

IN MEMORIAM

Francesco Francioni (1942-2024)

Francesco Francioni was a giant in the field of cultural heritage law. His influence also extended to human rights and environmental law. Much of the power of his contributions derives from his ability to seamlessly weave together these fields, and draw insights from each of them that could benefit the other, as well as international law more generally. In this collective contribution, many of his former supervisees from the European University Institute (his last academic appointment) reflect on Francioni's work and legacy as a scholar, a supervisor, and a humanist. Each of these vignettes is written by a different person, and focused on a different facet of Francioni's impact, which, as is befitting of a giant like him, lives on through us.

Alessandro Chechi
(University of Geneva, Switzerland,
and Catholic University of Lille, France) –
Cultural Heritage and International Adjudication
and Dispute Settlement

It is difficult to let go of people who have shared with us a piece of this exciting journey we call life. This is still the case for me following the passing of Professor Francesco Francioni. I met him at the University of Siena. Then, I had the privilege to be one of his supervisees at the European University Institute in Florence. After that we remained in contact. In our last conversation, when Professor Francioni let me know that his time was running out, he did not hesitate to, in his own way, teach me something about life.

But these lines are not about my personal and professional relationship with my *maestro*. They are about his contribution to the field of cultural heritage-related disputes – which was the topic of my PhD thesis. Professor Francioni provided me with constant input and illuminating guidance throughout the years of my doctoral studies. For instance, he encouraged me to permeate my thesis with the ideas underlying the term “cultural heritage”, so as to emphasize that

cultural heritage-related cases can be resolved not only based on legal rules, but also on principles reflecting the solidarity amongst human beings. He also encouraged me to read cases about protection of the environment and human rights in order to take a wide approach to my research.

Professor Francioni often shared with me his experience as a practitioner. It suffices to mention two examples. First, in the mid-2000s, he acted as a consultant for the Italian government in the disputes with a number of United States-based museums, including the Getty Museum and the Metropolitan Museum of Art. These disputes concerned the restitution of various illicitly exported antiquities. Professor Francioni recommended to avoid litigation so as to obtain the return of the disputed objects and the creation of bilateral programs of cultural cooperation. Second, he was asked by the government of Ukraine to provide an expert opinion in relation to the *Crimean Gold* case, the dispute involving the conflicting claims of the Republic of Ukraine and of four Crimean museums for the return of cultural objects temporarily imported in the Netherlands. There can be little doubt that the Court of Appeal of Amsterdam took Professor Francioni's legal opinion into account, according to which Ukraine was the state entitled to obtain the return of the collection.

In my opinion Professor Francioni's key contribution to the field of cultural heritage-related disputes – besides his work as practitioner and his prodigious scholarly output – is that he strived to identify principles that could best guide and facilitate the settlement of disputes in order to ensure the protection of the fundamental interests of individuals, communities, and of the international community.

Berenika Drazewska
(independent researcher, Singapore) –
Intentional Destruction of Cultural Heritage

Throughout his work, Professor Francesco Francioni advanced the view that the prohibition of the deliberate destruction of cultural heritage of significant importance for humanity has evolved into a norm of general international law, applicable during armed conflicts as well as in peace time. Although this proposal may *prima facie* appear idealistic and not easily compatible with the principle of state sovereignty in international law, Professor Francioni's measured view on the matter was backed by decades of thorough research and careful observation of the law and practice evolving on the international plain.

In practical terms, he argued in favour of: 1) an interpretation of existing law in a dynamic way, whereby state sovereignty could no longer credibly justify the most serious assaults on the common heritage of humankind, both in armed conflict and in peace time; and 2) a holistic and at the same time narrow understanding of the rules of treaty and customary IHL pertaining to the prohibition of the destruction of heritage during armed conflicts.

On the first point, Professor Francioni was obviously disappointed by the softening of the form and substance of the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, created in response to the 2001 deliberate destruction of the Buddhas of Bamiyan statues in Afghanistan. Nevertheless, he consistently viewed its adoption as evidence of acceptance among the international community of a norm prohibiting the intentional destruction of heritage of great value, and of its capacity to generate state and individual criminal responsibility, within as well as outside of armed conflict. More recently, this position has had an important confirmation from the International Criminal Court, which affirmed that the (war) crime of attacking cultural heritage does not necessarily have to be committed during and in connection with the actual conduct of hostilities.

Indeed, recognizing that much of the destruction of cultural heritage happening within or on the fringes of armed conflict does not come close to having any military justification, Professor Francioni insisted that the international community cannot accept war as a valid excuse for ignoring and/or openly violating international legal obligations in this field. Indeed, rather than distinct prohibitions, he viewed the “war-time” and the “peacetime” regimes protecting heritage as aspects of the same norm of customary international law defending a valid interest of the international community as a whole. Ultimately, like in so many other instances, Professor Francioni’s thought in this area of law advanced the view that international law should first and foremost serve and protect the long-standing interests and rights of human communities, over and above those which so often are based on short-term political gains.

Andrzej Jakubowski
(Institute of Law Studies of the Polish Academy of Sciences) –
Cultural Heritage and General International Law

Professor Francesco Francioni was a fair and supportive PhD supervisor, but above all an inspiring teacher, *maestro*, and fascinating interlocutor. During our numerous discussions on the law of state succession, we engaged in frequent debates regarding the historical and cultural context of international treaty practice. These were pivotal and formative lessons for me. But Professor Francioni was not only a great scholar and teacher. He was, indeed, an ardent advocate of international law and its potential and power for effecting change. He perceived international law as a system based on a multilateral legal order, the primary objective of which was to advance the values and interests of all humanity.

At the core of his research interests was an examination of the mechanisms through which general international law obligations are created and exercised. Indeed, a substantial portion of his work has been dedicated to the development of theories concerning the formation of universally binding customary law norms, with the aim of protecting human dignity and the collective interests of the international community as a whole.

His contribution is particularly noteworthy in the analysis of the customary basis for the realization of several fundamental rights, including the individual right of access to justice; the right to a clean environment; access to natural resources; and the right of access to culture and cultural heritage. In this context, Professor Francioni emphasized that a considerable number of obligations pertaining to the protection of cultural heritage are applicable to all states under customary international law. Through a systemic analysis, he demonstrated that a core of substantive and procedural obligations is emerging in this new but rapidly developing field of international law. In this regard, he emphasized the increasing global awareness that preservation of the great diversity of cultural heritage is part of the general interest of humanity.¹ It is difficult to envisage a more appropriate formulation of the constitutive elements of the global legal order and their capacity to shape the rights and obligations of a matrix of states, individuals, groups, and communities, in their diversity.

Professor Francioni's groundbreaking contribution is the courageous identification and definition of the interests of the international community in the protection of cultural heritage. His research and advocacy in international forums have provided a catalyst for a number of international initiatives that have resulted in propagation of the concept that the protection of cultural heritage is a matter of global peace, security, and sustainable development.

Lucas Lixinski
(Professor, Faculty of Law & Justice, UNSW Sydney) –
Safeguarding of the Intangible Cultural Heritage

Francesco Francioni's influence on intangible cultural heritage and the law came about in two main ways: as an international legal practitioner, and as a mentor. He did not do much writing directly on intangible cultural heritage per se,² but his general approach to international law, and the scholarship of people who benefited from his mentorship have deeply impacted the field.

As an international legal practitioner, Professor Francioni was highly influential as the chair of a key meeting held in Turin in 2001 to craft the definition and domains of intangible cultural heritage; and as a member of the Restricted Drafting Committee of experts UNESCO established to develop the preliminary draft for the 2003 Convention for the Safeguarding of the Intangible Cultural

¹ F. Francioni, *Au-delà des traités: l'émergence d'un nouveau droit coutumier pour la protection du patrimoine culturel*, "Revue générale de droit international public" 2007, Vol. 1, pp. 19-41.

² But see F. Francioni, *Article 2(1): Defining Intangible Cultural Heritage*, in: J. Blake, L. Lixinski (eds.), *The 2003 Intangible Heritage Convention: A Commentary*, Oxford University Press, Oxford 2020, pp. 48-57.

Heritage.³ During the Turin meeting, he skilfully brought together and into the international legal text a novel and nuanced understanding of what cultural heritage could be, and for whom. He interwove the needs for an instrument on intangible cultural heritage closely with general international law, and with ideas from intellectual property law. He also connected intangible cultural heritage with the idea of process, reinforcing its nature as living heritage. The meeting he led came up with a definition that the UNESCO Member States adopted virtually unchanged in the 2003 treaty. To the work of the Restricted Drafting Committee he brought his deep knowledge of international law and his extensive experience of working on the implementation of international cultural heritage and environmental treaties.

As a mentor too, Professor Francioni was deeply influential. He was instrumental in the nomination of Janet Blake to write the report for UNESCO that served as the basis for the treaty. Blake had been up to that point seen primarily as an expert on underwater cultural heritage, but Francioni created an opportunity for her career, and for the field. That report allowed Blake to think deeply and differently about the purpose of UNESCO treaties, and to propose path-breaking solutions for the safeguarding of living culture (the use of the term “safeguarding” being itself an innovation at that time).⁴ Professor Francioni thus did what he did best as a mentor, the mark of a true scholar: he made way for new voices, who could force us all to think better about what culture means, and how each of us relates to it. He paved the way for many others to carry on the work of advancing a humanized international law. I too hope to be worthy of that responsibility.

Marlène M. Losier

**(Principal, Expert in International Law at Losier González, PLLC) –
Cultural Heritage and the Law of the Sea**

Among those experts in cultural heritage law, Professor Francioni’s impact on its development is without equal. He was a founder of cultural heritage practice. He was a visionary who devoted a lifetime to his quest for compassion and justice in the law. He was generous, elegant, and unsurpassably delicate about that which most closely touches our human souls. He was remarkably perceptive and had a profound capacity to empathize. In a tumultuous world struggling for congruence and the essence of compassion and dignity from the mid-to-late 20th century and into the early 21st, Professor Francioni seemed to identify with the temporal arch connecting our humanity, entangled in the diverse ways we create beauty from our lives in an unrelenting, even if sometimes blunted, supplication for respect.

³ UNESCO, *International Round Table: “Intangible Cultural Heritage – Working Definitions”*, meeting held in Turin Piedmont (Italy) on 14-17 March 2001.

⁴ J. Blake, *Developing a New Standard-Setting Instrument for the Safeguarding of Intangible Cultural Heritage: Elements for Consideration*, UNESCO Publishing, Paris 2001.

His appreciation of this simmering plea was combined with his impassioned efforts to create forums to demand it and legal mechanisms to ensure its dignity. With his mastery of international law, expansive creativity, and loyalty to notions of morality and of ethics, he set and contributed to the formation of a legal mechanism to ensure a meaningful and lasting respect for the fundamental commonality amongst us to determine our cultures – in the way we live them; in the way we revere them; and in the way we uniquely dictate their thereafter. He was a leader in delineating, amidst a combusive geo-political world, principles and laws that allow us rights and recourse to defend our capacity for self-determination.

His remarkable academic repertoire, sagacious advocacy, cherished friendship, and profound lessons will remain unparalleled. The great impact he made on international law is immeasurable and will continue to disseminate in yet still unknown ways far beyond his lifetime. It will always remain one of my greatest privileges to have been a pupil of Professor Francesco Francioni.

Emanuela Orlando
(University of Sussex School of Law, United Kingdom) –
Culture and International Environmental Law

Professor Francesco Francioni had a significant and influential impact in the field of international environmental law as a scholar and through his work as legal advisor of the Italian government. Not only did he write extensively on the protection of the Antarctic environment,⁵ but he also had a crucial role as legal advisor in the negotiations and meetings organized under the Antarctic Treaty Systems, and particularly of the Antarctic Treaty Protocol on Environmental Protection.

Yet, his most distinctive contribution in my view is represented by how he developed, translated, and transferred his “progressive” view of international environmental law as an instrument which should be fundamentally aimed at and oriented toward the protection of the common public good. Professor Francioni advocated for more imaginative approaches to the implementation and enforcement of international environmental law,⁶ and to the widely debated question of states’ responsibility for environmental harm, particularly with respect to significant human rights and environmental harms perpetrated by multinational corporations (MNCs) within their jurisdiction or control. He proposed a progressive

⁵ See, e.g., F. Francioni, T. Scovazzi (eds.), *International Law for Antarctica*, 2nd ed., Brill, Leiden 1997; F. Francioni, *Establishment of an Antarctic Treaty Secretariat: Pending Legal Issues*, in: D. Vidas (ed.), *Implementing the Environmental Protection Regime for the Antarctic*, Springer, Dordrecht 2000.

⁶ F. Francioni, *Realism, Utopia, and the Future of International Environmental Law*, in: A. Cassese (ed.), *Realizing Utopia: The Future of International Law*, Oxford University Press, Oxford 2012, pp. 442-460.

reading of the fundamental principle of transboundary harm prevention⁷ and relentlessly advocated for a “functional” notion of state sovereignty, conceived as a “responsible exercise of state powers over natural resources [...] and activities capable of impacting on the global environment” in a way “functional to [...] conserving the quality of the environment that sustains our life”.⁸ But while advocating for legal imagination and innovation, he also retained a pragmatic approach to the progressive development of international law.

Professor Francioni’s outstanding contribution to international environmental law benefited from his extensive culture, his vast and solid knowledge of international law, and rigorous approach to the study of this discipline. Last but not least, one of his major contributions to the field has been the impact he had on his students and supervisees, presenting a truly inspiring role-model for each and any of us. It was indeed thanks to his lectures at the University of Siena many years ago that I became fascinated with international law as a discipline, and I am extremely grateful, and consider myself really fortunate, to have been able to start my academic journey under his supervision.

Robert Peters

(Head of Division, Senior Legal Officer,

Federal Minister of State for Culture and the Media, Germany) –

Combatting the Trafficking in Cultural Objects

The most interesting and inspiring aspect about Francesco Francioni’s approach to his academic work as well as his way of teaching and supervising PhD students, was his extraordinary ability to combine academia with practice. This unique ability of his has been highly relevant and appreciated, especially in the field of protecting cultural property against trafficking. In no other field of international, regional (*inter alia* European), or national law is the effectiveness of administrative, civil, and criminal provisions so directly noticeable – a stolen or trafficked object is either returned or not.

Bearing in mind this practical necessity and being devoted to combining legal, political, diplomatic as well as general policy aspects, Professor Francioni was part of several international fora shaping international law in the field of

⁷ F. Francioni, *Exporting Environmental Hazards through Multinational Enterprises: Can the State of Origin Be Held Responsible?* in: F. Francioni, T. Scovazzi (eds.), *International Responsibility for Environmental Harm*, Graham & Trotman, London 1991; also F. Francioni, *Alternative Perspectives on International Responsibility for Human Rights Violations by Multinational Corporations*, in: W. Benedek, K. de Feyter, F. Marrella (eds.), *Economic Globalization and Human Rights*, Cambridge University Press, Cambridge 2007.

⁸ F. Francioni, *The Private Sector and the Challenge of Implementation*, in: P.-M. Dupuy, J.E. Viñuales (eds.), *Harnessing Foreign Investment to Promote Environmental Protection*, Cambridge University Press, Cambridge 2011.

combatting the trafficking in cultural objects. He was a member of the Italian delegation at the UNIDROIT Conference on the return of cultural property in Rome in 1995, which led to the adoption of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Also in 1995 he was a member of the Italian delegation at the General Conference of the States Parties to the 1954 Hague Convention in Paris, as well as to many European Union and UNESCO meetings on the protection of cultural property, including the meeting of States Parties to the 1970 UNESCO Convention.

Francesco Francioni always saw the protection of cultural property and the fight against its trafficking within the overall frame of protecting the cultural heritage of humankind. Consequently, he argued that the concept of “heritage” has become emancipated from that of “property” so as to acquire a connotation associated with the “historical or artistic legacy” of cultural material, whose value and safeguarding are necessary in order to protect the public interest, irrespective of ownership rights. He also underlined the importance of the regime of state responsibility in international law to the area of international cultural heritage law, and by doing so identified not only a “negative obligation” for all states to abstain from conduct aimed at the destruction, damage, alteration, or profanation of cultural objects; but also a “positive obligation” to take steps to protect and conserve cultural heritage and to protect the communities and minority groups who created that cultural heritage.

I would like to express my utmost gratitude and heartfelt thanks to Professor Francioni for his supervision, advice, and guidance. It was also thanks to him that I was able to spend several months working in the Office of International Standards and Legal Affairs at UNESCO Headquarters in Paris in 2009 under the guidance of Abdulqawi A. Yusuf, who offered me a number of extraordinary experiences at UNESCO. Years later, working for the German government, I had the honor and privilege of participating in several EU and UNESCO meetings on the protection of cultural property myself. I thank him for his foresight and trust he placed in me.

Amy Strecker

**(Associate Professor, Sutherland School of Law, University College Dublin) –
Protection of World Heritage**

The protection of World Heritage was close to Professor Francioni’s heart. He graduated in Law from the University of Florence in 1966. In November of that year the city of Florence was flooded, and Professor Francioni spent what should have been his *difesa* (oral examination) helping with the clean-up. As he would recount years later, this was one of the sparks that kindled an interest in the notion of a common concern in protecting cultural heritage of importance to humanity, on which he became a leading expert.

Francesco Francioni served as member of the Italian national commission to UNESCO from 1993 to 1998 as legal counsel, and was Chair of the 21st session of the World Heritage Committee. During his time as Chair, he led the mission to Kakadu National Park, Australia, to assess the potential impacts of the Jabiluka uranium mine on the World Heritage Site. The recommendations he made to the Australian government went beyond the confines of his remit. Citing the customary rights of the traditional owners and the then draft UN Declaration on the Rights of Indigenous Peoples, the mission's report recommended cessation of the mining licenses, transfer of ownership of the land to the Mirarr people, and re-inscription of Kakadu as a "cultural landscape".⁹

While he believed in the idea of a general interest in the protection of heritage of importance to "humanity as a whole", this was always tempered through the prism of human rights and social justice. He was intersectional ahead of his time.

His scholarship on the World Heritage Convention was prolific and insightful in equal measure. In 2008, he published the first legal commentary on the Convention with his co-editor Federico Lenzerini, updated and revised in 2023, shortly before his passing.

While he maintained an optimism about the influence of the World Heritage Convention on other areas of international law, particularly international economic law, investment arbitration, and international criminal law, he also retained a critical eye that foresaw many of the problems with the monopoly of the state over local communities; the politicization of World Heritage; the withdrawal of the US and Israel from UNESCO; and the ever-expanding list.

It was this capacity to simultaneously critique and advocate that made Professor Francioni's contribution to the protection of World Heritage, and indeed other areas of international law, so unique. He did not limit himself to the narrow confines of the *lege lata*, but always considered emerging norms, and he engendered legal imagination which lives on through the writing and practice of his former students today.

It was emblematic of his open-mindedness that he accepted me, a humanities graduate, into a PhD programme in law when not many professors would have done the same. I could not have become a "landscape law scholar" without Professor Francioni, who himself cared deeply about landscape and place.

⁹ *Report on the Mission to Kakadu National Park (Australia)*, 26 October – 1 November 1998, WHC-98/22. EXTBUR/INF.3Rev, p. vi.

Valentina Vadi

**(Jean Monnet Fellow, Robert Schumann Center for Advanced Studies,
European University Institute;**

**Adjunct Professor, School of Political Sciences, University of Florence) –
Culture, Heritage, and International Economic Law¹⁰**

The philosopher Isaiah Berlin once divided thinkers into two categories: hedgehogs who view the world through a single defining idea; and foxes who are interested in many things. By nature, Professor Francioni was an eclectic scholar who contributed to different fields of international law.

His pioneering contribution to the development of international economic law was of seminal importance for international cultural heritage law. His contributions to international economic law include his monograph, *Imprese Multinazionali, Protezione Diplomatica e Responsabilità Internazionale*,¹¹ which was positively reviewed in the *American Journal of International Law*;¹² his article *Compensation for Nationalisation of Foreign Property* that appeared in the *International and Comparative Law Quarterly*;¹³ and the collection *Human Rights in International Investment Law and Arbitration*.¹⁴

In these and other works, he adopted a critical positivist stance to the field: while always attentive to the legal framework, he could also be critical of the same and develop alternatives. Socialist thought influenced his work in the field.¹⁵ He was committed to developing international law to protect common interests and public goods. While he regarded international law as law among states, he understood the increasing importance of private actors within the same.

His seminal contributions to international economic law also reverberated in international cultural heritage law. For instance, as the Chairman of the World Heritage Committee, he travelled to Kakadu National Park in Australia to ascertain the impact of a mine on the World Heritage Site. When writing my dissertation under his supervision, I discovered several investment disputes dealing with cultural heritage. With his encouragement and support, I was able to develop further studies in the field.¹⁶

¹⁰ An earlier version of this short piece was read at the Commemoration: Emeritus Professor Francesco Francioni, held at the European University Institute on 13 May 2024.

¹¹ F. Francioni, *Imprese Multinazionali, Protezione Diplomatica e Responsabilità Internazionale*, Giuffrè, Milano 1979.

¹² S.A. Riesenfeld, *Book Review*, “*American Journal of International Law*” 1981, Vol. 75, pp. 689-690.

¹³ F. Francioni, *Compensation for Nationalisation of Foreign Property: The Borderland Between Law and Equity*, “*International and Comparative Law Quarterly*” 1975, Vol. 24, pp. 255-283.

¹⁴ P.-M. Dupuy, F. Francioni, E.-U. Petersmann (eds.), *Human Rights in International Investment Law and Arbitration*, Oxford University Press, Oxford 2009.

¹⁵ At the University of Alexandria, Egypt, in 1983, 1987, and 1992 Professor Francioni held several lectures on “legal aspects of the new international economic order”.

¹⁶ V. Vadi, *Cultural Heritage in International Investment Law and Arbitration*, Cambridge University Press, Cambridge 2014.

Professor Francioni was a wonderful teacher and supervisor. As a teacher, he could convey complex legal concepts clearly. His supervision style was simultaneously demanding and liberal. While he expected rich, interdisciplinary, and multi-lingual bibliographical research, he did not impose his worldview on his supervisees. Generous with his time, he provided useful feedback. His legacy on economic and cultural rights in international law has not come to an end with the publication of his masterful works, but keeps on living in the works of his school.

Ana Filipa Vrdoljak
(UNESCO Chair in International Cultural Heritage Law,
University of Technology Sydney) – International Human Rights Law

Francesco Francioni's contributions to human rights law cannot be disentangled from his interventions in multiple branches of international law throughout his career, especially in the fields of culture and the environment.¹⁷ This is because he innately understood that it was all interconnected. His interventions were always challenging and pushing the field of human rights law forward to fulfil its promise.

This remembrance serves to acknowledge only three of the many, many steps forward made from the very start of his career to its close. He never hesitated to embrace the challenges and opportunities of his time.

Professor Francioni deeply understood and modelled our place as human beings within the world – both cultural and natural – as well as the importance of caring for and protecting culture and nature for the proper enjoyment and fulfilment of human rights. This was manifested in his work as chair of the World Heritage Committee in his visit to Kakadu and report on the impact of a proposed uranium mine expansion on the lives of the Mirarr People in the 1990s; in his work on the drafting of the UNESCO Declaration concerning Intentional Destruction of Cultural Heritage in response to the destruction of the Bamiyan Buddas by the Taliban, and the Convention for the Safeguarding of the Intangible Cultural Heritage in the 2000s; through his most recent work on climate and sustainability and the rights of peasants and rural communities. His scholarship and practice broke new ground in reinforcing the necessary links between human rights law, environmental law, and cultural heritage law.

Professor Francioni's life and career spanned a period of change – which his contributions embraced as challenges and opportunities to move the field of human rights law forward. In collaboration with other leading and emerging legal scholars, and those from other disciplines, his contributions to the impact

¹⁷ See F. Lenzerini, A.F. Vrdoljak (eds.), *International Law for Common Goods: Normative Perspectives in Human Rights, Culture and Nature*, Hart Publishing, Oxford 2014.

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of biotechnology, privatization of war, globalization, and climate emergencies and environmental degradation and the possible responses of human rights law led and shaped the field.

He completed his law studies in the year the two international human rights covenants were adopted. Over the course of his career, his contributions in the field of human rights law emphasized norm formulation and adoption – from the drafting of treaties and soft law instruments through to customary international law *and* the effective enforcement of these human rights obligations. From his earliest work with Benedetto Conforti on access to justice before national courts through to his expert testimony before such courts at the end of his life, Francesco Francioni strove to ensure that human rights law was not just written on paper but came alive for those who most needed its promises to be fulfilled.