

## THE FUTURE (?) OF EFFECTIVE PROTECTION

*Al di là di quanto è stato Spagna, e di quanto è stato colonia,  
ogni cosa nella vita della Sardegna diventa immemoriale e  
rimonta alla creazione della terra*

ELIO VITTORINI (1952)

When taking into specific account the case of Sardinia, the debate about the UNESCO protection, and therefore about the sites of “outstanding universal value”<sup>1</sup>, is both significantly meaningful and misleading. This is due to two main factors.

The first reason can be identified with the very definition of “site”, rather than for the exceptional nature (so-called) of its value. The “fanciful marginalization” of the archaeological heritage of Sardinia is, in fact, the main reason<sup>2</sup> of the insertion of Su Nuraxi at Barumini (the only Sardinian site) in the UNESCO World Heritage List (WHL). Its peculiarity is not only related to the dimensional and conservation characteristics, but also to the symbolic role, and represents an effort to protect, in general, the entire system of the prehistoric-nuragic heritage of Sardinia. In this sense, the protection rules provided for the UNESCO heritage (in large part too susceptible to be left unapplied and perhaps unenforceable, as will be specified below) do not seem the most appropriate approach to protect an asset that has its own uniqueness in the inseparable relationship with its territory. For these reasons, referring to the «adequately delineated boundaries» specified in the Convention, or to the «protective band of territory», which will be discussed in the following paragraphs<sup>3</sup>, leads to a forced enucleation of context that compromises the very nature of “heritage”, conceived as transmission of meaning for future generations. This is particularly valid for the case of Su Nuraxi and more in general for the Sardinian archeological heritage (Fig. 1).

Second, it is possible to look at two more sites particularly meaningful for our purpose: Porto Torres (the Archaeological Park, and more in general the entire urban structure), with its history of mixed fortunes and misfortunes, and Neapolis, a Roman site near Oristano, almost completely excluded from the routes of archaeological tourism. For different reasons both sites, might (could?)

<sup>1</sup> Articles 1-2 of the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, Paris 1972.

<sup>2</sup> «... making an imaginative and innovative use of the materials and techniques available to a prehistoric island community», World Heritage Committee, CR no. 833, Naples 1997.

<sup>3</sup> Paragraphs 97-98-101-106 of the *Operational Guidelines for the Implementation of the World Heritage Convention*, 2016.



Fig. 1 – Barumini, on the background the nuragic complex of Su Nuraxi.



Fig. 2 – Ancient Roman town of Neapolis, the southern limit of the archaeological area.

aspire to be recognised by the UNESCO “worthy”, which is, by the way, a quite troubling word. However, that is not what happened, and understanding the real reasons behind this choice would require a deep investigation into the secular land policy choices in Sardinia, often influenced by extraneous interests to the territory itself and its inhabitants. Certainly, it is not easy in these contexts to conceive a separation of the archaeological zone from the rest of the city using a “protective breaker”. This is particularly valid when the close railway infrastructure and the industrial site make comfortably their way *in limine* at the park. Anyway, it is our belief that this is not the real reason that had led to a long series of exclusions, condemning Porto Torres to an almost “colonial” fate. Nonetheless, looking at Neapolis, the absence of a specific rule for safeguarding has perhaps led to protect the site, allowing it to absorb seamless the wealth of the surrounding territory (Fig. 2), aided by a use that can be defined “weak”.

A brief comparative analysis conducted on these three sites aims at the evaluation of the (potential) effects of the UNESCO protection. More precisely, the analysis takes into account the evaluation from a legal point of view of the positive potentiality of a well-considered disciplinary application. Moreover, the investigation has also another goal, namely understanding (within a highly identitarian context) what kind of development may be designed

for a protection of “exceptional” sites connected, braided and inseparable from the entirety of the territory; consequently, trying to understand how it is possible (if possible) to avoid that, within a few decades, the territory of Sardinia will involute into an agro-pastoral destiny, fragmented by some islands (and “worthiness”) of ownership. The Italian Constitution, that protects the «landscape and the historical and artistic heritage of the Nation», shows a way, and that way should be understood and followed.

G.A.

If from a strictly legal point of view the action of protection seems to be structured in two distinct concepts<sup>4</sup>, from an archaeological point of view it seems important to analyze and evaluate the relationship among the examined areas and the territorial context, taking into account the limits imposed by UNESCO legislation. At the national level, within the debates on planning, the coexistence of different fields characterizes the technical environment in which numerous choices are developed, such as those related to the processes of protection and enhancement of the archaeological heritage. For the identification of historical and cultural assets, the legislation provides a process for the enumeration of the assets on the territory, followed by the identification of two distinct areas. First, an integral protection, linked to the precise localization of material evidence; then a second boundary, the so-called indirect constraint, that generally implies that a variable device should guarantee measures and other rules useful to avoid the endangering of the integrity related to the immovable cultural property in terms of perception, visual impact and links with the original context<sup>5</sup>.

UNESCO is probably the most eminent authority in the field of heritage protection and its list comprises sites able to express an «outstanding universal value»<sup>6</sup>. The inclusion in the list offers significant benefits that facilitate the acquisition of national and international funds for actions of protection and enhancement, in addition to a more general global attention. In order to ensure the most effective and active protection and conservation, the World Heritage Convention (WHC) asks to respect some fundamental conditions including, among others, the one contained in article 5, paragraph A, which expressly states that «a general policy [...] aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes». Nonetheless, these actions remain in the competence of individual countries, which keep a margin of autonomy in the respect of diversity and local characters.

<sup>4</sup> See *infra* the contribution of Chiara PERINI (§ 1).

<sup>5</sup> See articles 45-46 of Legislative Decree no. 42/2004 – *Code of Cultural and Landscape Heritage*.

<sup>6</sup> See articles of 1-2 of UNESCO – *Convention Concerning the Protection of the World Cultural and Natural Heritage* (Paris, 16/11/1972).

However, with regard to Su Nuraxi, the same critical characteristics of a legislation excessively focused on the archaeological object reappear. In order to ensure the conditions of necessary integrity (§87) the *Operational Guidelines for the Implementation of the World Heritage Convention* provide several operational solutions to be applied on the base of the evaluation criteria that have allowed the insertion of the site within the WHL. In the case of Barumini it is possible to refer to §89 of guidelines that, for sites nominated by the criteria (i) and (vi)<sup>7</sup>, requires that «the physical fabric of the property and/or its significant features should be in good condition, and the impact of deterioration processes controlled». The same paragraph also provides that the relationships and dynamic functions that link the site with the local context are maintained. However, in a contradictory way, in §100, is proposed the definition of a useful boundary to include all the characters that have made possible the inclusion of the site within the WHL. These boundaries are considered to be fundamental in the definition of an effective protection of the protected areas (§99) and their eventual absence must be appropriately justified (§106). Even within the UNESCO rules, it seems to recur all the characteristic aspects of the protection action focused mainly on the recognition of “worthy object” (RICCI 2006; AZZENA 2009)<sup>8</sup>, and on conservation aspects of the monumental complex, locked within well-defined boundaries. These weaknesses are particularly valid for Barumini site, where the recognition of the exceptional architectural complex seems to have deflected the attention from the overall values of the area, helping to break the continuity between site and context. In such situation the protection, if it is seen as a practice connected to the use of heritage<sup>9</sup>, should be able to provide the appropriate conditions for effective access to cultural heritage, their understanding and their enjoyment (GUERMANDI 2016, 251). Data on tourist inflows recorded at inclusion of Su Nuraxi in the WHL testify clearly how the UNESCO nomination was not useful. Compared with a significant increase in visitors numbers registered in the year of inclusion in the List, site accesses have fallen in a significant way in the following years. Indeed the trends show an average of 71,197 visitors between 1997 and 2006, lower than the numbers registered before the UNESCO nomination (75,783 visitors in 1996)<sup>10</sup>. Certainly, these

<sup>7</sup> «The Committee decided to inscribe this property on a basis of cultural criteria (i) (iii) and (iv), considering that the nuraghe of Sardinia, of which Su Nuraxi is the pre-eminent example, represent an exceptional response to political and social conditions, making an imaginative and innovative use of the material and techniques available to a prehistoric island community». World Heritage Committee Twenty – first session, Committee report no. 833, Naples 16 December 1997.

<sup>8</sup> It is a topic that leads to the idea of something “sacred” and something “expendable”.

<sup>9</sup> See article 3 of Legislative Decree no. 42/2004 – *Code of Cultural and Landscape Heritage*.

<sup>10</sup> The data for this section refer to the surveys of the Ministry of Cultural Heritage, Activities and Tourism on the number of visitors to Italian museums and archaeological sites ([http://www.statistica.beniculturali.it/Visitatori\\_e\\_introitit\\_musei\\_15.htm](http://www.statistica.beniculturali.it/Visitatori_e_introitit_musei_15.htm)).

are high numbers, especially if compared with those of the main state cultural centers of the island. However, the fluctuating trend seen for the area of Su Nuraxi is reflected in a similar way all over Sardinia, showing a widespread trend of the whole regional territory, independent of any form of recognition.

In relation to the weakness mentioned above, the events related to the Porto Torres Archaeological Park make this a particular case, due to the several difficulties emerged in relation to the protection of the site. It appears evident that the exceptionality of Porto Torres cannot be determined only by the scope of the archaeological remains, but also by the environmental and land condition in which the site is located. It is possible to agree that the establishment of an archaeological park might be able to combine the needs of protection and conservation of the structures with a large territorial breath. However, the archaeological legibility has been gradually compromised by the several factors that transformed both the city and the surrounding territory. The railway infrastructure has etched deep into the area of the park and created a barrier between the modern and the archeological areas of the city; similarly the not distant industrial area (about 2,000 ha), created to give a decisive impulse to the local economy, but now in almost total state of abandon. In this case, the relationship between the modern city and archaeology has been a theme often solved with the development of the cultural heritage revenue. However, the archaeological area, together with the structures created for the musealization, recorded for the year 2015 only 13,000 visitors. This is a very low number if compared with other museums and archaeological institutes of Sardinia, especially in relation to the archaeological richness of the area.

The Roman city of Neapolis is another example within the regional archaeological landscape, in which the application of protective boundaries shows a state of intangibility. By Ministerial order<sup>11</sup> the area was restricted with two boundaries, in order to protect the ancient remains. The first one was defined to protect the structures. The second was studied for the definition of a “buffer zone” – very similar to the «adequately delineated boundaries» provided by UNESCO – that includes the elements of the context useful to the protection and conservation of the archaeological complex, in addition to archaeological remains. In this case, if the definition of the first boundary may appear justified by the presence of the ancient structures, it is more complicated to understand the criteria associated with the definition of the “buffer zone”, whose limits should preserve the spatial and natural characters of the context and are instead coincident with the first border.

A further aspect may be considered ambiguous, because implicit in the key principles of UNESCO. The articles 1 and 2 of WHC define the inclusion in the

<sup>11</sup> See articles 1-3-21 of Legislative Decree no. 1089/1939 on the protection of items of artistic and historical interest. Procedure 10/04/1984.

WHL exclusively for cultural and natural heritage that expresses an outstanding universal value. In order to protect the territory as much as possible, this aspect seems to reduce considerably the chances of intervention, making the safeguard insufficient for the survival of the “minor heritage” (Tosco 2014, 109).

In light of the new reform for the reorganization of the Italian Ministry of Heritage, Culture and Tourism, the critical issues focused by this paper appear even more evident. The strong separation between a museum setting, which is delegated to the valorisation of the testimonies, and the Department of Archaeological Heritage, which is instead responsible for protection, appears to be reaching a worrying level precisely in Sardinia. The island does not host none of the super-museums conceived by the reform, at the expense of an important archaeological heritage spread throughout the territory (COSSU 2017).

In his book *Brandelli d'Italia*, Antonio Cederna firmly believed in the need for a respect of the context equal to the object therein contained (AZZENA 2007, 82). In practice, the UNESCO action seems to fail this principle. Nowadays, understanding what can be considered “exceptional” from what is not seems to be the biggest challenge for the future of the Convention. The §58 of the *Operational Guidelines* does not place formal limit to the number of sites that may be part of the WHL. Clearly, with more sites on the List, the risk that the exceptional and universal values of new sites could be lower than the previous ones is higher, until these values become void and make necessary a protection more opened to the territory.

R.B.

## 1. WORTHINESS AND DISCIPLINE FOR THE PROTECTION OF CULTURAL HERITAGE IN THE FRAMEWORK OF THE UNESCO CONVENTION

The sample of the archaeological sites in Sardinia featured in this contribution allows the comparison of the application of the model for the protection of cultural heritage applied by the Italian structure of legislation (art. 11 of UNESCO Convention, 1972). As known, the site of Su Nuraxi is part of the WHL list since 1997, while Porto Torres Park and the city of Neapolis are archaeological sites without any kind of labels.

In this analysis two different levels have to be distinguished: the worthiness of protection and the discipline of protection. While the first level refers to the judgment of value that the regulatory system associates to a certain asset as “cultural”, the second one is related to the preservation strategies.

a) The worth of guardianship is the criterion defining the scope of the UNESCO Convention. According to the different «point[s] of view» considered in paragraphs 1 and 2 of the Convention, it is established that the «world cultural and natural heritage» is just the one with an «outstanding universal value». The special worthiness of the “UNESCO protection” is

even reflected in the corresponding Italian legislation, that expressly affords a “symbolic value” to the “Italian UNESCO sites”, to be evaluated «due to their uniqueness, [as] record of excellence of the Italian cultural and natural heritage, landscape and to its international representation»<sup>12</sup>.

The Convention’s approach is highly selective to the object that aims to protect. This is proven by the first obligation imposed to the Members, «to this Convention to identify and delineate the different properties situated on its territory» (art. 3), recognizable as the types cited by the Convention (arts. 1 and 2). This requirement is also present in the *Operational Guidelines for the Implementation of the World Heritage Convention* (2016), where an essential element of UNESCO is the presence of «adequately delineated boundaries» (§97) «in order to protect the property’s heritage values from direct effect of human encroachments and impacts of resource use outside of the nominated area» (§98 and §101). It seems clear that the UNESCO Convention logic aims at devising the asset selected by the context by the provision of “buffer zones”, the lack of which, in fact, requires timely motivation within the application (§106).

Moreover, the particular worthiness of protection comes from the “outstanding universal value”, identified as an intrinsic quality of asset, regardless of its actual inclusion or exclusion from the List<sup>13</sup> (CASINI 2016).

Such factor seems to be confirmed by the *UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage* (2003) which, like article 6, paragraph 3 of the UNESCO Convention, claims the international responsibility of «States that intentionally destroy or intentionally fail to take the necessary measures to prohibit, prevent, stop and punish any intentional destruction of cultural heritage of great importance for humanity [...], registered or not in the list managed by UNESCO or by another international organization» (§VI Dec.). In addition, the Declaration commits also the parties to ensure accountability and to «provide effective penal sanctions for those persons who commit or order to be committed acts of intentional destruction of cultural heritage of great importance for humanity, including such cultural heritage which is of special interest for the community directly affected by such destruction» (§VII Dec.).

<sup>12</sup> Thus, see article 1 of Law no. 77, February 20, 2006 – *Misure speciali di tutela e fruizione dei siti italiani di interesse culturale, paesaggistico e ambientale, inseriti nella «lista del patrimonio mondiale», posti sotto la tutela dell’UNESCO* (*Special measures for the protection and enjoyment of the Italian sites of cultural, environment and landscape heritage, placed in the “World Heritage List”, under the protection of UNESCO*).

<sup>13</sup> However, an element of ambiguity comes from article 12 of Convention, based on which «The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists [WHL e WH Danger List] [...] shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists». In this case, the above purposes are characterized by some detail concerning the protection, the conservation and enhancement of cultural and natural heritage (see article 5 of Convention); the provision seems to reserve a judgment of “special worthiness” for assets excluded from the lists, but on absolutely marginal plans.

In this perspective, the special value of some assets of cultural and natural heritage revolves around the keyword “Heritage”<sup>14</sup> (in the English version of the Convention). Cultural properties appear worthy of protection and improvement in function of the alternation between generations. Furthermore, they can pass on unique shapes of human culture and nature in which the descendants will recognize their sense of belonging to the human race.

b) From the second level of the analysis, a mismatch emerges regarding the protection regulation and the judgment of worthiness just tracked. The UNESCO Convention creates generic and weak safeguard duties for the territorial jurisdiction of States, aimed at preserving the discretion of the national legislator about the specific aspects of the protection regulation. The same UNESCO Convention does not affirm the need of suited protection measures for «outstanding universal value» of the assets<sup>15</sup>. Furthermore, the faculty (recognized to the State) to have recourse to international cooperation to cope with the requirements for protection of property included in the WHL, seems not to play a role.

On the one hand, this support is subject to a specific «request for international assistance», as formulated by the State, in accordance with article 13 of the Convention. On the other hand, the Convention expressly refers to the duty of the State to «use the most of their resources», limiting requests for help just «when needed» (art. 4). Another issue is related to the activation of the independent international channel, limited to cases of «extraordinary circumstances» that would lead the World Heritage Committee to include the good in the WH Danger List (art. 11).

The Italian regulation reflects the setting of the Convention. After the official recognition of the «symbolic value of Italian UNESCO sites» (art. 1, Law no. 77/2006) it is expected only the establishment of a financing channel for actions and the introduction of a governance tool (the so-called “management plan”) (MARCHETTI, ORREI 2011)<sup>16</sup>. These plans do not appear innovative compared to similar ones conceived by the *Code of Cultural and Landscape Heritage*, to which the Law no. 77/2006 expressly refers, although they could be an element in assessing the proper fulfillment of the obligations imposed by the Convention (see CASSATELLA 2011, §.1; GARZIA 2014, §.4). Moreover «in our legal system UNESCO sites do not enjoy protection in its own right, but also due to their

<sup>14</sup> See the introduction of the UNESCO Convention, as well as the English version of the Convention, from the title to the text. However, the word Heritage does not appear in French language version, nor in the Italian translation.

<sup>15</sup> See articles 4-5 of the UNESCO Convention, and expressions as: «will do all it can to this end [to protect the heritage]» (art. 4); «each State Party to this Convention shall endeavor» to adopt the protection measures listed (art. 5).

<sup>16</sup> *Ex* article 3 of Law no. 77/2006. The UNESCO Declarations, in 2002 and 2004, were identified in the management plan as a requirement for submission of the application and for the site stay in the WHL.



typological diversity, they have different forms of protection defined for the cultural and landscape heritage, according to their specific characteristics»<sup>17</sup>.

Therefore, the Code does not provide any special safeguard measure due to the classification of “UNESCO site”. This aspect has created doubts in the administrative jurisprudence, raising often questions concerning the constitutionality of the rules of the Legislative Decree no. 42/2004 in charge of the so-called “Landscape assets”. Indeed this Legislative Decree does not contain a protection discipline strengthened and specific to the realities involved<sup>18</sup>. First, the UNESCO sites are not covered in the list of «Areas protected by law» (art. 142 of Legislative Decree no. 42/2004), but they may aspire to a similar protection, if traced to one of the categories considered by the law<sup>19</sup>. Moreover, they do not constitute an asset of «significant public interest», *ex* article 136 of Legislative Decree no. 42/2004, in accordance with the request of specific administrative measures to this end<sup>20</sup>. Finally, there is a third group of assets beneficiaries of protection as (simply) included in the activity of “landscape planning”, that can be adapted to the different appearance of the UNESCO sites. «The additional buildings and areas specifically identified under article 136»<sup>21</sup>, recognized between types listed in the latter provision (in particular the letters: “c” – as properties that make up a characteristic appearance having aesthetic and traditional value, including centers and historical cores; “d” – the panoramic beauty and those views or viewpoints, accessible to the public, from which the sight of those beauties can be enjoyed). The only explicit reference to the Code to the «sites inscribed on the WHL of UNESCO» is precisely with reference to the purposes of “Landscape plans”: the mentioned plans will have to pay particular attention to the preservation of such reality in the identification of “urban development guidelines” (UCCELLO BARRETTA 2016, 9)<sup>22</sup>.

The unconstitutional criticisms raised by the law in relation to the discipline and guardianship were discussed by the Legislative Decree no.

<sup>17</sup> Constitutional Court, judgment of February 11<sup>th</sup> 2016, no. 22, §. 6.1, in <http://www.cortecostituzionale.it>. With regard to the legal nature and effects of the management plan, see GARZIA 2014, §.4, where it is emphasized that this institution «can not provide for new constraints of conforming nature and is a coordination of the planning system tool – planning of measures aimed to the site protection/enhancement».

<sup>18</sup> See Administrative Court orders in Campania, recalled in opening Constitutional Court, judgment no. 22/2016.

<sup>19</sup> See, *in primis*, article 142, paragraph 1, letter m of Legislative Decree no. 42/2004, «the areas of archaeological interest».

<sup>20</sup> Definitely a judgment of the Public Administration which denied the recognition of “significant public interest” for an asset entered in the WHL would appear illogical and unreasonable.

<sup>21</sup> Thus, the text of article 134, paragraph 1, letter c of Legislative Decree no. 42/2004.

<sup>22</sup> See article 135, paragraph 4 of Legislative Decree no. 42/2004. On the further “safety valve” represented, for the purpose of protection, see article 143, paragraph 1, letter e, which allows the landscape plan to identify «any additional contexts, different from those indicated in article 134, to be subject to specific safeguard measures and intellectual property».

42/2004. Furthermore, they were based on the non-inclusion of the UNESCO sites among the landscape assets *ex lege*, or as result of a measure taken from the discretionary appreciation of the government and disregarding the principles established by articles 9 and 117, paragraph 1 of the Constitution (for the possible violation of articles 4 and 5 of the UNESCO Constitution as “international commitments”). Conversely, this legislation was saved by the Constitutional Court that considered inadmissible the issues raised by the judges «as aimed at obtaining an additive and manipulative judgment, not constitutionally obliged in a matter left to the discretion of the legislator»<sup>23</sup>.

The recognition of the discretion of the national legislature in defining the sites of UNESCO protection appears in line with the approach of the Convention. However, the fragmentary character and, ultimately, often any safeguard regime is not coherent with the judgment of worthiness formulated for such assets in terms of international and national sources<sup>24</sup>.

Furthermore, no preferential treatment for assets included in the WHL emerges from the provisions of the Penal Code for the protection of cultural heritage that are not guarded by such legal sector, incoherent, too mild and affected by some inconsistencies (PERINI 2016, 294)<sup>25</sup>, which always require a checking about the possibility of bringing the possible offense under the individual penal offenses.

Thus, in cases of aggravated damages, penal supervision will work only in respect to «things of historical or artistic interest, wherever they are located or properties included in the bound of city centers» (art. 635, paragraph 1, no. 1 of Penal Code), while the mild criminal damage of cultural heritage will be applied with respect to «a monument or something else own [...] of significant value» (art. 733 of Penal Code).

Curiously, the objective requirement for liability could regain unexpected vitality, just in case the damaged asset is a UNESCO site, as article 733 of Penal Code requires that «by the fact arises a damage for national archaeological, historic or artistic heritage». As it is known, the presence of such condition has been severely criticized as suffering from “gigantism”, such as to stop the operation of the case. In fact, just in exceptional cases a single damage behavior is able to cause the macroscopic damage required (MANTOVANI 1976, 77). However, if the behavior involves an asset included in WHL, this condition could be integrated, considering the explicitly recognized value by the national legislature, allowing the application of the expected penalty.

<sup>23</sup> Constitutional Court, judgment no. 22/2016, §.5.

<sup>24</sup> With reference, firstly, to the UNESCO Convention, secondly, to the Law no. 77/2006 and, in the reported parties, to Legislative Decree no. 42/2004.

<sup>25</sup> Referring to the prospects for reform, see, most recently the draft law C. 4220 presented on January 12<sup>th</sup> 2017 by the Minister of Cultural Heritage and the Minister of Justice, at the Chamber of Deputies.

In conclusion, the «crime of destruction or disfigurement of natural beauties» (art. 734 of Penal Code) would appear able to protect even the UNESCO sites. However, criminal supervision is expressly limited to «natural beauties of the places subject to the Authority's special protection», that is the «natural beauty that can be called just because subject to restrictions required by administrative rules» (MUCCIARELLI 1987, 435). This case ends up for becoming wedged in the same direction of Legislative Decree no. 42/2004, already examined.

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### a) *International Regulations*

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- UNESCO *Declaration Concerning the Intentional Destruction of Cultural Heritage* (2003).
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- *World Heritage Committee*, CR no. 833, Naples (1997).

### b) *National Regulations*

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- L. 20 febbraio 2006 n. 77 – *Misure speciali di tutela e fruizione dei siti italiani di interesse culturale, paesaggistico e ambientale, inseriti nella “lista del patrimonio mondiale”, posti sotto la tutela dell’UNESCO (Law no. 77/2006 – Special Measures for the Protection and Enjoyment of the Italian Sites of Cultural and Environment Sites and Landscape, Placed under the Protection of UNESCO, in the “World Heritage List”)*.

### c) *Jurisprudence*

- Constitutional Court, judgment of February 11<sup>th</sup> 2016, no. 22, in [www.cortecostituzionale.it/](http://www.cortecostituzionale.it/).

## ABSTRACT

This paper aims at a comparative reading of some archaeological remains in the island of Sardinia, starting from a reflection on the UNESCO discipline, which introduces a hierarchy of cultural heritage based on the level of worthiness of protection and provides enhanced protection for the goods that are on its list. The main goal of the study is to investigate in parallel the application of this “selective appreciation” on the actual context of the protection of the so-called “real cultural heritage” (article 9 of the Italian Constitution). The study proceeds by comparing some important sites on the island having similar contextualization, but different strategies for protection: the Archaeological Park of Porto Torres, Su Nuraxi in Barumini, registered since 1997 in the World Heritage List of UNESCO, and the archaeological area of Neapolis (Oristano). From comparisons and analysis carried out in selected areas it was possible to focus attention on some critical aspects of the UNESCO rules and on contradictions between the operational guidelines and the objectives that the organization provides for the protection of property. In the wake of new reforms for the reorganization of the Ministry of Heritage, Culture and Tourism, the critical issues discussed in this paper appear even more evident in Sardinia. The idea of a “protection of the exceptional” appears to reduce the opportunities of intervention, by isolating the evidence from its context and making the action of protection inadequate for the territory and for the same items contained therein.