RESEARCH ARTICLES

Ahmed Skounti*

ouskounti@gmail.com
Department of Anthropology
National Institute of Archaeology and Heritage Sciences
Rabat, Morocco

The Intangible Cultural Heritage System: Many Challenges, Few Proposals

Abstract: The 2003 Convention is one of the most norma-
tive instruments of UNESCO in the fields of culture and cultural her-
itage. Ten years after its entry into force, it's worth scrutinizing its
implementation globally. One hundred and seventy-four States have
become parties to the Convention as of 12 May 2017. Four hundred
and twenty-nine elements and 17 programs, activities, and projects
have been inscribed altogether on the Urgent Safeguarding List and
Representative List or selected on the Register of Good Safeguard-
ing Practices. The 2003 Convention has given birth to what I pro-
pose to call an "Intangible Cultural Heritage System" ("ICH System"):
a constellation of actors either on the local, national, or internation-
al levels who contribute, in different ways, to its implementation.
This paper examines the main challenges posed to this system in
the last decade. It focuses on key-issues to which the 2003 Conven-
tion is confronted today: the universality of the concept of ICH, the
governance of the 2003 Convention and its implementation on the
international, national, and local levels, the listing process, includ-
ing its positive and negative effects, the role of communities and
other stakeholders in the implementation process, and the impact

*   **Ahmed Skounti** is Professor at the Institut national des sciences de l'archéologie et du patrimoine
(INSAP, Department of Anthropology) in Rabat (Morocco). He holds a Ph.D. in social anthropology from the
École des hautes études en sciences sociales in Paris. He also serves as Associate Professor to the Universi-
ty of Marrakech and consultant to UNESCO in relation to the 1972 and to the 2003 Convention. Professor
Skounti has represented Morocco to the meetings of the Intergovernmental Committees of these two con-
ventions since 1998 and 2007, respectively. He also participated in the UNESCO feasibility study regarding
a new legal instrument on global landscape in 2010. Professor Skounti is also a member of the Advisory
Body of the Arab Regional Centre for World Heritage (Bahrain) and of the Consultative scientific Body of
the Musée berbère (Morocco).

of safeguarding on ICH elements. Through a critical approach, both from inside and outside the functioning of the ICH System, the main objective of the paper is to make a contribution to the efforts seeking at the enhancement of the safeguarding worldwide. Its aim is a contribution both to the academic research in the field of heritage studies and to the improvement of the implementation worldwide.

Introduction

The Convention for the Safeguarding of the Intangible Cultural Heritage ("the 2003 Convention") has demonstrated its "soft power" in the fields of culture and cultural heritage.[1] Ten years after its entry into force, it is worth scrutinizing its implementation globally. A broad survey of the main challenges to the safeguarding of intangible cultural heritage (ICH) on the international level will be carried out. The paper will focus on a few key issues, among many others. First, the universality of the concept of ICH is at stake since some UNESCO Member States (among which a few are economically and politically influential) have not ratified the 2003 Convention. Second, the governance of the 2003 Convention and its implementation on the international, national, and local levels is questioned by the capacity of its organs and the overgrowing workload. Third, the listing process is problematic, including its positive (visibility, awareness-raising, multinational nominations, safeguarding...) and negative (predominance of the Representative List over the Urgent Safeguarding List, competition, nationalism, redefinition or reinterpretation of ICH elements, conflicts over "ownership"...) effects. Fourth, the role of communities and other stakeholders (NGOs, centres of expertise, research institutes, experts...) in the process of implementation as their role is central according to the 2003 Convention itself. Last but not least, the impact of the safeguarding on ICH elements which witnesses two major trends: (i) the disproportion between the aspirations and needs of individuals, groups, and communities, mainly in developing countries, and the material and financial means made available by the States Parties concerned and (ii) the growing predominance of economic values of the elements over the social ones as ICH is more and more related to tourism and sustainable development. Each of these issues will be summed up in a short and comprehensive way before few proposals, if any, are made to improve the implementation process. Through

---

[1] H. Schreiber, *Intangible Cultural Heritage and Soft Power: Exploring the Relationship*, "International Journal of Intangible Heritage" 2017, Vol. 12.

a critical approach, both from inside and outside the functioning of the ICH System, the main objective of the paper is to make a contribution to the efforts seeking at the enhancement of the safeguarding worldwide. I define the ICH System as the organs, entities, stakeholders, and administrative, legal, and financial procedures, on the national or international levels, necessary for the implementation of the 2003 Convention. The main objective of the paper is to cement the gains of the system and to provide a foundation for its improvement.

The Universality of the Concept of ICH

Since the adoption by the UNESCO General Conference of the World Heritage Convention in 1972 ("the 1972 Convention"), some voices drew attention to the need for safeguarding the intangible heritage.[2] The UN organization spent more than two decades searching for the appropriate concept that could better qualify this heritage. In 1989, the *Recommendation on the Safeguarding of Traditional Culture and Folklore* was adopted. One decade after, both the concept – "traditional culture and folklore" – and the framework – a recommendation not binding for States Parties – were questioned. After a few experts meetings, the *Proclamation of Masterpieces of the Oral and Intangible Cultural Heritage of Humanity Program* was adopted in 1998. Implemented from 1999 to 2005, the program was very quickly contested on both the conceptual and politico-legal levels. The rather elitist and hierarchic concept of "masterpiece" came under fire: what is a "masterpiece" and why an element should be granted this quality and not another? On the politico-legal level, the program, like the precedent Recommendation, was not binding for UNESCO Member States.[3] After three proclamations in 2001, 2003, and 2005 which totalized 90 "masterpieces", the program was abandoned in 2006 with the entry into force of the 2003 Convention. The latter adopted a more neutral concept: "intangible cultural heritage". Moreover, its Article 31 provided that the 90 "masterpieces" would be inscribed on the newly established Representative List of the Intangible Cultural Heritage of Humanity without submitting them to the criteria required for inscription on that list. I will discuss later on the process of listing in the framework of this convention.

The Preamble of the 2003 Convention states the following: "[b]eing aware of the universal will and the common concern to safeguard the intangible cultural heritage of humanity".[4] One may reasonably question the "universality" of the will expressed in this sentence. Is it about the majority of the UNESCO Member States

---

[2] N. Aikawa-Faure, *From the Proclamation of Masterpieces to the Convention for the Safeguarding of Intangible Cultural Heritage*, in: L. Smith, N. Akagawa (eds.), *Intangible Heritage*, Routledge, London – New York 2009.

[3] A. Skounti, *The Authentic Illusion: Humanity's Intangible Cultural Heritage, the Moroccan Experience*, in: L. Smith, N. Akagawa (eds.), *Intangible Heritage*, Routledge, London – New York 2009.

[4] Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003, 2368 UNTS 1.

which participated to the negotiation of the instrument in 2002-2003? Is the universality called upon by the drafters to come in the near future following the adoption of the 2003 Convention? Whatever the answer may be, one has to recognize that the universality of this legal instrument has not yet been reached as is the case for the 1972 Convention. One can argue that it took a long time too for the latter convention to be ratified by all UNESCO Member States. But it seems that there are other reasons behind this slowness regarding the States which have not yet recognized it.[5] This is why the Preamble states that "the international community should contribute, together with the States Parties to this Convention, to the safeguarding of such heritage in a spirit of cooperation and mutual assistance".[6]

As to 5 September 2017, 175 UNESCO Member States have become Parties to the 2003 Convention. In less than 13 years, this international legal instrument has been recognized by a large majority of United Nations Member States. This plebiscite in such a short timeframe is one of the important achievements of this Convention. Nevertheless, it has not reached the universality since 19 countries have not signed it. Among them, some are heavy weights, either on the economic, demographic, or political levels, or more than one of these levels. The case of the United States of America is a good example. During the process that led to the adoption of the 2003 Convention, the agencies involved in the reflection on this instrument raised several points summed up by Richard Kurin[7] as follows: (i) the notion of cultural treaty in itself considered somewhat as anathema since culture is a matter of freedom not regulation; (ii) the definition of what is "intangible cultural heritage" and if it includes all religions and languages; (iii) the purpose of the 2003 Convention as whether it aims at recognizing or rescuing or preserving or legally protecting the traditions; (iv) the 2003 Convention is expected to preserve only endangered traditions or all human traditions; and (v) the responsibility of a democratic State as to ensuring the continuity of cultural practices while it is up to the bearers to do so. These were, among others, the underlying currents which became apparent at the moment of the adoption of this new legal instrument. As Kurin sums it up: "at the most general level, the U.S. administration did not want any treaty".[8]

This is only one example among other UNESCO Member States which did not wish to join the 2003 Convention.[9] As it was said above, this questions the universality of the international treaty. At the same time, the fact that a large majority of

---

[5] Some of these reasons related to what she calls "the Authorized Heritage Discourse (AHD)" were earlier discussed by L. Smith, *Uses of Heritage*, Routledge, London – New York 2006, pp. 106-113.

[6] Convention for the Safeguarding of the Intangible Cultural Heritage, op. cit.

[7] R. Kurin, *U.S. Consideration of the Intangible Cultural Heritage Convention*, "Ethnologies (Québec)" 2014, Vol. 36(1-2), pp. 325-358.

[8] Ibidem, p. 338.

[9] See the analysis of the collapse of the intangible cultural heritage initiative in Canada published in the same journal: G.L. Pocius, *The Government of Canada and Intangible Cultural Heritage*, "Ethnologies (Québec)" 2014, Vol. 36(1-2).

175 have become States Parties removes any ambiguity on the credibility of the process. Moreover, this is an ongoing process where future ratifications will occur in the coming years. It is true that the implementation process is not perfect but this is not only the case of this convention. At the same time, recognizing the pitfalls of an international treaty in this field, the negotiations that have led to the adoption of the 2003 Convention resulted in a very few obligations for States Parties. One concrete proposal is to look at and address the worries of these States that have not yet recognized the 2003 Convention. Some of those mentioned above regarding the United States find their answers in the now adopted Convention itself: the scope of the instrument, its purpose and objectives, the definition of ICH and safeguarding, mechanisms of safeguarding on both national and international levels.

The Governance of the 2003 Convention at the International, National, and Local Levels

The 2003 Convention aimed at ensuring continuity between the three levels of implementation: local, national, and international. The local level is represented by the communities (Articles 11(b), 15 and Chapter III(1) of the Operational Directives[10]) which are a key-partner in the safeguarding process. The local and national levels refer to the inventory making and to other safeguarding measures, political, legal, financial, educational, and awareness-raising, among others (Articles 12, 13, 14; Chapters IV(1.2), V(1), V(2) and VI of the Operational Directives). The international level is mainly dedicated to the implementation of the 2003 Convention through the governing bodies, e.g. the General Assembly and the Intergovernmental Committee (Articles 4-8 and Chapter IV(1.3)) in addition to the accredited organizations (Article 9 and Chapter III(2)) and the Secretariat (Article 10).

Nevertheless, the relationship between the three levels is rather discontinuous. On the international level, the wall of sovereignty seems to be impassable. Yet, this is far from being only the case of the 2003 Convention.[11] Rather, it seems to be a matter of international law in general. If the governing bodies of the 2003 Convention, e.g. the General Assembly and the Intergovernmental Committee, can hold a State Party accountable for the implementation at the international level, they are powerless as to the obligations of that State Party at the national level. They can only rely on periodic reporting by that State Party (a four years report on elements inscribed on the Urgent Safeguarding List and a six years report on

---

[10] UNESCO Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, 2016 version.

[11] The implementation of the 1972 Convention in recent decades witnessed some cases of disagreement between a given State Party and the World Heritage Intergovernmental Committee. For instance, the delisting has been decided by the Committee in two cases (Arabian Oryx Sanctuary in Oman in 2007 and Dresden Elbe Valley in Germany in 2009) but only after having consulted the States Parties concerned according to the Paragraph 196 of the Operational Directives.

the implementation of the 2003 Convention at the national level and on elements inscribed on the Representative List).

On the international level also, the process has come to overload very rapidly than expected due to many reasons among which the human resources of the Secretariat and the whole capacity of the governing organs, mainly the Committee and the Evaluation Body. Thus, a ceiling was adopted making the number of dossiers limited to 50 per year, including the four mechanisms (the Urgent Safeguarding List, the Representative List, the Register of Good Safeguarding Practices and the International Assistance of more than US$100,000). A list of priorities was set up in the Operational Directives to ensure that those States Parties that have the priority are in the ceiling.[12] The Secretariat engages in an annual gymnastics exercise to draw up a list of 50 priority nominations. Some States Parties chose to submit international nominations to ensure they're within the yearly 50 files. Obviously, the system seems to have reached its limits too quickly. The backlog is already full while the ability of the organs is losing ground. The dossiers which are not evaluated by the Evaluation Body and examined by the Intergovernmental Committee for a couple of years or more need to be updated. The capacity-building program seems to enhance the capacity of States Parties to submit a greater number of nominations while the ceiling is likely to be maintained for a long time ahead.

In addition, a unique Evaluation Body replaced the two previous Subsidiary Body and Consultative Body since 2015. It is composed of 12 people: six experts representing States Parties not members of the Committee and six representing accredited NGOs. The experience of this new body has built upon the General Assembly and Committee decisions and the recommendations of the previous consultative and subsidiary bodies. This new body is young as it was first established during the 9th session in Paris in 2014. Yet, it is facing unpredicted difficulties as the 11th session of the Committee turned out a majority of its recommendations and put at stake the whole evaluation process. All States Parties were not comfortable with this outcome and an ad hoc working group was created among the Committee members to reflect on the opportunity of a dialogue between the Evalua-

---

[12] The Paragraph 34 of the 2016 version of the Operational Directives explains this procedure:
   "The Committee shall endeavour to examine to the extent possible at least one file per submitting State, within the limit of this overall ceiling, giving priority to:
   (i)   files from States having no elements inscribed, best safeguarding practices selected or requests for International Assistance greater than US$100,000 approved, and nominations to the List of Intangible Cultural Heritage in Need of Urgent Safeguarding;
   (ii) multi-national files; and
   (iii) files from States with the fewest elements inscribed, best safeguarding practices selected or requests for International Assistance greater than US$100,000 approved, in comparison with other submitting States during the same cycle. In case they submit several files during the same cycle, submitting States shall indicate the order of priority in which they wish their files to be examined and are invited to give priority to the List of Intangible Cultural Heritage in Need of Urgent Safeguarding".

tion Body and States Parties before the former submits its final recommendations to the Committee.[13]

On the local and national level, experiences seem to be very diverse according to the Periodic Reports submitted by States Parties.[14] Positive efforts have been done but challenges are numerous. Many points drawn from my experience as a facilitator for the UNESCO capacity-building program arise.[15] They all deal with what I may call as "dark areas" or "blind spots" of the 2003 Convention, e.g. all those issues that, for various reasons, were not addressed at the time of the drafting of the 2003 Convention and now emerge from its implementation. These points are sometimes responsible for friction between the local and the national levels. They relate to the methodologies and protocols of the inventories, the criteria for the representativeness of the bearers, the relationship between administrations and communities within the preparation of nominations, including the criteria for the selection of elements to be submitted for inscription on the lists. In fact, these areas are left to the discretion of the States Parties which decide how to manage the challenges that arise.

National cohesion is a deep concern in the implementation process of the 2003 Convention in many countries. This is reflected in different ways. One is the reticence from or even the refusal to use the notion of "communities" according to a national "ideology" presumably based on the notion of "citizenship". The latter notion ignores any differentiation between nationals legally defined as "citizens". The second is the way in which some States Parties use the 2003 Convention to serve their own political and economic agendas. States Parties prefer the Representative List which seems to have priority in submitting national and multinational nominations.[16] Some of them stress on the political gain expected from having elements inscribed on that list. Some of these inscriptions seem to be intended at making the international community recognize not only an element as an intangible cultural heritage but also the political sovereignty on a local territory and community. Not to speak about the appropriation of cultural practices in relation to intellectual property,[17] an awkward issue not raised in the present paper.

---

[13]   The Ad hoc working group met several times during 2017 and has to deliver its conclusions to the 12th session of the ICH Intergovernmental Committee which will be held in Jeju Island, South Korea, from 4 to 9 of December 2017.

[14]   Periodic Reports of the States Parties to the 2003 Convention can be consulted on: http://ich.unesco.org/en/periodic-reporting-00460.

[15]   I act as a facilitator for the UNESCO capacity-building program for the project *Safeguarding the intangible cultural heritage through capacity-building in Mauritania, Morocco and Tunisia*, Phase I (2013-2015) and Phase II (2017-2018).

[16]   C. Duvelle, *A Decade of Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage,* "Ethnologies (Québec)" 2014, Vol. 36(1-2), p. 29.

[17]   T. Kono (ed.), *Intangible Cultural Heritage and Intellectual Property: Communities, Cultural Diversity and Sustainable Development*, Intersentia, Antwerp – Oxford – Portland 2009; K. Kuutma, *Who Owns Our Songs? Authority of Heritage and Resources for Restitution*, "Ethnologia Europaea" 2009, Vol. 39(2).

Finally, the link between the three levels may bring States Parties and the governing bodies of the 2003 Convention to better strengthen the continuum from the local to the international. The capacity-building program is a very appropriate tool to achieve this goal. The strategy of UNESCO in this area has proven its efficacy in recent years. Either on the implementation of the 2003 Convention on the national level or on participatory inventorying, preparation of nominations, elaboration of safeguarding plans, sustainable development, gender, and ICH, among others to come, the capacity of States Parties is being reinforced worldwide.[18] It is obvious that the preparation of nominations for inscription on the lists is only one subject among others. The program could thus encourage States Parties to focus on safeguarding efforts and enhance the resources of communities in that regard. International cooperation should also be enhanced, mainly on the intangible cultural heritage shared between more than two States Parties. This may foster international cultural cooperation and make the Representative List of the Intangible Cultural Heritage of Humanity more credible. Last but not least, the confidence in the work of the Evaluation Body should be fortified. Drawing from my experience as a member of this body during the last three years, I should say that it has become technical in the positive meaning of this term. A subtle mix of expertise and the search for consensus, of rigor and flexibility characterize the functioning of this organ.

The Listing Process

The principle of listing in the framework of the 2003 Convention has been widely discussed during the intergovernmental meetings dedicated to the drafting of this legal instrument.[19] Represented UNESCO Member States were then divided on the pertinence of the adoption of a list. Finally, two lists were created under Articles 17 and 16: the List of the Intangible Cultural Heritage in Need of Urgent Safeguarding (called briefly The Urgent Safeguarding List) and the Representative List of the Intangible Cultural Heritage of Humanity (called briefly The Representative List). Unlike the World Heritage List and its sub-list (World Heritage List in Danger) under the 1972 Convention, the two lists of the 2003 Convention are independent from each other, including the process and criteria of inscription. Other specific criteria were set for the selection of good safeguarding practices (Article 18; Chapter I(3) of the Operational Directives) and for the granting of the International Assistance (Articles 20-24; Chapter I(4)).

---

[18]   The objectives and achievements of the program so far can be consulted on: http://ich.unesco.org/en/capacity-building.

[19]   A. Skounti, *Réflexions sur les critères d'inscription sur les listes de la Convention du patrimoine culturel immatériel*, in: *The First ICH Researchers Forum of 2003 Convention*, International Research Centre for Intangible Cultural Heritage in the Asia-Pacific Region (IRCI), Tokyo 2012.

The listing began in 2008 with the inclusion by the Intergovernmental Committee of the 90 Masterpieces of the Oral and Intangible Cultural Heritage of Humanity[20] in the Representative List. Actually, the first inscriptions were decided by the Committee in 2009. As of 2016, 47 elements are inscribed on the Urgent Safeguarding List and 365 elements on the Representative List. Seventeen programs, projects, and activities are selected as better reflecting the objectives of the 2003 Convention and 73 international financial assistance requests are granted since 2008-2009. This process, mainly the listing has important effects on the whole progression of the implementation of this legal instrument. These effects include positive ones such as enhancing the visibility of ICH in general, raising awareness among all stakeholders, strengthening cooperation through multinational nominations, improving the safeguarding of ICH elements, among others. They also include negative effects such as predominance of the Representative List over the Urgent Safeguarding List, fuelling competition between countries, exacerbating narrow nationalism, redefining or reinterpreting ICH elements according to political or economic agendas, inducing conflicts on "common" or "similar" elements, among others.

On the last effect, one reflection is very often heard among people in different contexts: "we have the same practice!" or "we have a similar element!". Some even overbid: "our practice is better!" or "our element is older and authentic". There seems to be a competition between people who identify with "similar" or "shared" heritage.[21] Moreover, this is not limited to the 2003 Convention but occurs sometimes regarding the 1972 Convention. People feel sometimes frustrated when an element of another State Party is inscribed. Their first question, either expressed in a low or loud voice, is: "why *our* element which is more important is not inscribed?". In all countries, mainly in developing ones, the main question is always the same: what are the benefits of the inscription? People seem to expect direct and substantial support for an inscribed element which is the counterpart of its international recognition.

Finally, on a theoretical level, the listing principle is basically thorny. As Umberto Eco analysed it, there are "lists which suggest the immeasurable and make us feel the dizziness of the infinite".[22] At the same time, one has to recognize that the lists and

---

[20] The program of the Proclamation of Masterpieces of Oral and Intangible Cultural Heritage of Humanity was adopted by UNESCO in 1998. Three proclamations took place in 2001, 2003, and 2005 and resulted in a total of 90 elements from various countries proclaimed as Masterpieces. The 2003 Convention provided that the program will end with its entry into force after 30 ratifications were made and that the 90 "Masterpieces" shall be incorporated in the Representative List (Article 31).

[21] On the issue of "similarity", see my paper for the Open-ended Working Group on the right scale and scope of an element, UNESCO Headquarters, Paris, 22-23 October 2012: A. Skounti, *Possible Ways to Deal with "Similar Elements": The Extension of an Inscribed Element and the Nomination of "Serial Elements"*, 2012, http://ich.unesco.org/doc/src/ITH-12-7.COM_WG-5-EN.doc [accessed: 28.06.2017].

[22] U. Eco, *Le Vertige de la Liste*, Flammarion, Paris 2009 (my translation from French).

Ahmed Skounti

Register adopted in the framework of the 2003 Convention are the result of a large consensus among UNESCO Member States. There may be a distinction to put between the listing principle and the way elements and projects are selected. It is not only a matter of technical application of agreed-upon criteria but a global procedure, a mix of expertise and politics.[23] It is only a part of the ICH System. The whole system needs to be strengthened as such, from the located element and community or group to the international community, going through identification, viability assessment, safeguarding, oversight, and evaluation. At the same time, a majority of elements might be outside this global system, having their own life. Some disappear because communities, groups, or individuals aren't eager to safeguard them anymore. Others continue to be practised without any need for an international recognition or distinction. Some are candidates for inscription, either for raising the visibility of the ICH in general or for restoring their viability. The ICH System may be imperfect but it seems to work correctly. More awareness-raising and capacity-building can help improve and upgrade it for a better safeguarding worldwide. The promotion of cultural diversity can also be targeted through the identification and safeguarding of shared ICH in different communities and countries.

The Role of Communities

The standards of a "good" nomination for inscription on the lists of the 2003 Convention are fixed in the spirit of human rights and very recent achievements in local and participative democracy. Thus, they seem to better suit those countries with a high level of democratic experience because their political regimes and societies are strong and well established. On the contrary, "young" countries, mainly with a colonial experience, have engaged in a long and difficult process of state building and where the elites have chosen authoritarian and/or theocratic regimes. This debate occurred in my personal experience as a facilitator in North Africa during the recent years.[24] In fact, community participation (Article 15) is not an easy provision. There exists an abundant literature on this issue,[25] including "free, prior and

---

[23] C. Bortolotto, *UNESCO and Heritage Self-Determination: Negotiating Meaning in the Intergovernmental Committee for the Safeguarding of the ICH*, in: N. Adell et al. (eds.), *Between Imagined Communities and Communities of Practice Participation, Territory and the Making of Heritage*, Universitätsverlag Göttingen, Göttingen 2015.

[24] During a workshop on the 2003 Convention in Tunisia in 2013 (after the uprising which ended Ben Ali's regime in 2011), a participant asked: "and if we don't recognize the ratification of the 2003 Convention made by the previous regime because it wasn't a democratic decision?".

[25] J. Blake, *UNESCO's 2003 Convention on Intangible Cultural Heritage. The Implications of Community Involvement in "Safeguarding"*, in: L. Smith, N. Akagawa (eds.), *Intangible Heritage*, Routledge, London – New York 2009; N. Adell et al. (eds.), *Between Imagined Communities and Communities of Practice: Participation, Territory and the Making of Heritage*, Universitätsverlag Göttingen, Göttingen 2015; B. Rudolff, S. Raymond, *A Community Convention? An Analysis of Free, Prior and Informed Consent Given under the 2003 Convention*, "International Journal of Intangible Heritage" 2013, Vol. 8; A. Skounti, *The Authentic Illusion…*

informed consent" of the bearers and custodians.[26] It must be recognized that the issue of communities lies at the heart of the 2003 Convention and the ICH System as a whole.

In the case of nominations for inscription on the Lists and Register, the requirements are quite clear. The file has to describe the participation process of the whole stakeholders including communities, groups, and, where appropriate, individuals. This has to be proved by documents of consent either audio or audiovisual or written or in other format. Nevertheless, the evaluation process raises some questions that seem insolvable: what is a community since there is no definition of this notion in the framework of the 2003 Convention? What is the size of the community since inscribed elements witness different sizes?[27] Who are the spokespersons of the communities since there is no legal provision as to identify legal representatives? What is the relationship between communities, groups, and individuals since these three are linked in the text of the 2003 Convention? Another issue related to the former is the disproportion between the aspirations and needs of individuals, groups, and communities, mainly in developing countries, and the material and financial means made available by the States Parties concerned. People often express their concern about the lack of funding and the shortage in available budget. The inscription of elements is seen as an open door to funding and they expect direct profit for themselves.

The low use of the Intangible Cultural Heritage Fund has been noticed by the organs of the 2003 Convention. Few international assistance requests are submitted. Since 2016, the General Assembly has decided to raise the ceiling of the International Assistance requests examined by the Bureau of the Intergovernmental Committee to US$100,000. This will enable for more projects funded for communities. There is also lack of information on this mechanism which can help with safeguarding on the local level in developing countries.

Ultimately, communities are at the heart of the ICH System. They should be major partners in the whole safeguarding process, otherwise ICH elements are at risk. The ongoing capacity-building might help with enhancing the role of communities. This should be strengthened in the future so that an expanded base of stakeholders is involved in ICH safeguarding. The objective sought must be the empowerment of communities, groups, and individuals so that they decide for themselves what to do, how to do it, with what means, with whom and for what purposes. Furthermore, if they become autonomous, they will rely on government officials only for advice and provision of legal, technical, and/or financial support. Accordingly, they will be able to decide in what way they seek to safeguard their heritage.

---

[26]   T. Kono (ed.), *Intangible Cultural Heritage…*

[27]   Idem, *Taking Stock of the Elements Inscribed on the Lists: Actual Trends, Categories and Examples*, 2012, http://ich.unesco.org/doc/src/ITH-12-7.COM_WG-4-EN.doc [accessed: 28.06.2017].

The Impact of the Safeguarding on ICH Elements

As conservation is a heritage process that deliberately modifies and changes tangible heritage,[28] safeguarding also knowingly alters and transforms intangible heritage. It produces a variety of unpredicted effects on expressions, practices, knowledge, and know-how. Some aspects of the element are highlighted at the expense of others at different moments for various reasons, economic, social, and/or political. The international discourse (the 2003 Convention, Operational Directives, ICH Committee decisions, the Evaluation Body recommendations, capacity-building material) tends to delegitimize some economic or commercial uses of intangible cultural heritage so as to better stick to the spirit of the legal instrument. On the opposite, some of these uses seem to be pursued by the contemporary practices, mainly among bearers, but not only, in developing countries whatever the ICH domain is (Article 2(2) of the 2003 Convention). The question is about the uses of heritage:[29] the "authorized" uses and the "unauthorized" ones.

In Morocco, for instance (but this may be the case in many other countries), a wide range of elements of handicrafts and performing arts have, at least, two uses: (i) they are practised and transmitted for the sake of "traditional" cultural uses and "local" users. In this context, they have low monetary cost on the one hand and high social value on the other hand. A small musical instrument made of pottery and skin used during a special hallowed feast in some cities, is sold for one to three US dollars. In weddings, the invited people participate in many ways, including in collective dances, without any retribution other than meals and accommodation by the host family. Even groups of musicians play for very few hundreds of dollars. (ii) At the contrary, when they are devoted to "foreign" users, mainly tourists, other versions of the same elements have high monetary cost on the one hand and low social value on the other hand. Moreover, the element is curtailed from its cultural context such as oral expressions, beliefs, and/or rituals which are practised before, during or after. It is also not performed the same way in both contexts: while the practice is longer and follows the whole performing process in front of "local" users, it seems simplified and shortened when facing "foreign" users.

The challenge that the practitioners and the bearers are facing is the preference to be given to one way or the other. They are torn between the social value and the monetary cost. With regard to the economic and social changes, the practitioners seem to prefer the latter that guarantees increased income. This can also be valued because the performing arts group or the craftsman is invited by official agencies to take part in fairs either in the country or abroad. This enhances their position among their colleagues in the same field of activity and in their own village

---

[28]   L.H. Fredheim, M. Khalaf, *The Significance of Values: Heritage Value Typologies Re-Examined*, "International Journal of Heritage Studies" 2016, Vol. 22(6), p. 469.

[29]   L. Smith, op. cit.

or town. It also encourages them to progressively abandon the "local" and socially valued use and prefer the "foreign" and economically valued use. The latter progressively replaces the former and becomes the "authentic"[30] version of the art!

This question is about value. One could ask: what does value mean for a given community? What does it mean for other concerned parties in the safeguarding process? Does the intangible cultural heritage have value as such or only when it is processed? And which "uses" are in line with safeguarding requirements? What is the difference between actual/real values and potential ones? Who assesses the value among communities, groups, and individuals? Are the values on the top of a value-typology really important or one has to begin with those in the bottom of the typology? It is difficult to answer these questions. If value-assessment has progressed in the field of tangible heritage, one cannot say the same of intangible heritage. A recent review of the literature has been completed in the case of the tangible heritage.[31] Moreover, the 2003 Convention adopts a different perspective regarding value. It situates the value-assessment between communities' hands, mainly practitioners and bearers. Intangible cultural heritage has a value in the eyes of these people and it is up to them to define its nature and scope. Unlike the 1972 Convention, no "Outstanding universal value" defined by experts is to be discovered in the intangible cultural heritage elements.[32]

ICH originates largely from systems of social organization that are currently in difficulty and sometimes at odds with equality rights. The question then arises whether its safeguarding does not contribute to maintaining and transmitting these systems, including the inequalities associated with them. The relationship of ICH with religious or moral values that have been developed to maintain a given social order also arises. This can be seen, among others, in the division of labour, the distribution of tasks according to gender, age, or status. One nomination for inscription on the Representative List, for example, states that domestic work is "essentially feminine according to the norms" of the city. Another considers that the transmission of a traditionally female culinary knowledge will be done from mother to daughter, as has always been done. Are these dimensions essential for the understanding and sustainability of the social and cultural meanings of the element? Are the bearers willing to get rid of them in order to comply with contemporary

---

[30] The 2003 Convention doesn't use the concept of "authenticity". Nevertheless, practitioners, bearers, and a large public among communities use it with evident dissonant meanings. It appears also in some nominations for inscription on the ICH lists. For discussion of this concept in relation with ICH, see: C. Bortolotto, *Authenticity: A Non-Criterion for Inscription on the Lists of UNESCO's Intangible Heritage Convention*, in: *The Second ICH Researchers Forum of 2003 Convention*, International Research Centre for Intangible Cultural Heritage in the Asia-Pacific Region (IRCI), Tokyo 2013, and A. Skounti, *The Authentic Illusion…*

[31] L.H. Fredheim, M. Khalaf, op. cit.

[32] A value-based analysis of the 1972 Convention and the 2003 Convention is to be found in: S. Labadi, *UNESCO, Cultural Heritage and Outstanding Universal Value: Value-based Analyses of the World Heritage and Intangible Cultural Heritage*, AltaMira, Lanham 2013.

standards of equal rights? These are but some of the questions that arise whenever we deal with safeguarding. The fact is that the pertinent way is always the one that is adopted collectively and results from the widest consultation with all interested parties.

Conclusion

The 2003 Convention has built a wide and powerful system in very few years. The concept of intangible cultural heritage has emerged as one of the most popularized concepts of UNESCO. It has progressively replaced or competed with old notions such as "folklore" or "popular culture". Four hundred and twenty-nine elements have been inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding and on the Representative List of the Intangible Cultural Heritage of Humanity. Seventeen programs, projects, and activities in line with the objectives of the 2003 Convention have been selected in the Register of Good Practices. In addition, 73 international financial assistance requests were granted since 2008-2009 and benefited programs in various areas of the implementation of the 2003 Convention such as inventories, capacity-building, safeguarding or preparation of nominations in more than one hundred countries.

Nevertheless, the ICH System has some weaknesses that need to be addressed. The capacities of the organs, mainly those of the Committee and the Secretariat, are limited. The first impact was the ceiling of the number of nominations examined each year. The possibility to advise and accompany the States Parties and the communities is restricted because of lack of both financial and human resources. On a broader level, the universality of the treaty is at stake since 19 UNESCO Member States have not yet ratified it. Among them, some have reservations that need to be lifted through a continuous explanation and an improved implementation. The link between the local, national, and international levels of implementation is in need of consolidation to become less discontinuous. More awareness-raising and capacity-building can help upgrade the whole system for a better safeguarding worldwide. The capacity of the system has to be reinforced so that States Parties and communities are accompanied and advised in their efforts on the ground, including on the elaboration of nominations and requests for international assistance. The endorsement of ethical principles by the Intergovernmental Committee is likely to help place the bearers and the communities at the heart of the system.[33] Still, the States Parties have to make efforts to enhance the capacities of the communities present on their territory. The communities should be strengthened in order to play their entire role in the safeguarding process.

---

[33]   For a critical approach of these ethical principles, see M. Jacobs, *The Spirit of the Convention – Interlocking Principles and Ethics for the Safeguarding Intangible Cultural Heritage*, "International Journal of Intangible Heritage" 2016, Vol. 11.

Intangible cultural heritage could thus enable communities, groups, and individuals to search into their own cultural resources the ways to improve their lives and contribute to peace and sustainable development in a changing world.

References

Adell N. et al. (eds.), *Between Imagined Communities and Communities of Practice: Participation, Territory and the Making of Heritage*, Universitätsverlag Göttingen, Göttingen 2015.

Aikawa-Faure N., *From the Proclamation of Masterpieces to the Convention for the Safeguarding of Intangible Cultural Heritage*, in: L. Smith, N. Akagawa (eds.), *Intangible Heritage*, Routledge, London – New York 2009.

Blake J., *UNESCO's 2003 Convention on Intangible Cultural Heritage. The Implications of Community Involvement in "Safeguarding"*, in: L. Smith, N. Akagawa (eds.), *Intangible Heritage*, Routledge, London – New York 2009.

Bortolotto C., *Authenticity: A Non-Criterion for Inscription on the Lists of UNESCO's Intangible Heritage Convention*, in: *The Second ICH Researchers Forum of 2003 Convention*, International Research Centre for Intangible Cultural Heritage in the Asia-Pacific Region (IRCI), Tokyo 2013.

Bortolotto C., *UNESCO and Heritage Self-Determination: Negotiating Meaning in the Intergovernmental Committee for the Safeguarding of the ICH*, in: N. Adell et al. (eds.), *Between Imagined Communities and Communities of Practice Participation, Territory and the Making of Heritage*, Universitätsverlag Göttingen, Göttingen 2015.

Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003, 2368 UNTS 1.

Duvelle C., *A Decade of Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage*, "Ethnologies (Québec)" 2014, Vol. 36(1-2).

Eco U., *Le Vertige de la Liste*, Flammarion, Paris 2009.

Fredheim L.H., Khalaf M., *The Significance of Values: Heritage Value Typologies Re-Examined*, "International Journal of Heritage Studies" 2016, Vol. 22(6).

Jacobs M., *The Spirit of the Convention – Interlocking Principles and Ethics for the Safeguarding Intangible Cultural Heritage*, "International Journal of Intangible Heritage" 2016, Vol. 11.

Kono T. (ed.), *Intangible Cultural Heritage and Intellectual Property: Communities, Cultural Diversity and Sustainable Development*, Intersentia, Antwerp – Oxford – Portland 2009.

Kono T., *Taking Stock of the Elements Inscribed on the Lists: Actual Trends, Categories and Examples*, 2012, http://ich.unesco.org/doc/src/ITH-12-7.COM_WG-4-EN.doc [accessed: 28.06.2017].

Kurin R., *U.S. Consideration of the Intangible Cultural Heritage Convention*, "Ethnologies (Québec)" 2014, Vol. 36(1-2).

Kuutma K., *Who Owns Our Songs? Authority of Heritage and Resources for Restitution*, "Ethnologia Europaea" 2009, Vol. 39(2).

Labadi S., *UNESCO, Cultural Heritage and Outstanding Universal Value: Value-based Analyses of the World Heritage and Intangible Cultural Heritage*, AltaMira, Lanham 2013.

Pocius G.L., *The Government of Canada and Intangible Cultural Heritage*, "Ethnologies (Québec)" 2014, Vol. 36(1-2).

Rudolff B., Raymond S., *A Community Convention? An Analysis of Free, Prior and Informed Consent Given under the 2003 Convention*, "International Journal of Intangible Heritage" 2013, Vol. 8.

Schreiber H., *Intangible Cultural Heritage and Soft Power: Exploring the Relationship,* "International Journal of Intangible Heritage" 2017, Vol. 12.

Skounti A., *Possible Ways to Deal with "Similar Elements": The Extension of an Inscribed Element and the Nomination of "Serial Elements",* 2012, http://ich.unesco.org/doc/src/ITH-12-7.COM_WG-5-EN.doc [accessed: 28.06.2017].

Skounti A., *Réflexions sur les critères d'inscription sur les listes de la Convention du patrimoine culturel immatériel*, in: *The First ICH Researchers Forum of 2003 Convention*, International Research Centre for Intangible Cultural Heritage in the Asia-Pacific Region (IRCI), Tokyo 2012.

Skounti A., *The Authentic Illusion: Humanity's Intangible Cultural Heritage, the Moroccan Experience*, in: L. Smith, N. Akagawa (eds.), *Intangible Heritage*, Routledge, London – New York 2009.

Smith L., *Uses of Heritage*, Routledge, London – New York 2006.

UNESCO Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, 2016 version.