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Protecting the Intangible: The UNESCO Convention  
on Intangible Cultural Heritage (2003)  
and its Implementation

無形의 보호: 유네스코 無形文化遺産협약(2003)과  
협약의 이행

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# Protecting the Intangible: The UNESCO Convention on Intangible Cultural Heritage (2003) and its Implementation

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## Origins of the Convention

It was during the 1990s that the diversity theme, and especially the protection of diversity, began to emerge as a major focus of UNESCO activities, in large part due to fears that globalization was threatening the survival of the world's cultural diversity<sup>1)</sup>. The UN's 'Decade for Cultural Development' (1988-1997), which had cultural diversity as a key theme, ended with the World Commission on Culture and Development presenting its final report under the title *Our Creative Diversity*.<sup>2)</sup>

In October 2000, UNESCO's Executive Board invited the Director-General to prepare a declaration aimed at 'promoting cultural diversity in the context of globalization'. The resulting instrument was the *Universal Declaration on Cultural Diversity*, adopted by UNESCO's General Conference in 2001. The UNESCO web site refers to it as the founding act of a new ethic for the twenty-first century, providing the international community, for the first time, with a 'wide-ranging standard-setting instrument to underpin its conviction that respect for cultural diversity and intercultural dialogue is one of the surest guarantees of development and peace'. This was followed by the Johannesburg World Summit on Sustainable Development in September 2002, which adopted a Declaration that recognizes cultural

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1) W. Logan, 'Closing Pandora's box: human rights conundrums in cultural heritage protection', in H. Silverman & D. Fairchild Ruggles (eds), *Cultural Heritage and Human Rights* (Springer, NY, 2007); p. 36.

2) United Nations, *Our Creative Diversity: Report of the World Commission on Culture and Development* (EGOPRIM, Paris, 1995).

diversity as a collective force that must be promoted to ensure sustainable development.

In 1989 UNESCO had adopted a *Recommendation on the Safeguarding of Traditional Culture and Folklore*. The term 'folklore' has always been problematic and rejected by professionals in some countries as either demeaning or, perhaps worse, being seen to have links with praise of the 'Volk' in Hitler's time. Building on this Recommendation, however, by 2000, the UNESCO Director-General, Koïchiro Matsuura, had put in place a scheme called *Proclamation of Master Pieces of the Oral and Intangible Heritage of Humanity*. Japan has had, as I'm sure you know, a long history of recognising 'Living Human Treasures' - that is, heritage embodied in people - and it is perhaps not surprising that a Japanese D-G should want to make his distinctive mark on UNESCO's program by pushing into the intangible cultural heritage field.

The push to protect intangible as well as tangible heritage can be seen, therefore, as a further step in recognizing cultural diversity, and the 2003 *Convention for the Safeguarding of Intangible Heritage* and the 2005 *International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions* seek to engage states in binding legal instruments representing a commitment to cultural diversity.

The Masterpieces program, by the way, ended in 2006 when the Intangible Convention came into force. There were 43 items on the list by this time, and some of these have been inscribed on the new Intangible Heritage List that has been set up under the Intangible Convention.

This push into intangible cultural heritage was also related to the World Heritage Committee's 'Global Strategy' introduced in the early 1990s, which sought to recognize and protect embodied cultural heritage in societies where perhaps the built heritage was less significant.

Intangible cultural heritage values have always been encompassed by the WH Convention 1972. The World Heritage Committee's *Operational Guidelines* list the 10 Criteria for evaluating places to determine whether they have Outstanding Universal Value.<sup>3)</sup> Of these at

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3) UNESCO World Heritage Centre, *Operational Guidelines* (Paris, January 2008 Revision).

least three involve intangible values; that is traditional skills embodied in people.

In other words, the WH system does deal with intangible cultural heritage related to a specific place. But it is the place that is inscribed, not the intangible heritage itself. By contrast, the *Intangible Heritage Convention 2003* deals with living or embodied heritage that is not necessarily related to a specific place. Of course, the intangible heritage may be related to country or region generally, and it may be necessary to protect the 'cultural spaces' where the skill is typically performed, but this is different from the WH approach of identifying a single place which, if not unique, is likely to be extremely rare or the best example of a type of place.

Two fallacies that have caused difficulties in protecting places are the ideas that (1) it is possible to protect intangible heritage by protecting the associated tangible place, and (2) it is possible to protect tangible heritage without taking into account the protection of the associated intangible heritage. The Rice terraces of the Philippines Cordillera are a case in point - now on the World Heritage In Danger List because the intangible heritage (the skills in maintaining the terraces) is dying out as young people choose to move away and find easier lives in Filipino cities. The Cinque Terre in Italy is a similar case, although not yet on the In Danger List.

## Structure of the Convention

- 13 pp text
- Preamble
- I. General Provisions - purposes of the Convention, definitions, relationship to WH Convention and to IP
- II. Organs on the Convention
  - General Assembly of States Parties
  - Intergovernmental Committee for the Safeguarding of the ICH
  - Secretariat
- III. Safeguarding the ICH at the National Level
- IV. Safeguarding the ICH at the International Level

- V. International Cooperation and Assistance
- VI. ICH Fund
- VII. Reports
- VIII. Transitional Clause - ratification, accession, entry into force, denunciation, amendment, etc

## Scope and Intellectual Context

This is set by the Preamble in the following words:

- ‘The General Conference of UNESCO, meeting in Paris, from 29 Sept to 17 Oct 2003, at its 32<sup>nd</sup> session,
- *Referring to* existing international human rights instruments, in particular the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966,
- *Considering* the importance of the ICH as a mainspring of cultural diversity and a guarantee of sustainable development, as underscored in the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, in the UNESCO Universal Declaration on Cultural Diversity of 2001...
- *Considering* the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage,
- *Recognizing* that the processes of globalization and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage...’

## General provisions

- Article 1 - Purposes of the Convention
  - (a) to safeguard the ICH
  - (b) to ensure respect for the ICH of communities, groups and individuals concerned
  - (c) to raise awareness and mutual appreciation at the local, national and international

levels

(d) to provide for international cooperation and assistance

■ Article 2 - Definitions

'ICH' means the 'practices, representations, expressions, knowledge, skills - as well as the instruments, objects, artefacts and cultural spaces associated therewith - that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.

'This ICH, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.

■ For the purposes of this Convention, consideration will be given solely to such ICH as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

■ Article 2 then goes on to highlight five types of ICH, presumably ones regarded as central and/or 'safe'

- Oral traditions and expressions, including language as a vehicle of ICH
- Performing arts
- Social practices, rituals and festive events
- Knowledge and practices concerning nature and the universe
- Traditional craftsmanship

**In summary, the key points are:**

- (1) we are dealing with living heritage - skills, beliefs - this is 'culture' writ wide, not the old, narrow 'high culture' of artistic practices that appealed only to a political or economic elite
- (2) it is heritage embodied in people
- (3) it consists mostly of skills that are revealed in moments of performance, which are temporary and ephemeral
- (4) intangible cultural heritage is more about processes rather than products.

## How is the Convention being implemented? How effective is this likely to be?

There are two levels of operation - national (Section III) and international (Section iv).

### (a) National

Goal: Strengthening of ICH in national systems (eg. Burra revision 1999, VN's Cultural Heritage Law 2001, etc)...

It is the responsibility of Member States to:

- ensure safeguarding of the ICH in their territory
- identify, with participation of communities, groups and NGOs
- draw up an inventory or inventories
- adopt policies and integrate these in planning processes
- designate or establish one or more competent bodies
- foster studies
- adopt legal, technical, administrative and financial measures
- ensure recognition of, respect for and enhancement of ICH
- keep the public informed about threats to ICH
- promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the ICH

### (b) International level

#### ■ General Assembly of States Parties:

- To meet every two years
- Is the 'sovereign body for this Convention' (Article 4)
- Intergovernmental Committee for the Safeguarding of the ICH (Articles 5 - 9)
- Representatives of 18 State Parties elected by the General Assembly, rising to 24 once the number of State Parties reaches 50
- Equitable geographical representation and rotation (6 electoral divisions; proportional; minimum 3 seats)
- Examine & decide upon listing submissions in accordance with objective selection criteria to be established by the Committee and approved by the General Assembly' (Article 7)

- List of ICH in Need for Urgent Safeguarding (Article 17)
  
- International cooperation and assistance, including ICH Fund (Section V)

■ **Inter-Governmental Committee:**

The IGC's inaugural meeting was in November 2006, in Algiers. Its Agenda included consideration of:

- The *Operational Directives*
- Criteria and procedures for establishing, updating and publishing the Lists
- Criteria and procedures for examination and selection of requests for assistance
- Uses of the ICH Fund
- Criteria and modalities for accrediting advisory organisations
- Identify, disseminate, provide guidance and make recommendations on best practice
- Define the form and periodicity of reporting
- Examine and summarize for the General Assembly the reports submitted by States Parties
- Incorporate the Masterpieces into the new Representative List

**There will be two lists: (a) Urgent Safeguarding List; (b) Representative List.**

These lists and activities conducted in relation to them will be the responsibility of the General Assembly, Inter-Governmental Committee and Secretariat, with goodwill and cooperation of the States Parties to the Convention.

**(a) Urgent Safeguarding List**

**Criteria:**

An element must meet all of the following criteria if it is to be listed:

- U.1 The element constitutes ICH as defined in Article 2 of the Convention.
- U.2a The element is in need of urgent safeguarding because its viability is at risk despite the efforts of the community, group, or, if applicable, individuals

and States Parties; OR

- U.2b The element faces grave threats and is unlikely to survive without urgent safeguarding
- U.3 Safeguarding measures must be proposed that is, a safeguarding plan is necessary.
- U.4 The element has been nominated following the widest possible participation of the community, group, or, if applicable, individuals concerned and with their free, prior and informed consent.
- U.5 The element is included in the State Party's ICH inventory.
- U.6 In case of extreme urgency (U.2b) the State Party has been duly consulted.

**Evaluation procedures:**

Examination by IGC using one or more advisory body

The process takes 1.5 years for U.2a cases but quicker for U.2b cases.

Removal of an element from the Urgent Safeguarding List may be decided by the IGC, after assessment of the implementation of the safeguarding plan, if that element no longer satisfies one or more criteria.

**(b) Representative List**

- Article 16: 'In order to ensure better visibility of the ICH and awareness of its significance, and to encourage dialogue which respects cultural diversity...'

**Criteria:**

The element must meet all of the following criteria:

- R.1 As for U.1
- R.2 'Inscription will contribute to ensuring visibility and awareness of the significance of the ICH and to encourage dialogue, thus reflecting cultural diversity worldwide and testifying to human creativity'
- R.3 As for U.3, a Safeguarding Plan is required. This will be designed to protect and promote the element.
- R.4 As for U.4, community participation is required.

R.5 As for U.5, the element will be on the State Party's ICH inventory.

**Nomination procedures:**

State Parties are encouraged to jointly submit multi-national nominations when an element is found on the territory of more than one State Party.

Article 77 of the Operational Directives encourages States Parties to set up a 'consultative body or coordination mechanism' to facilitate participation.

**Evaluation procedures:**

Examination by IGC using one or more advisory body

The process takes 13 months years. Strangely, this seems to be a quicker process than for the Urgent Safeguarding List.

Removal of an element from the Urgent Safeguarding List may be decided by the IGC, after assessment of the implementation of the safeguarding plan, if that element no longer satisfies one or more criteria.

Note that an element cannot be on the Urgent Safeguarding List and the Representative List at the same time, but may be transferred from one to the other.

- (c) There is also provision for nominating programs, projects and activities that best reflect the principles and objectives of the Convention.

## **Progress of the Convention**

How many countries have now ratified? By April 2009, 112 national governments had become Member States. The Republic of Korea was the eleventh country to become a Member State when it accepted the Convention in February 2005. This was very early, well before the 30<sup>th</sup> ratification or acceptance needed before the Convention came into force, which occurred in April 2006.

A number of countries that are very active in the WH system and in programs under other UNESCO Conventions have not ratified the Intangible Convention. These include the USA, UK, Canada, Australia, New Zealand, the Scandinavian countries, the Netherlands, Germany. Australia has observer status.

This is of concern to those in UNESCO and elsewhere who are strong supporters of the Convention and want to see it adopted universally. On the other hand, there is also a concern that a number of countries with very poor human rights records regarding the way they treat cultural minorities have ratified the Convention.

Why this resistance to joining?

Some UNESCO staff and experts in other global and national agencies thought the Convention was developed too quickly. This resulted in a lack of guidelines or criteria. The notion of 'authenticity' had been rejected on the grounds that this is living heritage; if it is living, it must be able to change. But what criteria would be used instead?

But a set of *Operational Directives* has now been developed and adopted in June 2008 by the General Assembly of States Parties. These appear to allay many fears about the Convention's operation. However some methodological concerns remain, such as:

- If change is seen as normal, is there a point at which we are forced to say that the element has lost its connection with what was inscribed and is no longer 'heritage'?
- But is this a relevant consideration? Perhaps, instead of authenticity, the key issue is whether continuity can be tracked. In the post-Nara period, this is essentially how authenticity is defined in relation to tangible (WH Convention 1972 *Operational Guidelines*: 'Properties may be understood to meet the conditions of authenticity if their cultural value...are truthfully and credibly expressed through a variety of attributes').

## Weaknesses

### Policy issues:

- Why do it? Do we really want to do it? Is there a better way?

- Impact of selection on selected representatives
  - Tourism target
  - Advantaged or disadvantaged?
- Impact on the non-selected
  - Implies second rate
  - May try to emulate the 'successful' representative
- In other words, both listing or non-listing may lead to distortions in the element.
- Need to be very clear what is the point of selecting just a representative.
- Would it not be fairer, more democratic to develop policies to deal with all?

#### **Human Rights Considerations<sup>4)</sup>**

- Infringement of HR (despite Preamble & claims to community involvement)
- Heritage protection serves ideological and political purposes (esp. nation building).  
This can be benign, where it helps bring communities together in a peaceful, democratic, consultative and informed way, or malign, where it is used to force the assimilation of minority groups into the dominant culture.
- Other less selective approaches might be better, more democratic, less distorting and more effective

#### **A new colonialism?**

- There remains a focus on the exotic that reflects the continuing dominance of Eurocentric and 'high-art' attitudes in the determination of what heritage is significant.
- To an extent the Japanese approach is similar, placing a very high emphasis on refined arts.
- But the notion of 'culture' is broad.
- World Conference on Cultural Policies, Mexico City, 1982:  
Culture was seen 'in its widest sense, [as] the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society and social

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4) See H. Silverman & D. Fairchild Ruggles (eds), *Cultural Heritage and Human Rights* (Springer, NY, 2007); B. Graham & P. Howard (eds) *The Ashgate Research Companion to Heritage and Identity* (Aldershot UK, Ashgate, 2008, esp. ch.25); M. Langfield, W. Logan & M. Nic Craith (eds), *Cultural Diversity, Heritage and Human Rights: Intersections in Theory and Practice* (London, Routledge, in press)

group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs’.

- Perhaps it would have been easier to have limited the Convention to ‘performance’.

## **Conclusion**

Nevertheless, the goals of the Convention are clear and commendable: it recognises a form of CH long ignored, and it should help to achieve a more balanced and hence credible set of programs protecting the world’s heritage. It is up to individual nations to decide whether or not to ratify the Convention. If they do not, the onus is on them to provide an alternative set of consultative programs that will achieve effective maintenance of their diverse intangible cultural heritage.

**Thank you.....**