values contained therein is not a simple task for administrators [53] (p. 373). As in the case *Parkerings Compagniet AS v. Lithuania*, it may give rise to political and economic conflicts among the different actors involved. In this context, and since no apposite court exists, investment arbitral tribunals may serve for settling international disputes related to the management of historical buildings and sites, and also as an enforcement mechanism for their effective preservation.

As the analysis of the relevant international law provision has demonstrated, there is a need to develop and implement an integrated policy approach to the preservation of historical buildings into both local and national decision-making processes. International law rules and principles examined in this paper have highlighted that the integrated conservation approach they recommend may provide a sound basis for effective legislative policies aimed at recognizing the value of historical buildings and controlling their use. The Recommendations adopted by the UNESCO General Conference and the Council of Europe, the declarations of international diplomatic conferences and the text of multilateral treaties prior to their entry into force for the state concerned are examples of 'soft law' from which evidence of the existence of an established rule that governs preservation can be inferred. Indeed, the rules and principles on preservation, although not always legally binding or self-executing as such, do constitute a useful point of reference to support national and local authorities in the enactment of sound legislation and administrative measures that implement the requirement established under international law. Hence, decisions taken in compliance with those rules and principles can be deemed as legitimate and lawful.

As part of the architectural heritage, historic buildings play a key role in the construction of local, national and even 'human' identities which are under pressure today in ways they were not previously [3] (p. 9). In this perspective, their preservation also represents a means to effectively implement the human right of access to and enjoyment of cultural life, an individual right now expressly recognized at the international level. The impact of such recognition is in the creation of inescapable responsibilities upon states and administrators, the consequence of which is that efforts to conserve and improve historic buildings must be regarded not as an activity peripheral to modern life, but as an essential action to sustain and deploy assets which are vital to the quality of everyday life and to future progress [48]. Ultimately, such an approach is functional and accords with the principle of sustainable development, for it allows us to maintain and transmit the idea that each historical building is a non-renewable resource and must therefore be safeguarded for future generations as their inheritance.

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