Seven Years of Implementing UNESCO’s 2003 Intangible Heritage Convention—Honeymoon Period or the “Seven-Year Itch”?

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Abstract: This article aims to examine how far our experience of implementing UNESCO’s Intangible Heritage Convention, which was adopted in 2003 and entered into force in April 2006, over the last seven years has transformed our understanding of intangible cultural heritage and of its safeguarding. There have been, of course, both positive and negative impacts thus far as well as both unexpected and, thus far, unknown outcomes. The Convention broke new ground, introducing new terminology and new definitions of existing terms and requiring a reexamination of some approaches to international and national law making and policymaking. When considering the impact of the 2003 Convention internationally, we need to look, inter alia, at its impact on international policymaking (including cultural policy, the sustainable development agenda and indigenous rights), related developments in other areas of international law (including human rights and environmental law), and the way in which states treat shared heritage that crosses international frontiers. On the national level, we should consider how the Convention may have contributed to creating a new paradigm for identifying and safeguarding intangible cultural heritage (ICH), shifting the focus of significance, redefining the role of non-state actors vis-à-vis state authorities in this process and, even, moving the idea of national heritage away from a purely state-driven concept.

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Important questions to consider include whether the Convention has resulted in the development of new national policy strategies for (a) promoting the function of ICH in society and (b) integrating ICH into planning and development programs and how effectively Parties have managed to engage communities, groups, and individuals in the aforementioned activities.

INTRODUCTION

Since its adoption in 2003 and subsequent entry into force in April 2006, UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage has been subject to much critical analysis, much of which has been published in non-legal literature.¹ Probably as a result of the fact that this analysis has not been primarily written by international lawyers, a lot of the criticism leveled at the Convention and its implementation thus far has betrayed a degree of misunderstanding of the nature of international law and the requirements of international treaty making. For example, it has suffered from the two following misconceptions: First, there is a misreading of the nature and capacities of international law which, as a system of law created by and for states,² cannot be expected to answer all the needs and aspirations of subnational groupings, let alone the research community.³ Second, with reference to the Convention itself, there is a heavy focus placed in the literature on intangible cultural heritage (ICH) inscribed on the international lists of the Convention,⁴ which are intended primarily as an awareness-raising mechanism and as an encouragement to states (a) to become parties and (b) to be active in applying the Convention’s obligations.⁵ By focusing so heavily on the listing mechanism, many commentators have failed to address a central purpose of the Convention, namely the introduction of national safeguarding measures by States Parties (as set out in Part III in Articles 11–15): It is by the effective application of these measures that ICH will be better safeguarded and that cultural communities will become more closely involved in the process of its identification, safeguarding, and management.

If we wish to judge the success of UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage (2003), the number of ratifications secured by the tenth anniversary of its adoption—155 with ratification by Malaysia on 23 July 2013—might seem to be a good indicator.⁶ However, this is a rather overly quantitative approach to evaluating the Convention and it is intended here to present a more qualitative one that considers how far the Convention has succeeded thus far in answering its intentions on the international and, in particular, the national levels. If we wish to consider the effect of the 2003 Convention internationally, we need to look at its impact on international policymaking (including cultural policy, the sustainable development agenda, and indigenous rights), on related
developments in other areas of international law (including human rights and environmental law), and on the way in which states subsequently treat shared heritage that crosses international frontiers. In addition, we should ask certain questions, such as whether the tangible/intangible dichotomy in cultural heritage law making is a valid one; how the 2003 Convention interacts with the 1972 World Heritage Convention; how far the international listing of ICH has contributed to the increased visibility of this heritage and to our understanding of the character, scope, and possible domains of ICH; and whether the Representative List (RL) has responded effectively to the value of cultural diversity—is it truly representative of the totality of the world’s intangible cultural heritage?

On the national level, we should consider how the Convention has contributed to creating a new paradigm for identifying and safeguarding ICH through shifting the focus of significance, redefining the role of non-state actors vis-à-vis state authorities in this process and, even, moving the idea of national heritage away from a purely state-driven concept. Other important questions to consider, include if and how far the Convention’s implementation has succeeded in developing new national policy strategies for (a) promoting the function of ICH in society and (b) integrating ICH into planning and development programs; how far the Convention’s implementation has led to developing best practices and new legislative approaches and/or institutional structures at different levels (governmental, regional/local, community, etc.); and how effectively have parties managed to engage communities, groups, and individuals in the aforementioned activities. Ultimately, in assessing the usefulness thus far of the Convention, it is appropriate to ask this question: Are we better or worse off than we would have been without the Convention at all?

THE IMPACT OF THE 2003 CONVENTION ON NATIONAL LAW MAKING AND POLICYMAKING

The following is a review of the experience of States Parties to the 2003 Convention in implementing the Convention. Particular emphasis is placed here on the developments identified in internal state practice since it is the potential impact of the treaty on the development of policies, measures, and legislation to safeguard and manage the ICH on their territories that is the most important aspect. Since parties are implementing the Convention within a great variety of contexts, with differences related to political structures, social realities, geographical and environmental factors, and other issues, there is a wide variety of responses to the challenges of implementing the Convention on the national level. Following this, its impact on the international level is considered, particularly at the regional and subregional levels. The information presented here is based in large part on the reports presented by States Parties to the Convention during the 2012 and 2013
periodic reporting cycles. It is possible to identify the following priorities they have in implementing the Convention:

- **Identification and inventorying** of ICH is viewed as an essential first step for any further safeguarding by most parties. There are interesting exceptions to this: Norway (which has not yet provided its periodic report) took the decision not to conduct an inventory up until now and Flanders (Belgium), which has undertaken several valuable safeguarding activities is only at the early stages of this process.
- **Awareness-raising and promotion** of ICH are other leading priorities (often aligned with formal and informal educational programs), and are cited specifically as a priority by 12 parties.
- **Research and documentation** have traditionally been leading forms of identification and safeguarding and continue to be an important activity in several parties. In some cases, there is the tendency to place too heavy an emphasis on documentation and recording ICH rather than on enhancing its function in the community.
- **Education (formal and informal) and training** are also important activities for many parties, being viewed as a means of capacity-building, promotion, and transmission of ICH, with bearer communities directly involved to a larger or lesser degree.
- **The recognition of Living Human Treasures** (commonly the term used) is a further safeguarding approach of interest used in several parties, in some cases providing economic and other support.

**Legislative and Institutional Development**

On the basis of the periodic reports thus far submitted, 14 parties have introduced new dedicated laws or included the ICH and its safeguarding into existing legislation for the protection of cultural heritage and antiquities, whereas five parties are in the process of developing new legislation. The identification of what ICH is present on the country’s territory and establishing an inventorying system is a common purpose of these laws as an essential first step of safeguarding: A fundamental challenge for many countries in this area is to be able to define what ICH is for their purposes and to identify ICH. The need to involve cultural communities in this endeavor increases the complexity of this and requires new institutional approaches and the development of a relationship with the communities that has not previously been built. In some cases, the new legislation leads to the establishment of a new institution (as in Gabon) or the designation of an existing one for safeguarding ICH, as in the case of the 2011 Decree enacted in Burkina Faso.

The establishment or development of dedicated national institutions for ICH safeguarding is an important element in effective implementation of the Convention and it seems that this is taking place on the ground, although the actual capacities (human and financial) of these may vary greatly. Beyond responsibilities for the different actions and measures set out in the Convention, one important role assigned to these new bodies, as is the case in Burkina Faso, Turkey, and Hungary,
is the coordination of the activities of various stakeholders (non-governmental organizations [NGOs], civil society organizations [CSOs], communities, university researchers, national and local governments, etc.). Another notable aspect of the developing institutional framework is that some parties (for example, Hungary, Turkey, Vietnam, and Senegal) enjoy a high degree of decentralization in their institutional approach to ICH safeguarding.

Mostly, this is devolved to the regional level. Belarus, for example, operates through cultural resource centers in the six administrative regions of the country which, in turn, coordinate the work of more than 70 local houses and centers of folklore; Vietnam implements its ICH safeguarding policy through 63 provincial departments of culture, sports, and tourism (DO CST), each with a unit or division in charge of ICH. In Mali, the central directorate (Direction Nationale du Patrimoine Culturel [DNPC]) operates through regional offshoots to reach the local level and these, in turn, collaborate with the local communities and traditional leaders whose authority is recognized by both the state and the community. A notably bottom-up approach is that of Flanders, which aims at building the capacity of NGOs and other civil society actors for ICH safeguarding and regards local communities, local authorities, and NGOs as the key actors in this. This approach is built around the new notion of the “heritage community,” as used in the Faro Convention of the Council of Europe (2007).14

It should be noted that local authorities and municipalities play a very important role in several countries in fostering and safeguarding ICH, especially by providing the physical spaces and financial means needed for the continued performance and enactment of theatrical and musical performances, processions, festivals, and so forth. In some cases, as in Korea, the local authorities also support the creation, storage and upkeep of costumes, musical instruments, and other tangible elements associated with an ICH element while, in others, they provide essential workshop space for craftsmen and women and outlets for the sale of their products.15 Through their support for museums, local libraries, and cultural centers, local authorities also provide significant support to local communities and cultural associations for the continued practice of their ICH.16

National Policymaking

Setting and coordinating cultural policies, for example through a national safeguarding plan, is a common objective: Several parties have specified in their periodic reports that their legislation has been brought in or revised in order to bring the country’s cultural heritage policy and law in line with the provisions of the Convention.17 In some cases, the requirements of ICH safeguarding appear to have resulted in an overall reorientation of policymaking.

Almost 75% of parties (29 out of 41) reporting in the 2012 and 2013 periodic reporting cycles have put in place some kind of new ICH safeguarding policy, 24 of which can be regarded as demonstrating the integration of ICH safeguarding into
other policy areas. The policy objectives stated are quite diverse, and include the following: In Armenia, the policy is oriented toward the needs of national minorities (Yezidi, Jewish, Kurdish, Greek, etc.), while Cyprus and Hungary include the ICH of the Cypriot/Hungarian diasporas; Mexico, Peru, and Guatemala place a strong emphasis on intercultural dialogue, ethnic and cultural diversity, and the heritage of indigenous peoples; ICH in Burkina Faso is seen as playing a central role in social cohesion; and in Kyrgyzstan, Cambodia, and Côte d’Ivoire, the power of ICH to prevent conflict or in postconflict resolution is seen as an important aspect.

A significant aspect of the policymaking associated with ICH safeguarding is the integration of ICH into other areas of government policy, predominantly in development-oriented areas. ICH is clearly perceived as a driver of development as in Burkina Faso where culture (much of which is intangible in nature) is viewed as a main pillar of development and Zimbabwe, which sees it as a basis for building the country’s future. In its 2010–2020 National Strategy for Cultural Development, Bulgaria seeks an integrated approach toward creative cultural and sustainable development (including a better standard of living), and Morocco has instituted integrated policies that marry local development with ICH safeguarding (e.g., government support for cultural tourism small and medium enterprises [SMEs]). In Nigeria, cultural industries have been created by the federal government and handed over to local governments to foster an enabling environment for these ICH elements to be learned and practiced.

Rural development is a specific policy area into which ICH safeguarding has been integrated, with the Hungarian National Rural Network providing funding for communities that identify ICH for inventorying or whose ICH is already listed and the Belarus National Programme for the Development of Small Towns and Villages provides investment for developing the economy and social and cultural environment of provinces that are rich in ICH and preserving the traditional rural landscape. In Lithuania, there are various programs for revitalizing traditional crafts and encouraging rural communities to demonstrate and practice their ICH and a database of traditional agricultural products is also being created.

This reflects that fact that, in many countries, the potential contribution of ICH to local economies, especially through handicrafts and tourism, is recognized in policymaking: ICH festivals in Armenia are held within tourism support services programs and state policy also encourages quality vocational education for crafts, skills, and so forth. The National Institute of Cultural Studies in Pakistan, in collaboration with private partners, has established an innovative scheme that offers professional and vocational diplomas (e.g., hotel management, interior design, fashion and textile design) with a special focus on ICH, as well as a series of innovative workshops for artisans (e.g., textiles, woodwork, metalwork) to train them in market trends, product design, packaging, and market access. The Ministry of Culture in Croatia actively cooperates with other ministries to include ICH in local- and state-level strategic programs and plans that are aimed at supporting
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The potential of ICH to contribute to community development has also been recognized in national policymaking, and in Cote d’Ivoire, ICH is seen as an important social resource (traditional medicine, metallurgy, etc.). The current five-year strategic plan (2011–2015) in Seychelles includes cultural initiatives to encourage social participation. The Rawafed project in Syria is notable as a community development project that aims to harness ICH in the socioeconomic development of the country. As in the aforementioned case of Croatia, several parties are taking a broad, multisectoral approach that responds well to the procedural requirements of sustainable development. The most notable example of this is in Brazil where ICH policies are well-integrated into other policy areas with, for example, interministerial initiatives on the environment, tourism, and health. The Ministry of Culture in China oversees an interministerial Joint Conference for Safeguarding ICH, which is composed of 14 departments or ministries covering a wide range of cultural, economic, scientific, educational, planning, information, religious, and other domains. In several cases, ministries of culture (or equivalent bodies) are cooperating with the Ministry of Education over the provision of ICH-related courses in schools and with ministries of tourism, industry, and trade over the production, marketing, and promotion of handicrafts.

DEVELOPMENTS ON THE REGIONAL AND SUBREGIONAL LEVELS

The recognition given in the 2003 Convention of the transfrontier character of much ICH represents a significant departure from the approach taken previously in cultural heritage law, an unusual example of international law accepting the reality that cultures cross and straddle international borders. In many ways, this is in keeping with the general approach taken throughout the Convention of recognizing that the interests of cultural communities and their heritage may challenge purely statist concerns: If the cultural community (or those communities) live on either side of an international border, this fact must be recognized and respected by the states in question when safeguarding their ICH. The possibility of making multinational nominations to the RL has been positively received by many parties with inscriptions ranging from Falconry (with 13 parties from different regions) and Nowrouz (with 10 parties from Asia) to the cultural practices and expressions linked to the Balafon of the Senufo communities of Mali and Burkina Faso. It is also worth noting that in some cases, parties to these inscriptions do not have any other inscribed elements: It suggests that this process has provided for them an important opportunity to have their heritage recognized and to develop capacity and experience in this area through jointly developing a nomination file with other, more experienced parties.

Multinational inscriptions have led to several cases of valuable subregional and international cooperation for their safeguarding which has, in turn, resulted in
deeper cooperation for regional ICH in general. The main elements found in these bilateral and multilateral cooperative frameworks are the exchange of information, expertise, and experience on ICH safeguarding; sharing documentation on the element; collaboration over developing inventoring methodologies; joint fieldwork for documentation; hosting joint seminars and workshops; and cohosting festivals. A good example of this is the close subregional cooperation enjoyed by Latvia, Estonia, and Lithuania over the Song and Dance festival and its related ICH. Equally importantly, the governments of Peru and Ecuador now cooperate over the identification of oral heritage and traditions of the Zápara people and improving their understanding and the safeguarding of this fragile ICH, its bearers and of the Amazon itself, a critically endangered environment where this cultural diversity is an essential part of its continued sustainability. Two further interesting initiatives have been (i) the creation of a network of professionals, communities, and centers of expertise for the Mvett, a common ICH of the Fang community located in four states of the Central African subregion (Gabon, Cameroon, Congo, and Equatorial Guinea); and (ii) establishing an International Institute for the Study of Nomadic Civilizations (Kazakhstan, Kyrgyzstan, Turkey, and Mongolia). Examples can also be found of cooperation between parties over shared heritage not inscribed on either international list, as in the case of the fusion of African and Brazilian heritage.

It is unfortunate that in certain subregions, the inscription of elements to the RL in the name of one state has been exploited by parties to play out their geopolitical rivalries. This has been the case in Southeast Asia (between China, Japan, and Korea) and also between Azerbaijan and Iran. Such actions, of course, are not the failure of the Convention, which explicitly gives the possibility for joint nominations (which can be read as an encouragement for parties to use this new facility offered to them) but rather, the failure of some parties to embrace the spirit of the Convention. Moreover, it points to a deeper problem with the listing system. In reality, it was necessary to establish such a system in order for the treaty to be sufficiently attractive to Member States of UNESCO to adopt it in 2003; however, it does also carry with it certain problems that were identified at the time of drafting. In many ways, this problem now encountered relates to a misreading of the Convention (and the drafters’ intentions) and an unfortunate but understandable confusion with the World Heritage List that most parties are much more familiar with. The World Heritage List is, in some sense, a hit-parade of outstanding examples of cultural and natural heritage. The RL of ICH, in contrast, is intended to include representative examples of ICH and, thus, to showcase the diversity of ICH present around the world. In this sense, any element listed may be typical of an ICH form that exists in a number of countries (and even in a number of forms within one country): The example of the bagpipes is an informative one, being on the National ICH List of Serbia and on the Internet-based Wiki Inventory for ICH in Scotland (not a party) and existing in various forms in countries through which Celtic tribes moved (e.g., Iran, Turkey, and Spain).
CONCLUSION AND QUESTIONS FOR FUTURE CONSIDERATION

A general conclusion that can be drawn from the preceding argument is that implementation of the Convention is in its early stages and that there are both substantial achievements to be lauded as well as serious challenges yet to be addressed. No doubt, new challenges will emerge in the future that require the attention and consideration of the parties and other actors in order to find appropriate solutions.

Given the innovative nature of this Convention, which is the first international treaty to address directly the non-physical aspects of cultural heritage and as a consequence, the human context of that heritage, it introduces new approaches that may throw up unexpected outcomes and require creative responses. Importantly, it places under question the traditional top-down approach to the identification of national heritage\(^\text{26}\) and the attribution of significance to it by putting communities, groups, and even individual exponents at the center of the process of identification, safeguarding, and management. This creates a fundamental shift in the preexisting relationships between state authorities and local communities, which both challenges the authority of the former and promises to respect more effectively the cultural rights of the latter.

One of the informative aspects of the implementation of the Convention has been simply to demonstrate the variety of different interpretations of ICH around the world. Despite gaining some experience from the proclamation of Masterpieces of Oral and Intangible Heritage by UNESCO (between 1998 and 2003), the actual content and scope of ICH was poorly understood. The work of inventorying undertaken thus far by parties shows clear local specificities both in the domains employed and the criteria applied. In Egypt, for example, ICH domains include protective devices (under oral expressions) and practices for preventing evil deeds (under social practices) while, in Peru, they cover also indigenous languages and oral traditions, traditional political institutions, ethno-medicine, ethno-botany, and gastronomy. Similarly, the Mexican criteria include a set of three general criteria of community participation. The criteria of Mongolia include specific criteria for identifying the bearers of ICH as well as the role of the environment in maintaining the ICH.

Community participation and involvement in identification and inventorying ICH is, of course, a key aspect of the 2003 Convention\(^\text{27}\) that sets it apart from other cultural heritage treaties. Although most parties have made efforts to ensure community involvement in inventorying and safeguarding in general, the degree of actual participation may differ widely: This ranges from Flanders (Belgium), where two NGOs and “heritage cells” undertake much of this work, to other parties, where the community involvement is much more superficial, involving a single consultation by the authorities with selected community representatives and even, in some cases, establishment of state-sponsored NGOs specifically for the purposes of ICH identification and management. The question of NGO
involvement in the operation of the Convention, both at local and international levels, is a complex one and is an area requiring much development: NGOs clearly have a key role to play and can provide a depth of knowledge and expertise not available elsewhere. However, in many countries, the NGO community in this sector is not well developed and this is a question for future consideration; equally, the treaty lacks any international NGO(s) to play an equivalent role to that of the International Union for Conservation of Nature (IUCN) and International Council on Monuments and Sites (ICOMOS) for the 1972 World Heritage Convention.28

Other issues that require further consideration and development include the following: the relative roles of important stakeholders, including central and regional government agencies, practitioner associations, academic institutions, national artistic academies, local (non-bearer) communities, individuals, and so forth; the role local government authorities can play in facilitating ICH safeguarding, such as providing suitable spaces, financing, and/or the associated tangible elements; the role the private sector may play in ICH safeguarding and the overlap with UNESCO’s 2005 Convention;29 defining more clearly policies to harness the potential of ICH to contribute to sustainable development and how to exploit ICH for tourism and local economic development without distortion of the element, disruption of the physical environment, or the abusive exploitation of its cultural community; and how to address the dependency of many elements on the natural environment and their vulnerability to climate change, deforestation, and the resulting rural-urban migration; the interaction between established religions and ICH. With reference to UNESCO’s 2005 Convention, the interactions and synergies that exist with it are likely to become increasingly important in the future implementation of the 2003 Convention. In particular, the 2005 Convention may offer some guidance in the way forward for protecting the intellectual property rights of communities (and groups and individuals) that create, practice, and transmit ICH, which are not effectively protected under the 2003 Convention.30 However, it is worth noting here that the 2005 Convention has been criticized since its inception both for the speed with which it was developed31 and for an apparent lack of coherence of its legal approaches, namely: is it a trade-related, cultural, intellectual property, or human rights approach, or a mixture of these?

An interesting example of the fluid and dynamic picture of experience thus far of implementing the Convention relates to two aspects of ICH that were not directly covered in the Convention text32—language and indigenous heritage33—both of which are now being safeguarded by parties under the Convention. Several parties in Africa and Latin America list language as an ICH domain and explicitly recognize its role in transmission.34 Latin American and Pacific parties,35 in particular, have chosen to focus much of their safeguarding activities on indigenous ICH, reflecting specific cultural policymaking approaches. Another unspoken issue of the Convention and its implementation relates to
the gender dynamics of ICH practice and safeguarding and how to address apparently discriminatory forms. Many ICH elements have very clearly defined gender roles in their practice and/or performance but this does not necessarily imply gender-based discrimination. However, in cases where there is a clear conflict between ICH elements and the spirit of the Convention, creative approaches will need to be found for this. In such cases, is it appropriate for parties and the Intergovernmental Conference (IGC) (or the subsidiary body) to encourage transformations in an ICH element that sanitize it while keeping its core value?

ENDNOTES

1. Unfortunately, very few international lawyers have engaged with this Convention; this is a gap in the legal literature that needs to be addressed in future.
3. The “research community” referred to here comprises the scholars, other experts, practitioners, and others involved in research and academic publications related to intangible cultural heritage and its safeguarding.
4. The Representative List of Intangible Heritage of Humanity (RL) and the Urgent Safeguarding List (USL), as established by Articles 16 and 17. This strong focus on inscribed elements is found both in the heritage studies literature as well as the (extremely limited) cultural heritage legal literature. There are, of course, books and articles that do address ICH from a wider perspective, but they are still few in number.
5. The lengthy discussions held in the three intergovernmental sessions for negotiating the final text of the Convention during 2002–2003 demonstrated (i) serious concerns over potential negative impacts of having a system of international lists and (ii) the view that, although flawed, an international listing system was essential for the Convention’s successful operation given the need to raise awareness of this heritage (at all levels) and as a carrot to encourage Member States to submit to the stick of the obligations placed on them by Part III of the Convention. For more details, see Blake, Commentary on UNESCO’s Convention.
6. This is very high and compares favorably with UNESCO’s most successful ever treaty—the World Heritage Convention—that had 190 Parties by 2012 (40 years after its adoption).
7. See Bouchenaki, “The Interdependency of the Tangible and Intangible Cultural Heritage”; Munjeri, “Tangible and Intangible Heritage.”
9. Information provided by Magne Velure, the director of the Norwegian Ministry of Culture speaking in the second roundtable (on inventorying ICH) at the Chengdu International Conference, The Intangible Cultural Heritage Convention: Its First Decade, held in celebration of the tenth anniversary of UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage, in Chengdu, China, 14 to 16 June 2013.
10. Under the terms of Articles 1(b), 12, and 15 of the Convention.
13. “Safeguarding” is defined in Art. 2(3) as: “measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.”
14. In 2010, the Flanders Ministry of Culture wrote its vision statement, which was published in 2012 in Flemish, French, and English (van Den Broucke and Thys, La politique de l’Autorité flamande); Council of Europe, Framework Convention.
15. In Peru, the city councils of Concepcion and Mito have worked with the Society of Huacones to develop safeguarding strategies for the Huaconada element, including building an on-site museum. The Mito city council regulates trade in the main square where the Huaconada is performed and ensures the upkeep of this urban space as well as safety measures for spectators and dancers.

16. In Cyprus, operating through local authorities has become a clear policy approach: The Lefkara Municipality is establishing a Handicraft Centre, where Lefkara lace making as well as other traditional crafts will be taught; and Larnaca Municipality sponsors the various tsiattista societies that participate in the Kataklysmos Festival, which it organizes.

17. For example, Belarus revised its cultural heritage law in 2012 to include ICH safeguarding and Vietnam’s 2001 Law on Cultural Heritage was amended in 2009 to bring it into line with the 2003 Convention.

18. A notable program in Armenia is teaching arts and handicrafts to vulnerable groups and the disabled.

19. This latter mirrors the chain of production model applied in UNESCO’s 2005 Convention on the Diversity of Cultural Expressions and demonstrates the intimate connection between the two treaties.

20. The World Heritage Convention (1972) was firmly based on the duty of Parties with regard to cultural and natural heritage located on their territory. This has led to disputes between states over sites, most notably the Preah Vihear Case heard by the International Court of Justice), see: Lixinski et al., “Identity Beyond Borders.” Similarly, the 1970 Convention is developed around the notion of the rights of the state of origin of movable cultural property. This question has also proved to be a challenge to the 2001 Underwater Heritage Convention given the international nature of many wrecked trading vessels.

21. There are 14 multinational inscriptions on the RL so far, of which Falconry has 13 sponsoring states. One is sponsored by seven parties, two are sponsored by four parties, three are sponsored by three parties, and seven are sponsored by two parties.

22. Pakistan, for example, is one of the nominating parties of the Nowrouz element and it is now working with regional countries for inclusion in the list of countries nominating Falconry for the RL.

23. As in the case of a joint field study organized by China, Mongolia, and the Russian Federation for the Urtiin Duu element, which involved 40 experts, practitioners, and others, which resulted in the creation of a multinational archive and information database of long song and its singers and a comparative study of the composition and performance of Urtiin Duu, its different variants of melodies and lyrics, their contents.

24. In the latter case, Azerbaijan inscribed elements such as the Magham, Tar, and more recently in 2013, Choghan (the original form of polo that was played in the 15th century in the Meydan-e Imam in Esfahan in Iran, a World Heritage site). All three are elements that Iranians regard as theirs and this has caused a great deal of negative publicity in the Iranian media.

25. In 2008, the U.K. National Commission for UNESCO (UKNC) Scotland Committee, in partnership with Museums Galleries Scotland and the Scottish Arts Council, commissioned a report on Scoping and Mapping Intangible Cultural Heritage in Scotland. Following this, a project was set up to establish an online inventory of Scotland’s ICH to record the living aspects of Scotland’s culture and inform decisions concerning its possible safeguarding.

26. This operates within Smith’s Authorised Heritage Discourse; see Smith Uses of Heritage.

27. Specifically provided for in Arts. 11(b), 12 and 15, but also made clear in the definition of ICH (Art. 2(1)) whereby the community is defined in relation to its ICH and vice versa.

28. It is important to note that these NGOs are unusual in that they were either established by an intergovernmental organization (IGO) (e.g., ICOMOS by UNESCO) or, as in the case of IUCN, are of a mixed intergovernmental and non-governmental character.

29. Both these Conventions have grown out of UNESCO’s Universal Declaration on Cultural Diversity (2001). In many ways, the 2003 Convention is aimed at safeguarding the intangible values (e.g., skills, know-how) that underlie the cultural expressions and products whose diversity is protected by the 2005 Convention; in this way, there are many points at which the two Conventions intersect, in particular with regard to handicrafts and aspects of traditional knowledge.
30. The Preamble to the 2005 Convention recognizes (at paragraph 17), “the importance of intellectual property rights in sustaining those involved in cultural creativity.” In the early stages of identifying the legal approach to be taken by UNESCO for safeguarding ICH, the decision was made to take a broader, cultural approach (i.e., that of “safeguarding” as defined in Article 2(3) of the Convention) rather than an intellectual property one, which was deemed overly narrow; however, this has left the issue of intellectual property rights unresolved and further work needs to be done in this area. It is likely that closer future cooperation between UNESCO and the World Intellectual Property Organization (WIPO) will be an important aspect of this work.

31. The whole process took little over two years (between 2003 and 2005), which is an exceptionally short time scale for international law making and it was understood to be a highly political process, with some Member States wishing to use it to shore up their “cultural exception” to the General Agreement on Tariffs and Trade (GATT) Agreement (Uruguay Round, 1994).

32. This was rather a deliberate decision taken during the Intergovernmental Sessions for negotiating the final text of the Convention (2002–2003) since both language and indigenous peoples’ rights proved to be extremely controversial topics for some Member States: In both cases, there were some strongly supporting the inclusion of these subjects and others, equally vocal, opposing this. For more on these negotiations, see Blake, Commentary on UNESCO’s Convention; see also, Kuruk, “Cultural Heritage, Traditional Knowledge and Indigenous Rights.”

33. Although there is mention of the role of indigenous peoples in the Preamble, the main text makes no mention of their heritage and they are subsumed into the general term “communities.”

34. In Art. 2(2)(a), “language as a vehicle of the intangible cultural heritage” is mentioned, but not language per se, while the role of indigenous peoples in “the production, safeguarding, maintenance and re-creation” of ICH is noted only in the Preamble at paragraph 6.

35. Such as Mexico, Peru, Ecuador, and Seychelles.

36. At its 8th Session held in December 2013, the Intergovernmental Committee of the 2003 Convention adopted a Decision aimed at addressing these and similar questions in the future.

37. Explicitly excluded from its definition are elements that conflict with international human rights standards.

BIBLIOGRAPHY


