

# | Safeguarding Intangible Cultural Heritage in the 2003 UNESCO Convention: a critical appraisal

by Richard Kurin

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Can UNESCO help local cultural traditions around the world survive and even flourish in the face of globalization? No one really knows, but with a new International Convention for the Safeguarding of the Intangible Cultural Heritage it may be better equipped to do so.

At the biennial meeting of General Conference of UNESCO in Paris on 17 October 2003 some 120 Member States voted for the multilateral treaty; scores more registered their support subsequently. No one voted against it; only a handful of nations abstained – Australia, Canada, the United Kingdom, Switzerland, and the United States among them. For the Convention to now become international law it needs to be ratified by thirty states parties.

This article considers the nature of intangible cultural heritage, the approach, consequences, problems and possibilities suggested by the new Convention.

## What is intangible cultural heritage?

The Convention following common practice, describes intangible cultural heritage in the form of a list, as oral traditions and expressions – such as epics, tales, and stories, performing arts – including music, song, dance, puppetry and theatre, social practices, rituals and festive events, knowledge and practices concerning nature and the universe – for example, folk medicine and folk astronomy, and traditional craftsmanship, as well as the sites and spaces in which culturally significant activities and events occur. A more generative, categorical definition is somewhat illusive. It is the culture that people practise as part of their daily lives. It is beliefs and perspectives, ephemeral performances and events that are not tangible objects of culture like monuments, or paintings, books or artefacts. It is often described as the underlying ‘spirit’ of a cultural group. The technical, somewhat awkward term ‘intangible cultural heritage’ was selected because of the many difficulties cultural workers and scholars have encountered in an international, comparative context, with the use and misunderstanding of such terms as ‘folklore’, ‘oral heritage’, ‘traditional culture’, ‘expressive culture’, ‘way of life’, ‘folklife’, ‘ethnographic culture’, ‘community-based culture’, ‘customs’, ‘living cultural heritage’, and ‘popular culture’. Many people – educated experts as well as community members from around the world who hold such heritage will not know what ‘intangible cultural heritage’ means. Since the success of many safeguarding efforts will depend upon public acceptance, disseminating and explaining the term itself will take considerable work.

## Historical background

Well-meaning people have thought about how to save, protect, and preserve the world’s living cultural heritage for at least several hundred years. The specific idea of an international legal instrument to do so has a two-track history that formally extends back to the 1950s.

One track is a technical, legal one and concerns the ownership of cultural property. Multilateral discussions in the 1950s considered the idea of copyright and its application to folklore and traditional culture. Copyright is a means of assuring continued artistic and intellectual activity, as well as social benefit, by encouraging commercial rewards for the creators of particular tangible cultural products for a specified period of time. Could traditional forms of expression – ancient songs and folk tales for example be covered by copyright law? Should nations regulate and exert some form of legal control over such expressions on their territory, and their commercial exploitation by others? While such has been the subject of both national and international law, the extent of regulation is still an open question being considered by the World Intellectual Property Organization and others.

The other track was a more diffuse, nationalistic one, oriented to social and cultural policy. Japan, in the post Second World War era, had begun a serious programme to offer government recognition and support to those traditions that embodied its national cultural patrimony. The programme grew in reaction to the concern that ancient, royal, and local traditions would disappear in the wake of modernization and thus diminish national identity. In its benchmark

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*Law for the Protection of Cultural Properties* (1950), and its revision (1954), the government defined tangible and intangible cultural properties, and people as ‘living treasures’, – all national resources and assets to be protected, appreciated, utilized and managed – not for commercial profit, but for the very survival of the civilization. A variety of other national programmes grew from these roots and in response to similar concerns in the Republic of Korea, the Philippines, the United States, Thailand, France, Romania, the Czech Republic, Poland and other nations.

The formal effort to safeguard intangible cultural heritage through UNESCO began three decades ago in 1972 with the acceptance of the *Convention for the Protection of World Cultural and Natural Heritage* and the initiation of the World Heritage List – a programme oriented towards the international recognition and national support for the restoration, conservation, and preservation of tangible monuments, sites, and landscapes. Bolivia, with the support of several other nations, proposed addressing oral traditions. Little action followed for a decade. A variety of experts’ meetings were held in the 1980s, and in 1989 UNESCO issued a *Recommendation on the Safeguarding of Traditional Culture and Folklore*. This defined practices that countries could put in place to preserve their intangible cultural heritage. Very few did.

By the mid-1990s, international awareness of and discourse about the consequences of globalization had increased dramatically. Many cultural observers around the world believed that local, regional, even national, traditions were devalued or endangered or both. The onslaught of

global mass culture raised the question of whether valuable traditions, practices, and forms of knowledge rooted in diverse societies would survive the next generation. As the pace of cultural transformation and displacement picked up, scholars and community advocates have sought means of encouraging contemporary linkages to their distinctive cultural past. Numerous governments, too, became sensitive to the importance of publicly asserting the value of their national cultures in various forums that bestow and reflect international prestige.

Renewed attention to the issue of local, national and regional cultural survival resulted in a series of UNESCO-sponsored regional conferences on the topic, and culminated in a global conference at the Smithsonian Institution in Washington in 1999. That conference found the UNESCO Recommendation to be a somewhat ill-construed, ‘top-down’, state oriented, ‘soft’ international instrument that defined traditional culture in essentialist, tangible, archival terms, and had little impact around the globe upon cultural communities and practitioners. The conference and a subsequently published book – *Safeguarding Traditional Cultures*, called for a more dynamic view of cultural traditions as ‘living’ and enacted by communities. It envisioned a community-involved, participatory approach to safeguarding efforts in any formal convention that might be developed. This gave the movement towards a convention an added boost, especially given the appointment of the Japanese diplomat, Koichiro Matsuura, as Director-General of UNESCO.

Under Matsuura’s leadership UNESCO instituted a programme, *Masterpieces of the Oral*

and *Intangible Heritage*, which pointed to the value of such traditions. In 2001, the first nineteen Masterpieces were proclaimed – ranging from Chinese *kunqu* opera to the balaphone tradition of Guinea, from Sicilian puppetry to the disappearing oral tradition of an Amazonian rain-forest community, from the practice of Dominican confraternities to the ‘cultural space’ of Morocco’s famed Jemaa El-Fna Square in Marrakesh. The Masterpieces programme was very well received, despite considerable conceptual and practical problems about the criteria for selection. It did have immediate and significant impacts – bringing public attention to and validation for traditions, and encouraging local and national governments to develop action plans to safeguard them. The programme was seen as a corrective to the World Heritage List. That list generally excluded the cultures of many states, particularly those in the southern hemisphere, because they lacked monuments and sites. The Masterpieces programme offered a form of international recognition more suited to the particularities of those cultures with strong intangible traditions.

Buoyed by the conferences and the success of the Masterpieces programme, advocates for a convention argued that such would inspire worldwide attention and also voluntary donations of significant funds to support safeguarding activities. A preliminary draft convention was crafted, following closely the language and structure of the World Heritage treaty. Three meetings of intergovernmental experts in Paris and endorsements by various meetings of cultural ministers accomplished the technical, legal, and diplomatic work needed to bring the Convention to the UNESCO General Conference.

### Recognizing intangible cultural heritage in the Convention

Not all human cultural activity is defined as intangible cultural heritage in the Convention. First, the Convention has as its purview forms of experience that are aesthetically or conceptually elaborated. The Convention is focused upon ensembles of action that people name as traditions and regard as meaningful – not mere utilitarian actions. Second, the Convention views heritage as something shared within and symbolically identified with a cultural community, and traditional in that it is socially transmitted from one generation to the next. Most of the experts who helped formulate the Convention assumed that intangible cultural heritage is traditional culture and ruled out all sorts of things – *avant garde* theatre, video games, pop music, Bollywood choreography, contemporary state rituals, McDonald’s recipes, American football, astrophysics and university legal studies. But the definition, as given in the Convention, can encompass a broader range of activity than the framers assumed. Such cultural forms as rap music, Australian cricket, modern dance, post-modernist architectural knowledge, and karaoke bars all symbolize cultural communities (albeit not necessarily ethnically or regionally based) and pass on their own traditions (though not usually genealogically).

Recognizing intangible cultural heritage in terms of the Convention is not that obvious and is sometimes befuddling. Verbal expressions of a particular language – for example stories, tales and sayings are considered intangible cultural heritage, but not a language as a whole.

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The differentiation of intangible from tangible heritage might also be puzzling. Craft items, such as magnificently elaborate Lithuanian crosses are tangible, but the knowledge and skills to create them intangible. Tools are tangible, but plans, if thought are not, but if drawn are. This makes safeguarding most interesting because sometimes the preservation of the tangible and intangible are intimately conjoined. For example tangible textual scripts, costumes, props and stage settings are part and parcel of a performance tradition like India's Sanskrit *Kutiyattam* theatre and Japanese *Nogaku* theatre. For many peoples, separating the tangible and the intangible seems quite artificial and makes little sense. For example, among many local and indigenous communities, particular land, mountains, volcanoes, caves and other tangible physical features are endowed with intangible meanings that are thought to be inherently tied to their physicality. Similarly, it is hard to think of the intangible cultural heritage of Muslims on the *hajj*, Jews praying at the western wall of Jerusalem's temple, or Hindus assembling for the *kumbh mela* as somehow divorced and distinct from the physical instantiation of spirituality. Given that the Convention, in effect, operationally makes the intangible tangible, the conceptual distinction and separation of the two domains is problematic.

Furthermore, according to its explicit provisions, not all intangible cultural heritage is recognized for the purposes of the Convention. To be recognized, intangible cultural heritage must be consistent with human rights, exhibit the need for mutual respect between communities, and be sustainable. This is a very high and one might say unrealistic and imposing standard.

Understandably, UNESCO does not want to support or encourage practices inimical to human rights such as slavery, infanticide, or torture. Yet the standard is not without controversy. Is female genital mutilation a legitimate part of intangible cultural heritage to be recognized by the Convention or not? Is a religious tradition that includes Brahmins, but excludes non-Brahmins disqualified as intangible cultural heritage because of its discriminatory quality? Is a musical tradition where only men play instruments and only women sing inequitable, and thus contrary to human rights accords? Determining what is allowable or not as intangible cultural heritage under the Convention will be a difficult task.

Similarly problematic is the 'mutual respect' clause in the Convention. Intangible cultural heritage is by definition something used for community self-definition. Many cultural communities though, define themselves in opposition or resistance to others. Their very identity as a people or community relies on their victory over or defeat by others. Their defining songs and tales may celebrate the glory of empire, victorious kings, religious conversion, or alternatively resistance to perceived injustice, martyrdom and defeat – not the mutual respect of peoples. The Convention's standard is quite idealistic, seeing culture as generally hopeful and positive, born not of historical struggle and conflict but of a varied flowering of diverse cultural ways. Including the 'mutual respect' standard can however disqualify much of the world's traditional culture from coverage by the Convention.

The standard of 'sustainability' is noteworthy but problematic. Consider that the

whole treaty is about safeguarding heritage thought to be endangered to some degree or other. The very fact that a tradition is endangered means that it is not sustainable in its current form or in its current context – hence the need for national or international intervention. Yet by definition a tradition to be recognized as intangible cultural heritage under the Convention and thus worthy of safeguarding, must itself also be sustainable. The provision, though well meaning, is confusing. Sustainability here is an ideal to be achieved, not an eligibility requirement for action. Cultural workers will have to figure out the degree to which a tradition may be sustained – much more a matter of professional judgement than legal stricture.

#### **Duties and obligations under the Convention**

The Convention commits nations to develop inventories of their intangible cultural heritage and to work with local communities, groups and individual practitioners on various, appropriate means of ‘safeguarding’ those traditions. The Convention calls upon nations and communities to develop action plans for safeguarding culture. Safeguarding those traditions entails their research and documentation, education and transmission, appropriate legal protection, and forms of public recognition and support. Those action plans will be formulated with expert involvement, and presumably, to be good, will be based on research, community input, and comparison with other such interventions. Safeguarding, according to the Convention, must be done with the permission, co-operation, and substantive decision-making involvement of the relevant communities and practitioners. National governments may use their

own resources, coupled with those of the community for such purposes, as well as seeking UNESCO aid and recognition for those traditions deemed particularly valuable and especially endangered. Once the Convention is ratified, a UNESCO fund generated by voluntary members’ dues and donations will be established. UNESCO will also form an international committee and an internal unit to oversee the work, assuring that safeguarding efforts are based upon empirical research, sound assessment and regular evaluation. The committee will also oversee two international ‘lists’. One will be a list of ‘representative’ – one might have preferred the term ‘exemplary’ intangible cultural heritage. This will incorporate the items already designated as *Masterpieces of Oral and Intangible Heritage* by UNESCO. It will be comparable to the World Heritage List. The other list will be that of endangered cultural heritage – those traditions recommended to UNESCO for immediate safeguarding work by the international community.

Are the obligations the Convention imposes reasonable? Are the foreseen impacts and outcomes beneficial? Are the Convention’s envisioned actions adequate to the stated need?

The largest obligation imposed by the Convention is that it commits national scholars and public servants to the task of composing comprehensive inventories of intangible cultural heritage. There was considerable debate among international experts over the usefulness of inventory making. For most, it was deemed a rational way of identifying and itemizing intangible cultural heritage as a prelude to management – just

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as is done for other cultural ‘property’ like monuments and archaeological sites. For critics, this is a huge, never-ending task, using a historically discredited methodology misconceiving culture as atomistic items, and bearing little relationship to the goal – as if such inventories in themselves could encourage cultural vitality. The former prevailed, arguing prudent management; with the latter anticipating that making inventories will divert resources and public servants away from the task of working with specific communities on actual safeguarding activities.

A second large obligation for states grows from the Convention’s appropriate recognition that those who practise the traditions should have the major responsibility for their safeguarding; states-parties have to work with them to do so. The problem is how. Efforts by governments to involve cultural communities appropriately recognizes local agency, but on the downside might require the formalization of social relations that detract from the tradition. Most cultural communities are constituted informally. Cultural exemplars are more respected than they are elected. Identifying who speaks for the cultural tradition being safeguarded is no easy task – will wise women and exemplary storytellers have to be elected as such? A cultural community may also be beset by factionalism. Developing a means of working together is also difficult. There are often great status differentials between public officials and experts on the one hand and the practitioners of the tradition on the other. Bringing community participation into play has been a great challenge for many cultural projects in the past and will continue to be so in the future.

The difficulty of working with and engaging far-flung isolated communities in safeguarding activities is logistically and sociologically challenging. This, anthropologists, folklorists, and linguists usually surmount, albeit imperfectly. The challenges will be considerably greater in cases where the cultural community constitutes a very large ‘national’ group within a state. Large or significant groups might, through cultural assertion seek their own civic or political autonomy or even independence from the state party. Working with such communities – particularly those defined as indigenous peoples – will not just be a technical challenge, but rather call upon very sophisticated political and legal skills given a variety of other national and international treaties, often of a contentious nature.

The third major obligation for states is to charge a specific national entity with developing action plans to safeguard its intangible cultural heritage. Most nations have not done this. The typical situation is that within a nation a variety of governmental units, university departments, and other organizations have developed rather uncoordinated plans to address one or another aspect of safeguarding work.

A 1995–99 UNESCO survey of actions undertaken by nations to safeguard intangible cultural heritage revealed a lack of institutions in the field and a paucity of effective programmes. Many countries have good programmes in place to research and document intangible cultural heritage – though there are never enough trained researchers, equipment or supplies, and time to

meet the need. Most nations have developed some form of archives documenting intangible cultural heritage, but they generally lack the resources adequate to keep up with cataloguing and preservation functions. Many are also challenged to digitize their collections and make them accessible to the tradition bearers and the general public, whether in analogue or digital form. Dissemination and valorization programs for intangible cultural heritage typically take the form of organized festivals, exhibitions, audio recordings, films, videos, books, conferences, educational materials, and increasingly web pages. But overall, nations lack the human and fiscal resources to produce these forms of intangible cultural display in a regular, high-quality manner. Formal legal measures for the protection of intangible cultural heritage vary greatly around the globe, with a wide variety of consequences for traditional culture – intended and unintended. A number of governments provide stipends and direct support to tradition bearers through ‘living treasures’ and apprenticeship programmes. These are intended to promote both the status of tradition bearers and the transmission of the particular tradition, but do so only for a miniscule portion of the population. Large-scale projects where government agencies or non-governmental organizations work closely with the cultural community to help perpetuate intangible cultural heritage, tying it in with economic development, cultural enterprise, and comprehensive educational efforts are few and far between – though there are encouraging programmes such as the development of community-based museums, local-level cultural industries, and even community-controlled cultural tourism operations.

Given the disparate state of current programmes, one would anticipate widely differing strategies and capabilities of nations in formulating their action plans. Many do not have experience in developing such plans and carrying them out. Many plans now in place often reflect antiquated cookie-cutter approaches, full of assumptions about the nature of tradition and its preservation. There is, around the world, a real lack of study and assessment of best practices. The Convention does not mandate any particular strategies for safeguarding work.

National action plans may indeed enhance particular traditions and their practitioners, but they may also have unintended, negative consequences. The revival and revitalization of traditions may, to ensure sustainability, turn religious practices, for example, toward tourist and commercial endeavours. The Convention seeks to have the safeguarding of intangible cultural heritage integrated with other state interventions – planning for development, building institutions, fostering scientific research, formulating laws, budgets and government operations. This is most appropriate. Yet the question of how to accomplish this remains.

#### **The Convention: drawbacks and obstacles**

Aside from the programmatic obligations, the Convention imposes upon states obligations that may prove drawbacks and obstacles to its success. For one, the Convention calls upon nations to take ‘necessary measures’ to ‘ensure’ the viability of intangible cultural heritage. ‘Necessary measures’ can be quite extreme. Surely no one rationally envisions the Convention as safeguarding the



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transmission of intangible cultural heritage through such coercive forms as legally requiring the sons and daughters who practise a tradition to continue in their parents' footsteps. No cultural treaty should ensure results through the denial of freedom promised under human-rights accords, with the opportunity for social, cultural, and economic mobility.

A similar over-reach of the Convention regards its envisioned results. 'Safeguarding' is defined as 'ensuring the viability of the intangible cultural heritage.' No cultural intervention can 'ensure' such an outcome. Culture changes and evolves. Practices of the past are discarded when they cease to be functionally useful or symbolically meaningful to a community. UNESCO and Member States need not guarantee through financial and symbolic rewards the survival of those customs and practices, beliefs and traditions that the community itself wants to discard. Nor should they encourage particularly harmful practices, or 'freeze' cultural practices in the guise of preserving cultural diversity or defending against cultural globalization. The true aim of the Convention is to aid traditional cultural practices and their practitioners so they have the opportunity to survive and even flourish, but not guarantee such an outcome.

Another technical consideration and possible drawback is the consistency of the Convention with other international accords. The Convention has what is called a 'savings clause', which says it has no effect on any rights or obligations regarding intellectual property. This, too, was a matter of considerable debate between those who wanted the Convention to bolster the

argument for national control over traditional cultural expressions, and those who sought to leave such a debate to future treaties – such as a looming UNESCO accord on cultural diversity, as well as those under consideration by the World Trade Organization and the World Intellectual Property Organization. The 'savings clause' essentially postpones the discussion of who owns culture, and leaves to this Convention a more programmatic orientation.

### **The Convention: adequate for the task?**

The big question about the Convention is whether or not it is up to the task envisioned. Can it really safeguard living cultural practices among the diversity of the world's people?

The inventories and lists by themselves may have value for recognizing and valorizing various traditions, but will hardly save them. The 'representative' list that will incorporate the Masterpieces programme will probably continue to include those traditions that are colourful, poignant, have long histories, and a good measure of national, if not international, popularity. The list of endangered intangible cultural heritage will note their worthiness for international support, but not necessarily occasion action plans adequate to sustain them.

The Convention tends to reduce intangible cultural heritage to a list of largely expressive traditions, atomistically recognized and conceived. The actions it proposes miss the larger, holistic aspect of culture – the very characteristic that makes culture intangible. This is the intricate and complex web of meaningful social actions undertaken by

individuals, groups, and institutions. Thousands of human cultures today face a myriad of challenges. Whether they survive or flourish depends upon so many things – the freedom and desire of culture bearers, an adequate environment, a sustaining economic system, a political context within which their very existence is at least tolerated. Actions to safeguard ‘tangibilized’ inventoried items of cultural production are unlikely to safeguard adequately the larger, deeper, more diffuse intangible cultural patterns and contexts. Saving songs may not protect the ways of life of their singers, or the appreciation due by listeners. Far greater more holistic and systematic action is likely to be required.

### Conclusion

The *International Convention for the Safeguarding of the Intangible Cultural Heritage* has come a long way from the much more conceptually problematic Recommendation that preceded it. Given the both the subject matter and the nature of international treaties, perfection is an illusive attainment. Yet the desire of Member States and experts to do at least some good for endangered cultures and traditions outweighs the fears of doing inadvertent harm or nothing at all. The Convention is clearly a work in progress wherein experts and community people, policy-makers and scholars will try to figure out how to safeguard cultures over the coming years. The Convention itself sets out a viable means of addressing the problems and legitimate concerns raised by critics. This is to be done through the formulation of an international committee of cultural experts under the auspices of UNESCO, elected by the General Assembly for the Convention. The committee will help determine

the future course of safeguarding practice. It will help implement definitions and criteria, select projects, examine best practices, review plans, make recommendations for funding, consult with communities and other experts, and in the end, assess results and Convention impacts.

Importantly, this committee can provide a core function with regard to the improvement in cultural work, hopefully galvanizing the intellectual tools and organizational efforts which have lagged behind the need to safeguard intangible cultural heritage around the world. Heretofore, experts have not developed the theory and practice for saving languages, ensuring the continuity of musical traditions over hundreds of years, applying the rich and disparate knowledge of folk communities to contemporary life, or using living cultural resources in a wise and sustainable way for economic development. Fortunately, now, this deficiency can be addressed.

The Convention does some very good things. It reinforces the idea that the practice of one’s culture is a human right. It seeks government recognition and respect for the varied cultural traditions practised by people within its jurisdiction. It seeks to bolster the idea that all cultures give purpose and meaning to lives and thus deserve to be safeguarded. It privileges the culture bearers over the state. It suggests that forms of safeguarding be integrated with legal, educational, and economic development efforts where appropriate so that culture retains its vitality and dynamism. Now, with this Convention, a mechanism will be put into place at the international level where those efforts *may* be energized and improved to take on the task. While

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doubts persist about the institutional machinery and the ability of the Convention to attract adequate external funding appropriate to the level of need, the Convention may still provide an important opportunity. For cultural advocates around the globe, and for many communities and tradition bearers, the *International Convention for the Safeguarding of the Intangible Cultural Heritage* is a welcome addition to the tool-kit of resources available for accomplishing valuable cultural work.



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12. The Oruro carnival, Bolivia, was proclaimed by UNESCO as a masterpiece of the oral and intangible heritage of humanity in 2001. The cultural memory is embodied in these practices, not in the object.