

Safeguarding Experiences in Central and Eastern European Countries and China



INTANGIBLE CULTURAL HERITAGE

edited by Hanna Schreiber

10th Anniversary of the Entry into Force of the 2003 UNESCO Convention
through the Prism of Sustainable Development

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Ten remarks on the 10th
anniversary of entry
into force of the 2003
UNESCO Convention for
the Safeguarding of the
Intangible Cultural Heritage

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10 remarks:

1. *The 2003 Convention has radically changed the way of thinking about and defining cultural heritage.*
2. *The 2003 Convention is a 'sister' of the 1972 and the 2005 Conventions.*
3. *The 2003 Convention is a legal, social, but also a political instrument, which in certain cases is misused and leads to 'side effects'.*
4. *The Representative List is everything. And it lives its own life.*
5. *The 2003 Convention reinforces the prestige and the soft power of the countries and UNESCO itself.*
6. *The Convention evoked new processes of patrimonialisation (heritagisation).*
7. *The 2003 Convention created new fields of power for the research about the human and culture, especially for cultural anthropology (ethnology, ethnography, folklore studies).*
8. *The 2003 Convention was the first to give voice and subjectivity to communities, groups, and individuals.*
9. *The well-thought implementation of the 2003 Convention on the local level is its most powerful advantage, which may in practice ensure the realisation of the concept of sustainable development.*
10. *The Convention is the biggest achievement of the contemporary international cultural heritage law, and at the same time it leads to its further fragmentation.*



Introduction

Writing about the 2003 Convention¹ as the greatest legislative triumph of the last decade (since its entry into force in 2006) in the field of international cultural heritage law has become somewhat obligatory; it is a kind of a chorus; a phrase which all articles on it should start with (see, for example, Blake 2009, 45; Duvelle 2014, 27). It is, however, well-justified; when we compare the speed of its ratification with other legal instruments adopted in the area of cultural heritage under UNESCO auspices, this statement becomes firmly warranted.

¹ Dziennik Ustaw [Journal of Laws] 2011 no. 172 item 1018.

Ten years after the entry into force of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage² in 1975, it had 87 states-parties; the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property³ was ratified by 47 states (since its entry into force in April 1972); The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict⁴ had 52 states-parties. The closest in terms of success to the 2003 Convention is currently the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions,⁵ which entered into force in March 2007 and had 144 states-parties at the end of 2016. However, it is still far behind the success of the 2003 Convention, which only after 10 years of its entry into force, in 2016, reached 172 member states.

Although the 2003 Convention still lacks more than 20 ratifications to reach the status of the most widely ratified international treaty in the world, currently held by the Vienna Convention for the Protection of the Ozone Layer⁶ with 197 member states ('Most-ratified international treaties' 2012), the speed of ratifications suggests that in 2023, during its 20th anniversary (or in 2026, during the anniversary of its entry into force), it will come very close to this number, however, the chances of matching it are not high due to some points of dispute over, among others, the indigenous peoples or the political tradition of regulating the culture sector via legislative measures (which prevents it from being signed by some countries, such as the United States, Great Britain, Canada, Russia, or New Zealand). However, taking into consideration the six countries whose politics will probably not undergo a sudden change, the number of 190 ratifications seems very likely to be achieved long before 2023. One can thus talk about 'implementation optimism' and a real 'success story' of this instrument. It is therefore worth to attempt to formulate a number of remarks basing on the articles presented in this volume that summarise the changes that have been caused by the adoption of the 2003 Convention so that one may see if in 10 years' time they are still valid, verify what kind of unforeseen changes they will have resulted with, and assess whether they were the right answers for the identified challenges and threats.

² Dziennik Ustaw 1976 no.32 item 190.

³ Dziennik Ustaw 1974 no. 20 item 106.

⁴ Dziennik Ustaw 1957 no. 46 item 212, appendix.

⁵ Dziennik Ustaw 2007 no. 215 item 1585.

⁶ Dziennik Ustaw 1992 no. 98 item 488.



Remark 1: the 2003 Convention has radically changed the way of thinking about and defining cultural heritage.

The new definition of cultural heritage introduced by the 2003 Convention has radically altered the way of thinking and defining the entire area of heritage, including its fields that have a grounded literary output (e.g. cultural and natural heritage). This statement constitutes yet another verse of the chorus, without which the analysis of the Convention is impossible. The research, documentation, and protection of the areas that are safeguarded by the definition of the convention are not a novelty; in fact, in many countries, they have been in place for centuries, and since the 19th century they have been more organised and systematised in frameworks of the scientific disciplines emerging at that time (anthropology, ethnology, ethnography, sociology of culture), or in publication series (such as, for example, the research of Oskar Kolberg quoted by Jan Adamowski in this volume). However, as noticed by Danijela Filipović in this volume, with the adaptation of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, this issue has come under debate again and became analysed in a completely new way. This new context, emerging with the 2003 Convention, is one that blurs the previous boundaries between what is tangible and intangible, what is cultural and natural, what belongs to the future or to the past, what is subjected to the actions of communities and individuals or experts and administrators, and what brings prestige to the West and the East (see Mishkova, in this volume; Schreiber 2017). Through the 2003 Convention, the first and, arguably, the most serious renegotiation since the 18th century of what is and can be 'cultural heritage', has become a fact.



Remark 2: the 2003 Convention is a 'sister' of the 1972 and the 2005 Conventions.

The 2003 Convention was created in the period between the adoption of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage and of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and has a lot in common with them, including the organisational structure concept, certain procedures, and lists of heritage (apart from the 2005 Convention). However, each one of them has different goals, philosophy of culture safeguarding and the historical context of its development (see, for example, Smith



The Gala audience – the II Official Ceremony of Awarding Diplomas of Inscription into the National ICH List. Ceremony closing the Forum in Sukiennice (Cloth Hall), Kraków, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.



Intervention by Michał Malinowski, Storyteller Museum – MuBaBaO, member of the Polish Council for ICH, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.

and Akagawa 2009; Skounti 2011; Smeets and Deacon 2017). Nevertheless, they are regarded as belonging to the same 'family' of UNESCO legal regulations (Duvellé 2014).

Still, the differences between them are pointed out more often than their similarities; it is the departure from the rules governing the 1972 Convention that has made the 2003 Convention so unique and was a sign of its revolutionary character: placing the communities, groups and individuals in the centre, focusing on sustaining living practices and phenomena, accepting their fragile and dynamic character and rejecting the concept of outstanding universal value. It was also meant to fulfil the hopes connected to the de-westernisation of the international heritage safeguarding regime (Meskell, Liuzza, and Brown 2015). The logic of the 2003 Convention: safeguarding the practices and communities is also different to the one of the drafters of the 2005 Convention: protection of the national culture industries against the treats of globalisation. So what makes them so related?

Marju Kõivupuu (Estonia, in this volume) points out to these inspirations using the example of cross-trees, which link together the natural, tangible, and intangible heritage. She also points out to the osmosis of definitions and practical solutions taking place in Estonia due to the use of the documents adopted on the international forum, particularly UNESCO and IUCN (International Union for Conservation of Nature). Moreover, she highlights the influence of these solutions on the everyday life of the inhabitants of sites where all aspects and layers of heritage intertwine and link together. A place similar to the region of Võru in Estonia is described by Katarzyna Zalasieńska (in this volume) – Kalwaria Zebrzydowska in Poland, and its example of landscape arrangement. She notices: 'Taking into consideration the religious practices performed in this place as an intangible element and linking it with material heritage, it indicates a desirable direction for thinking about landscape as a type of cultural space that is complemented by elements of intangible heritage'. Indeed, the category of cultural landscape emerged in 1992 in the system of the 1972 Convention and allowed taking into consideration various examples of interactions between humans and nature, including practices of religious, artistic, and cultural nature (Luengo and Rössler 2012). Such bridges that connect both Conventions include the criterion VI of the inscription on the World Heritage List: 'the cultural property should be directly or tangibly associated with events or living traditions, ideas or with beliefs, with artistic and literary works of outstanding universal significance'. The importance of this criterion as a link is reduced, however, by the fact that it can only be applied as a supplementary criterion.

Mirela Hrovatin (in this volume) finds the connections between the 1972 and 2003 Convention and heads towards a holistic treatment of heritage, describing the possibilities of employing



long-established knowledge and skills in the traditional dry-stone wall building on the Starigrad Plain in Hvar, inscribed on the UNESCO World Heritage List. The importance of this place and of the inscription generates an increased interest in preserving the intangible heritage elements present in this area, which are inseparable from cultural and natural heritage.

The ties between the 2003 and 2005 Conventions are mentioned, in turn, by the experts from Albania, who write about the new draft act on cultural heritage, which contains a special chapter devoted to ICH, reflecting the duties outlined in both Conventions (Breshani and Dollani, in this volume).

Everything thus points to the fact that the practical functioning of these three legal acts in a specific place, on one territory, and additionally bonded together strongly by the concept of sustainable development (2005 Convention Preamble and main text, Chapter VI in the Operational Directives of the 2003 Convention, adopted in 2016, and the Policy on the integration of a sustainable development perspective into the processes of the World Heritage Convention, adopted in 2015) leads to the situation in which the conceptualisation of the integrated, coherent way that heritage and the policies surrounding it should be safeguarded (e.g. those that relate to cultural industries) is becoming a crucial challenge for the next 10 years. The undertaken initiatives to reflect on these connections, such as the conference in Bergen (Norway) in 2014 – called ‘International Conference on UNESCO 1972, 2003 and 2005 Conventions: Synergies for development: using natural and cultural heritage in sustainable development’ – confirm that a harmoniously connected implementation of these Conventions in the future is not only necessary for the communities, groups and individuals and the civil society as a whole (article 11 of the 2005 Convention), but also from the perspective of the states and UNESCO themselves (Duvellé 2017, in print).

Remark 3: the 2003 Convention is a legal, social, but also a political instrument, which in certain cases is misused and leads to ‘side effects’.

The contentment that marked adopting the Convention eventually joined with critical voices, which have nowadays become especially loud. Only a month after the publication of the 2003 Convention – as noticed by Adina Hulubaş (in this volume) – specialists began to voice their concerns that the heritage safeguarding system can lead to the emergence of a ‘specific environment that only



mimics nature' (Brown 2012, 95). One of the experts argued that the new regulations might even 'change the course of things' (Kurin 2012, 100). Moreover, An Deming (in this volume) adds a critical observation to these concerns:

... a number of problems have also risen simultaneously. Among them, the central one is the paradox between the UNESCO ideal theory and the actual practice of ICH safeguarding in specific contexts. It has not only caused competition or conflict between different places in the country, and caused various countries to fight over property rights to traditional events, but has also diminished the authority and confidence of the common people as traditional bearers in expressing themselves through their own culture.

The researchers from Macedonia (Stojkova Serafimovska and Opetčeska Tatarčevska, in this volume) point out to the side effects connected to the functioning of the Convention caused by encompassing certain elements of intangible heritage into the safeguarding system, thus, at the same time, into the legal-political framework. They highlight the political nature of the Convention and its role as a pretext for strengthening the local and national identity (Stojkova Serafimovska 2014).

In the Republic of Macedonia, the establishment and development of institutional mechanisms for the safeguarding of ICH are inextricably linked to politics on the international level, particularly with regard to the contestation of the existence of the Macedonian ethnicity characterised by a distinct language and culture. ... As a consequence, the state has put significant focus on affirming and publicising the national and cultural identity, which, in turn, has spurred processes of recontextualisation and heritagisation of ICH.

What is more, even the traditional Galičnik wedding (Macedonia) that is under protection became a state-sponsored reconstruction of a traditional wedding that highlighted the ethnic distinctiveness of Macedonian heritage. At the same time, the researchers emphasise that, despite the emergence of this political dimension in the creation of the ICH safeguarding system in their country, the processes of safeguarding ICH, when implemented in ways that empower local tradition-bearers, may be effective in sustaining cultural traditions even when safeguarded ICH elements are simultaneously employed for other political or economic ends' (Stojkova Serafimovska and Opetčeska Tatarčevska, in this volume).

Thus, apart from the political dimension of the Convention, we also need to notice its powerful influence on other practices and customs that are seemingly outside of its scope. An example of such unforeseen, unintended 'side effects' resulting from the local and national implementation of the 2003 Convention, often brought up by researchers, is commercialisation of the intangible



cultural heritage phenomena. Adina Hulubaş analyses this situation basing on the Horezu ceramics, inscribed on the Representative List of Intangible Cultural Heritage of Humanity in 2012:

Unfortunately, potters from other ethnographic zones react to its success in an imperilling manner.

In Marginea, Suceava, black pots have been produced until eight years ago and made the village famous for their specific craftsmanship. Today, tourists entering the workshop encounter Horezu plates for sale, which are brought from 500 km away. Other potters paint the Horezu cock, a trademark image for these ceramic products, on plates whose chromatics belong to the Baia Mare region, up in the northern part of Romania (Hulubaş, in this volume).

Yet, the sole presence of a phenomenon on the Representative List does not guarantee its safeguarding; sometimes it might even jeopardise the heritage element as it creates a breakthrough moment in its functioning: the change occurs in the perception of the element by its depositaries, and by the local, country-wide, as well as the international environment (Romanková-Kuminková, in this volume; Turgeon 2014). It can also become the bone of contention and a source of international conflicts, which is analysed by An Deming (in this volume) and exemplified by the Gangneung Danoje and the Duanwu (also known as the Festival of Dragon Boats) festivals in Korea. The former was acclaimed as a Masterpiece of the Oral and Intangible Heritage of Humanity in 2005. Moreover, they both occur on the same day (5 May according to the moon calendar) and they both – as signified by their names – base on the same Chinese concept of ‘Duanwu’. The conflict about the ‘property rights’ to them has led to the worsening of mutual relations, which costs both countries a significant amount of time and effort to re-establish them.

Among many side effects, one can also mention the disappearance of previous meanings and functions tied to, on the one hand, commercialisation and increased touristic interest with a given element, and on the other hand, to the natural inclination of the bearers to earn money and increase their standard of life (see Skounti 2017). In this publication, such case of folklorisation of intangible cultural heritage is described by Adina Hulubaş, who uses the example of the ‘Căluş Ritual’, inscribed on the Representative List in 2008 (proclaimed as a Masterpiece of the Oral and Intangible Heritage of Humanity in 2005). Traditionally, it was organised only nine times a year, beginning with the first day of Whit Sunday, and the participating dancers, who all had been secretly initiated into the group, travelled from village to village and carried the promise of curing the barren women and people ailed by widely fearsome diseases such as, for example, epilepsy. As noticed by Hulubaş, after the inscription on the List all the mystical elements became immediately forgotten and the only lore learned by the new adepts of this performance is related to dance



virtuosity, presented on various festivals, weddings, processions or other festivities throughout the whole year.

The issue of side effects tied to the functioning of the Convention, together with the philosophy of intangible heritage safeguarding, is perfectly summarised in a joke by Valdimar Hafstein, which points out to the common way of thinking about intangible heritage as a phenomenon (in the meaning of a problem, or an illness) that needs to be 'diagnosed' (documented, assessed, inscribed on a list) in order to decide on applying the necessary remedies.

At the doctor's office:

Patient: "What is it, doctor?"

Doctor: "There's no easy way to break this to you: you have heritage."

Patient: "Heritage? Are you serious? What kind?"

Doctor: "Intangible. I'm sorry."

Patient: "Intangible heritage ... How bad is it?"

Doctor: "It is in urgent need of safeguarding. It's already metacultural."

Patient: "What's the prognosis?"

Doctor: "Intangible heritage is chronic, I'm afraid. It is often terminal, but in your case, there is a reason to be optimistic. You can live with your heritage for a long time to come, provided we take immediate measures to safeguard it."

Patient: "Will it be painful?"

Doctor: "I won't lie to you. The treatment is not pleasant. You will have to learn to relate differently to yourself and to your heritage from here on out."

Patient: "Shouldn't we get a second opinion?"

Doctor: "I recommend contacting UNESCO. If they agree with the diagnosis, we might get you on their list."

Patient: "Would that help?"

Doctor: "If you're listed, UNESCO can help document your heritage, identify its elements, analyze the mode of transmission, raise awareness, even draw up a five-year safeguarding plan."

Patient: "Is all that really necessary?"

Doctor: "Without proper treatment, I'm afraid your heritage may lose what authenticity it has left. Worst case scenario, you might be looking at a full-blown case of fakelore."

Patient: "Wait a minute. That's what they said when our parents' generation came down with tradition. But they beat that."

Doctor: "They did, with a lot of drugs. But back in those days, tradition responded to drugs. Intangible



heritage is more serious. And it is highly communicable. We haven't found an effective way to contain it yet." (Hafstein 2015, 282)

The joke shows the problem which might accompany the introduction of external measures into the current situation of heritage, as the side effects might in some cases outweigh the expected benefits stemming from taking safeguarding measures. The reflection on this paradox reminds somewhat of the common saying that 'I had better not visit the doctor, he might find that something is wrong with me'. We know, however, that in many cases it is this approach that actually brings negative results. The Convention, thus, should be perhaps treated as a dose of aspirin: even though it seems good for everything and it is effective in treating inflammation, in certain cases it carries a risk of causing an allergic reaction – and such was the case with the Horezu ceramics and the 'Căluș Ritual'.



Remark 4: the Representative List is everything. And it lives its own life.

'World heritage is first and foremost a list' wrote Barbara Kirschenblatt-Gimblett (2004, 57). This sentence perfectly fits to the Representative List, together with the opinion of Valdimar Hafstein (2009, 93) that 'the lists [of heritage – H.S.] frequently live a life of their own', which suggests that heritage elements – firstly decontextualised by the nomination procedure and then recontextualised by placing them on the lists – are beginning to function in a new way. The immense impact of the Representative List can be noticed in this very publication. There is no text that would not quote it at least once or would not mention it (in most cases, it is mentioned as an achievement of a country, sometimes, as a neutral fact, in some – critically, see texts by Eva Románková-Kuminková or Adina Hulubaş).

Eva Románková-Kuminková even begins her paper with the accurate statement: 'Everyone wants to be on the list!'. It is because the list is becoming somewhat of a gauge; a tangible proof for the power of culture; an element of soft power (Schreiber 2017) of a given country that has managed to successfully inscribe an element of its heritage on the international forum and thus made it visible, noticeable, and widely esteemed. The list, therefore, is a clear source of information about what is considered to be a carrier of social (but not only!) values (see Schuster 2002, 15).

Equipping the Convention with the List has to be also considered as an element of expanding the knowledge about the Convention itself, as well as raising awareness and highlighting the meaning of intangible heritage. 'It is vital, as it means that the humanity – and this sounds proud – recognises our customs and pays attention to them as authentic, valuable, and attractive', noticed the director of the Historical Museum of the City of Kraków, when he commented on the first Polish nomination in 2017 for the inscription of the Nativity Scene tradition in Kraków on the Representative List (Gazur 2017). 'The humanity' in the case of the Representative List thus directly replaced 'the world' from the World Heritage List (1972 Convention). And even though the 2003 Convention currently avoids the terms 'uniqueness', 'authenticity', 'mastery' or 'masterpiece', 'world' or 'universal' (UNESCO 2016a, para. 31), it is those terms that are commonly tied to the concept of 'the list': something must, therefore 'deserve' to be inscribed, and the proof that it indeed does is its 'distinctiveness', 'authenticity' or 'uniqueness'. In this way, the collection of meanings and connotations tied to the World Heritage List becomes passed on – almost genetically – to the Representative List of the Intangible Heritage of Humanity, the title of which might for many be as well 'The List of Authentic Intangible Heritage of the World', as every one of the 365 currently inscribed elements (as of December 2016) might be considered a 'world-scale phenomenon' (Gazur 2017). It was even directly stated so by the representatives of various organisations and communities when they filed the declarations of consent to inscribe yoga as 'world heritage' on the Representative List in 2016...⁷ What is interesting is that a similar title was proposed in the draft version of the Convention: The List of Treasures of the World Intangible Cultural Heritage (article 11C; see UNESCO 2003, para. 20) and the arguments that advocated its creation included, among others, the following (proposed by the representative of Benin on behalf of a group of African countries): if we do not create a list of masterpieces of intangible heritage as a part of this Convention, it will be treated as a 'second rate' Convention and not as good as the one from 1972 (Hafstein 2009, 103).

The enormous impact of an inscription on the Representative List on states is also highlighted by the intense efforts of the national delegations to influence the Intergovernmental Committee – in the case of the Evaluation Body's⁸ negative recommendation of the nomination prepared by said states for the Intergovernmental Committee – to nevertheless press the Committee to decide

⁷ Nomination file no. 01163 and the consent of communities are available online, see UNESCO 2017.

⁸ Created to assess applications in 2015 as a successor of the Subsidiary Body and the Consultative Body. In the draft Convention the latter was provisionally named Scientific Council, see UNESCO 2003, para. 17.





Cross-cultural encounter. Polish falconry specialists meeting an ICH expert from China, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.



Cross-cultural encounter. *Perebory* (weaving traditions in the Bug River region) bearers with Professor An Deming from China, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.

positively on the inscription. This situation finally in 2016 became jarring and caused a general discontentment, both among the states – observers of the Committee meeting as well as within the Committee itself. In 2016, in Addis Abeba, out of 19 negative recommendations, as much as 15 were inscribed on the Representative List (thus ignoring the recommendation of the Evaluation Body). A special ad-hoc group has been therefore created with the aim of solving this issue in the future. This problem itself can be also treated as ‘heritage’ of the World Heritage List and, furthermore, as an element of the functioning of almost every international treaty that is developed and ratified by states, and governed by the established organs operating under the provisions of this treaty comprised – again – of the representatives of these states.

Such perception of the meaning of the Representative List is a source of natural determination among the states to prepare nationwide applications – as, in such way, their social and political meaning increases (see Duvelle 2014). Hence, we see inscriptions where the term ‘a community’ – which according to the ideas of the Convention creators was supposed to pertain to a specifically defined social group that inhabits a specific territory, tied by intangible cultural heritage practices – is interpreted as ‘community’, or in other words, the entire ‘nation-state’, such as in the case of ‘Turkish coffee culture and tradition’ (2013), ‘Gastronomic meal of the French’ (2010), or ‘Chinese calligraphy’ (2009).

At the same time, there is a need to highlight the fact that during this fight for a change of perception of the Representative List there has been an increasing pressure on the previously ‘neglected’ registers: List of Intangible Cultural Heritage in Need of Urgent Safeguarding (Article 17 of the Convention, the number of inscriptions as of 2016: 47) or the Register of Good Safeguarding Practices (Article 18 of the Convention, number of inscriptions as of 2016: 17).

Thus, in this context, three basic questions emerge: first, will it be possible to realistically balance the Representative List by inscriptions on the Urgent Safeguarding List and the Register of Good Practices within the next 10 years and thus change the vector of the interests of countries and the centre of gravity of the Convention? Second, is it possible to create, and if yes, what are the mechanisms that limit the political character of the actions tied to the Representative List inscription procedure and can they be prepared and implemented in the subsequent years? Third, in what way should the communities, groups, and individuals be helped after the inscription on the Representative List – despite the frequent post-inscription commercialisation and folklorisation – so that the phenomena nurtured by them do not lose their original, important pre-inscription context?



Remark 5: the 2003 Convention reinforces the prestige and the soft power of the countries and UNESCO itself.

This aspect of the Convention is not only a pleasant addition to the ‘usual’ activities of states; in fact, it is a crucial strategic element in the current ‘beauty contest’ of states on the international arena and in their struggles to achieve high ranks on the ranking of ‘international attractiveness’ – the soft power rankings of countries. This soft power is undoubtedly built up by the inscriptions on the Representative List; however, they are still not visible in the assessment criteria of soft power in the most popular rankings of countries: Soft Power 30 and the Elcano Global Index (Schreiber 2017). This pivotal aspect tied to the 2003 Convention is mentioned in this volume by Eva Románková-Kuminková:

An inscription on the Representative List is a highly prestigious matter and the States Parties to the Convention approach it accordingly. It means that political motives can very easily push away any ideals and the well-intentioned wishes of experts to provide responsible international protection. ... Thus, on the one hand, the Representative List promotes the goals and ideals of the Convention, and on the other hand, it creates space for political and institutional manipulation.

Joseph Nye furthermore states: ‘a country’s soft power is based on three resources: its culture (in places where it is attractive to others), its political values (when it lives up to them at home and abroad), and its foreign policy (when others see it as legitimate moral authority)’ (Schreiber 2017, 45). The researchers of cultural politics have noticed that in the 19th century, countries that were conscious of the primary role of their cultures began to compete in a ‘global race for soft power’ (Holden 2013). It is also connected to the highly popular concept of the so-called ‘nation branding’ of Simon Anholt (Anholt 2006, 23). There is thus a reason why the states which possess the largest resources of soft power are leaders in the strength of their ‘brands’ (Schreiber 2017); rankings of national brands are created in parallel to the soft power rankings.⁹ This concept, however, is not limited solely to countries; it is also used to point out the ‘attractiveness’ of non-state actors, such as international organisations, and UNESCO in particular. This organisation, through its arbitrary role in culture and cultural heritage, has significant resources of soft power and an awareness of them and employs this potential in positioning itself in the environment of important international organisations. The emergence of a new act of international law: the 2003 Convention, together

⁹ The most well-known ones include S. Anholt’s Nation Brand Index (NBI) and the Country Brand Index (CBI) of Future Brands.



with the new concept of intangible cultural heritage that it brought, has led to increasing the soft power of UNESCO itself, as the organisation that safeguards the increasing number of processes that legitimise heritage.

The concept of soft power has become the leading one in determining the roles and tasks of UNESCO in the widely understood process of consultations on the UN Post-2015 Development Agenda, which were accepted in 2015 as Sustainable Development Goals (SDGs). In the introduction to the UNESCO document prepared in April 2014, named *Soft Power Agenda* in short (UNESCO 2014), Irina Bokova, UNESCO Director-General, stated that the organisation is a key actor of soft power (UNESCO 2016b; Schreiber 2017).

The prestigious character of being visible on the UNESCO forum and having inscriptions on the heritage lists may also bring positive consequences. The states that want to be visible and respected for the actions related with safeguarding intangible heritage undertake real administrative and legislative efforts, which in turn change the situation in the area of intangible cultural heritage in their countries. They can also guide the countries that have only started their journey into this area. This interpretation of a country's role in the process, adopted by China, is described by Chen Fafen (in this volume), who notices: 'Especially when China's first law – the Law of the People's Republic of China on intangible cultural heritage protection – was enacted in 2011, it has accelerated the progress of China's intangible cultural heritage safeguarding, and strengthened the awareness of its entire society about intangible cultural heritage, and furthermore, significantly improved China's global influence'. At the same time, a direct impulse to such action was provided by UNESCO, which encouraged countries to develop their safeguarding systems through its Masterpieces of the Oral and Intangible Heritage of Humanity programme. Today, ICH safeguarding in China is described as one of the national goals.

A similar approach to prestige – embedded into the functioning of the 2003 Convention – and its potential positive outcomes is mentioned in this volume by Adina Hulubaş:

The steps towards a secure future may be symbolised by an image of concentric waves on water, created by an object falling in. In the centre, we have the public acknowledgement of cultural value, but then local initiatives have to be supported and protected from the pressure exerted by central standards. ... These initiatives, along with the activities of the National Commission for the Safeguarding of ICH, gradually ripple the public awareness and aim at creating a sustainable development for ICH in Romania, involving citizens, civil societies, the business sector, and the higher authorities. ... A company uses the Living Human Treasures programme for their brand campaign, which might have been an inspiration from the ceremony held at the



presidential palace last year. This act of public recognition is a vivid example of the circular waves created by prestige; it has managed to involve all the above mentioned social entities.

Prestige in the field of culture is thus built by creating a space for cooperation and dialogue. In this way, the actions undertaken by the countries on the UNESCO forum legitimise this institution as somewhat of an arbiter that creates and oversees the international cultural heritage regime (or to be precise, regimes. For a description of various regimes, see Bendix, Eggert, and Peselmann 2013).

Furthermore, as noticed by researchers Velika Stojkova Serafimovska and Ivona Opetčeska Tatarčevska in this volume: 'It is also a matter of prestige in a world of United Nations' activities to be networked in this system and to cooperate on an equal level with other states. ICH has the power to solve conflicts, mainly because in many different ways it goes beyond political borders'. This can be supported by the evidence of the multinational inscriptions on the Representative List which unite the communities, groups, individuals, and countries in a common goal, and result in tangible and concrete outcomes through the creation of fora for communication, education, dialogue, and joint action.

Remark 6: the Convention evoked new processes of patrimonialisation (heritagisation).

The term 'patrimonialisation' has a Latin etymology: *patrimonium* means homeland, but also property. It points out, however, not at the object – the heritage, but at the sole fact of the presence of a specific heritage making policies, and it highlights the activity of selecting what is meant to become heritage (in foreign literature this term is used interchangeably with the term 'heritagisation', see Adell et al. 2015). It thus points out to a heritage that is subjected to transformations and incessant practices of ascribing status to the chosen testimonies of the past and using this status for the sake of the present. On the level of international relations, the term patrimonialisation thus concerns the research of political processes aimed at the concept of cultural heritage as a specific resource, which must be subjected to procedures of legitimisation and institutionalisation on various international fora, basing on specific selection, classification, and hierarchisation policies related to those elements of this resource, which are regarded as worthy from the perspective of a specific individual, group, community, local, national, or international government



administration, and meet the criteria created by and enforced by the legitimate organisations: councils, committees, commissions, and expert teams (Schreiber 2016b). Thus, patrimonialisation is an element of the cultural policy of states, but also of international organisations, local communities, and other subjects in the realm of functioning in various international cultural heritage regimes (on fragmentation, see remark 10). It is moreover an element of the cultural policy that proposes a 'specific reading of the past' (Kowalski 2013, 11), in which, however, the past plays a gradually less important role than the challenges of the present. In this present time, it is the people and their needs – the bearers of the heritage – that become more important, or at least, as important as the heritage itself (see remark 6).

The 2003 Convention encourages reading the past in a way that will make it into a mere springboard; a starting point for highlighting the continuity of practices related to the bearers of the heritage. The Convention's philosophy encompasses, above all, the present and the future, together with the individuals and groups rooted in sustaining their intangible heritage.

The authors of this volume notice this way in which the Convention works. Velika Stojkova Serafimovska and Ivona Opetčeska Tatarčevska employ this perspective to write about the *Kopačkata* dance, which was one of the first elements that the Republic of Macedonia applied to be inscribed on the UNESCO ICH list in 2011. The actions undertaken in order to prepare this application initiated new processes of patrimonialisation, tied to both the UNESCO guidelines related to the implementation of the intangible cultural heritage safeguarding system, as well as to the contemporary political factors (Stojkova Serafimovska and Opetčeska Tatarčevska, in this volume). The same thing occurred – however, without UNESCO's participation as it did not manage to become inscribed – to the Galičnik wedding, in whose current form the borders between a national festivity, a corporate-organised ritual, a festival organised for tourists, and a staged folklore and cyclical event have become blurred (Opetčeska Tatarčevska, in this volume). Ivona Opetčeska Tatarčevska notices that, on the one hand, the institutionalised ICH safeguarding systems are always grounded in the political processes of patrimonialisation and recontextualisation and thus are subjected to their influence, but on the other hand, the way and the degree to which these processes affect cultural practices differ substantially, even within the borders of the same country. To use Adina Hulubaš's metaphor about the concentric waves that appear after dropping a stone in water, it is not difficult to notice that even the elements that officially remain outside the processes of patrimonialisation stemming from the 2003 Convention are nevertheless subjected to its influence – even if they are playing a secondary role, they still have to relate or subordinate to the primary processes that run in parallel.





The welcoming of the guests of the Forum by the mining orchestra in Wieliczka Salt Mine, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.



Polish national dances in Wieliczka Salt Mine, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.

These processes of redefining heritage for the purposes of the UNESCO list nomination procedure, which include, among others, a visible identification of safeguarding institutions and the creation of spaces for obtaining consent from the bearers of the heritage, can be observed with almost every application, regardless of the country.

At the same time, they generate the need to create institutions that guard the procedures which legitimise, classify, select, and include or exclude certain elements from this heritage resource. This does not remain unnoticed by the researchers from Croatia (Hrovatin i Šimunković, in this volume):

The preparation of the nomination files for two editions of the UNESCO Masterpieces of the Oral and Intangible Heritage of Humanity programme in 2003 and 2005 resulted in the formation of a special expert Committee for Intangible Cultural Heritage in Croatia in 2002, and a special Department for ICH in the Ministry of Culture in 2004 that prepared the first inscriptions into the National Registry of Cultural Goods of the Republic of Croatia ...

These challenges are addressed accurately by Velika Stojkova Serafimovska (in this volume), who notices also a positive side in these patrimonialisation processes driven by the Convention, in places where they lead to local bearers becoming independent:

the traditional performing art is a living matter that constantly changes, transforms, transits, and lives as a separate entity that absorbs and records all changes to individuals, performers, communities, collectives, regions, and the peoples it originated from. It changes from personal or collective expression to public national cultural heritage; from a spiritual asset into a commercial product; from the limited artistic form and a part of the syncretic rite and everyday life into differentiated musical expressions and forms; from local rural culture into an element of urban and national culture (Pečicheva 2014). Although the long-term effects, in this case, remain to be seen, it suggests that the processes of safeguarding ICH, when implemented in ways that empower local tradition-bearers, may be effective in sustaining cultural traditions even when safeguarded ICH elements are simultaneously employed for other political and ideological ends.

Therefore, even though the processes of patrimonialisation entail the choice of whose heritage will be safeguarded via legal regulations and whose heritage will be dominated and marginalised, and also the choice of various international fora where it is showcased or hidden – or even negated and excluded – and thus, the decisions on whose voices will be heard and muted; at the same time, the initiation of this process of selection, through the power of the Convention, gives this voice to the bearers. It is here that lies the emancipatory, liberating element of the 2003 Convention.



Remark 7: the 2003 Convention created new fields of power for the research about the human and culture, especially for cultural anthropology (ethnology, ethnography, folklore studies).

The importance of studies on culture (cultural diversity of humanity), especially those based on fieldwork, has undoubtedly become greater on the international arena thanks to the 2003 Convention. It is particularly interesting as the reflection on cultural heritage has been interminably crossing scientific disciplines and various fields of science; in fact, it is considered as an area that links together various disciplines (Bendix, Eggert, and Peselmann 2013, 11; Logan, Nic Craith, and Kockel 2016, 2) and that does not give privileges to any of them: whether it is conservation, architecture, history of art, ethnology, folklore studies, sociology or philosophy, law, economics, or political studies. However, the potential of cultural anthropology (ethnology, ethnography) on the level of international heritage regimes can be only fully seen after 2003. For it was the 2003 Convention that created a clearly defined space for the activation and demonstration – in the areas that had been until then dominated by experts from other disciplines – of anthropological and ethnographic associations, represented, for instance, on the forum of nongovernmental organisations accredited by the 2003 Convention, which counts 164 organisations at the moment. These organisations, abiding by the rule of equitable geographical representation, also nominate 6 experts to the 12-person Evaluation Body, which assesses the applications for the Representative List, the Register of Good Practices and the Urgent Safeguarding List. The states parties of the Convention are also responsible for the nomination of experts in the areas safeguarded by the Convention when applying for the Intergovernmental Committee (art. 6, p. 7: ‘States Members of the Committee shall choose as their representatives persons who are qualified in the various fields of the intangible cultural heritage’).

This extraordinary career of cultural anthropology has been also noticed by the experts writing in this volume. It is related to both the increase of importance of anthropology and its representatives on the international, as well as the national level. Thus, the created national solutions, connected to the almost universal ratification of the Convention, take into account mainly anthropologists (ethnographers, ethnologists, folklorists) when creating expert teams or evaluating bodies that assess the national-inventory applications. An Deming, for example, refers to the Chinese experiences and the crucial role played by the China Folklore Society, especially in connection with the actions that have been undertaken after the ratification of the 2003 Convention. He writes:



Folklore studies and other related disciplines also celebrate new opportunities. This does not mean the superficial prosperity ... this movement enables scholars to think thoroughly and deeply about the relationship between culture and people's lives; it enables them to investigate Chinese folklore more deeply and more comprehensively, with strong support from governmental agencies ... Therefore, it makes it possible to contribute new perspectives and methods based on Chinese experiences, both to the academic domain and to the campaign of ICH.

Such experience of the special role of anthropologists, ethnographers, folklorists in the system of safeguarding – a system that also requires supervision, selection, assessment and control of specific practices and cultural phenomena performed to address its requirements – is also described by Eszter Csonka-Takács. She describes the network of experts established in Hungary for a systemic improvement of ICH safeguarding:

The Directorate [of the Skanzen in Szentendre – H.S.] relies on the mediating work of county rapporteurs. The Skanzen created this professional network based on the institutions of the county museum system to coordinate and facilitate the promotion, the awareness-raising, and to give professional guidance to the communities. By selecting an expert – most commonly an ethnographer – from each county, a group of professionals has been formed, which helps in mediating information, informing and looking up communities, and preparing the nomination document. They provide professional advice to interested communities and organise orientation forums with the participation of the Directorate, facilitating contact between the involved parties.

The description of the county rapporteurs' tasks thus largely overlaps with the activities of most ICH experts that operate within the states parties to the Convention, pointing out to the great responsibility that they carry as intermediaries, the so-called cultural brokers (Jacobs, Neyrinck and van der Zeijden 2014) between local communities and the systems and structures of power.

In this tome, the importance of anthropologists is also mentioned by Filipović, Židov, and Hrovatin.

The incredible career of anthropology, however, inevitably leads to tensions between the various roles that the anthropologist has to play: the researcher striving to discover the truth, the spokesman of his own culture, the representative of a selected occupation or the culture of an organisation (e.g. an anthropological society), and finally, the trusted delegate of the interests of a given group. These are all subject to the milieu regulations, which take shape of ethical codes of conduct created by anthropological associations.

For a long time anthropologists – in response to the post-colonial criticism in their field in the 1970s (Asad 1973) – have made it a matter of honour to give voice to the excluded and margin-



alised communities. Today, again, through the 2003 Convention, they are forced to trailblaze the jungle of responsibilities and power relationships, navigating between the interests of their subjects, those of their own, the interest of their sponsors and finally, the ideals of supporting the scientific and humanistic aims of anthropology. They have been compelled to react to the emergence of a new legislative act, which for the first time has related to their knowledge to such an extent. This causes extreme reactions in most countries, including Poland (Schreiber 2014) and France. They follow similar patterns, described by Christian Hottin and Sylvie Grenet (2017, 63): spanning from a radical rejection to enthusiastic support, spectated by a wide audience of more or less sceptical and cautious observers of the situations' development. It is thus quite visible that, by entering the legal and ideological framework of the Convention and the international and local system it had created, anthropologists begin to take on actions that are at some point less oriented towards research and more in tune with the implementation of cultural policies (of their own country or those of UNESCO) (Hottin and Grenet 2017).

Anthropology creates a special and unique type of connection between the researcher and the researched. His role as an expert-researcher of the community nominated for an inscription on any of the UNESCO lists (nominated by the country) entails duties towards both the researched community as well as towards the sphere of power that influences this group, which is able to create and exert legislative acts and specific safeguarding programmes. By entering this intricate maze of interconnected processes, the researcher himself frequently becomes an object of manipulation. Ewa Nowicka (2006, 150) notices:

Indeed, it is not clear whether the anthropologist is to be a cool observer and analyst that only sometimes delivers his/her insight when an order is placed, or an active participant of social life, a mediator and advocate of the conflicted parties. In this context, the educational or moralising role of anthropology and anthropologists is also mentioned. Such tasks, if set before the discipline, raise a series of ethical issues, as well as practical and political doubts which anthropologists are unable to escape, whether they want it or not. One of the ideological assumptions of anthropology, deriving from its earliest development stages, is the desire to defend an existing cultural difference, the diversity that becomes a separate value in its own right.

A question remains open whether the anthropologist that navigates through the structures of heritage regime, local or international, can realistically defend this diversity without having to compromise (ethically or politically). The 2003 Convention, by opening these areas of power, undoubtedly leads the entire anthropological milieu into a somewhat intellectual, ethical, and practical 'temptation'.



Remark 8: the 2003 Convention was the first to give voice and subjectivity to communities, groups, and individuals.

‘Communities are at the heart of the intangible cultural heritage safeguarding system’ – this is yet another obligatory statement which appears each time the 2003 Convention is quoted (see, for example, Skounti 2017, in print; Blake 2009, 2017; Duvelle 2014). Indeed, in the text of the Convention itself the term ‘communities’ appears 11 times, whereas the experts are mentioned only twice: in article 21, point b), which describes international aid in providing experts; and article 6, point 7, which describes the nomination of persons that possess adequate qualifications in various aspects of intangible cultural heritage to the Intergovernmental Committee. One can also conduct ‘an archaeology’ of the institutional presence of the concept of safeguarding individuals, starting from the 2003 Korea proposal of creating the Living Cultural Properties safeguarding system, and only later protecting groups and communities, which resulted in the acceptance of the Living Human Treasures programme (UNESCO 1993), and subsequently evolved into the Masterpieces of the Oral and Intangible Heritage of Humanity Programme, whose 90 elements have become incorporated into the system of the 2003 Convention (article 31).

In all the international treaties that have appeared since 2003, whether on the UNESCO or the Council of Europe forum, its new, grassroots, social, open dimension is profoundly visible on all levels, including decision-making, creating, maintaining, and safeguarding cultural heritage. The two most important international conventions adopted after 2003 that protect cultural heritage are the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the Council of Europe Convention on the Value of Cultural Heritage for Society¹⁰ (the so-called Faro Convention). Both of them highlight the significance of social participation as key to preserving cultural heritage. The Faro Convention goes as far as to introduce, in article 2 b), the term ‘heritage communities’ that consist of ‘people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations’.

Giving the voice to the communities and individuals has also resulted in noticing other groups, the so-called passive bearers of cultural practices, who are mentioned by An Deming (in this volume):

¹⁰ *Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Faro*, 27 October 2005. Unfortunately, this Convention is ratified only by 17 out of 47 member states of the Council of Europe. Only 8 member states of the EU ratified it.



For quite a long time, in accordance with the situation of the academia, the attention of most participants of the ICH programme has been mainly paid to the active bearers, who are usually very dynamic in the transmission of specific cultural items and have special talents in particular cultural genres. However, when the concept of community as integration was introduced to the public, together with more and more scrutiny on the distinction between the 'active bearers' and 'passive bearers' by some folklorists (Yang et al. 2011, 23–24), it has been gradually accepted that those ordinary people who are not specialists in any cultural items actually shape the main foundations of the viability and vitality of the concerned traditions. Based on increasingly more discussions and adequate communication, the concept of 'everyone is the bearer of traditional culture' was subsequently promoted.

The expanding apprehension, together with the increasing importance of the role of 'bearers' is also noticed by the researchers from Croatia: 'We can also observe an increasing recognition among the public of the exceptional value of intangible cultural heritage, as well as the conviction that the commitment and responsibility for its safeguarding and transmission to future generations should rest on the bearers, local communities and relevant institutions; local, national, or minority identities' (Hrovatin and Šimunković, in this volume).

The importance of bearers is not solely declarative, and for a long time has been the object of scientific scrutiny (Onciul, Stefano, and Hawke 2017; Adell et al. 2015; Rudolff and Raymond 2013; Kono 2009). All the accepted nomination procedures on the UNESCO level take into consideration the necessary element of their free, prior and informed consent for any actions that affect them. Reading the consent forms might sometimes yield surprising discoveries (for example, the fact that sometimes dozens or even hundreds of bearers sign institutionally prepared forms of consent of inscribing their ICH element on... the World Heritage List, instead of the Representative List), however, it does not change the fact that it is the first time that communities, groups and individuals cannot be ignored. Their cooperation, joint effort, and also the shared responsibility for sustaining a given cultural phenomenon is fundamental for the Convention.

However, as observed by An Deming (in this volume), the ambitious goals connected to the presence of communities, groups and individuals in the system of the Convention cannot be fully achieved as the project of ICH safeguarding, despite the fact that it came into being based on principles of equality and diversity of cultures, has led to a creation of a new hierarchy of those cultures, as well as of their elements within: 'The experts and UNESCO have the privilege to determine what item is suitable to be inscribed on the Representative List, which in the public mind means a certificate to the more valuable; whereas the actual bearers of a particular cultural item cannot have



their voice on it'. It is thus necessary to notice that even such a significant change in the language of legal international acts does not result in a sudden change in the practice of countries, including implementation processes. An example of such attempt to sustain 'nation-centrism' can be the stretching of the term of 'community' in the 2003 Convention in order to include national community, which allows inscribing on the Representative List not only local and regional communities but also the nation-wide ones. Thus, the revolutionary step which made communities, groups and individuals the most important subjects in the system of ICH safeguarding has, in the practice of UNESCO – an organisation made by countries and for the countries – turned out to be crucial, yet also easy to manipulate, especially in situations in which the Convention does not provide a definition of a community, a group, or an individual. What is more, it also does not provide any guidelines on the way in which representatives of such groups should be selected, nor the way to distinguish communities from groups. An unanswered question also remains: should the expectations of benefits of being inscribed on the UNESCO list, expressed by communities, groups and individuals, be condemned?

Even though these questions still remain largely unanswered, the 2003 Convention and its various fora, including the ICH NGO Forum, undoubtedly create opportunities to identify and discuss these problems and to propose practical solutions to them.

Remark 9: the well-thought implementation of the 2003 Convention on the local level is its most powerful advantage, which may in practice ensure the realisation of the concept of sustainable development.

The concept of sustainable development, originating in the 1980s, can be certainly called an international success. In the context of UNESCO, its way was paved by adopting the 2013 Hangzhou Declaration (UNESCO 2013b), which called for an attempt to inscribe culture into the newly drafted UN development goals for the subsequent 15 years. It needs to be noticed that although culture did not make it as an independent point on the list of 17 new Sustainable Development Goals, it appears in many different forms (local culture, cultural diversity, intercultural understanding, culture of peace) in a number of places on the Agenda (point 8, point 36, and goals 4, 8, 11 and 12). The importance of heritage is particularly emphasised in goal 11: Making cities and human settle-





The ICH bearers with Professor Małgorzata Rozbicka and Professor Magdalena Gawin at the II Official Ceremony of Awarding Diplomas of Inscription into the National ICH List. Ceremony closing the Forum in Sukiennice (Cloth Hall), Kraków, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.



The audience and ICH bearers gathered at the II Official Ceremony of Awarding Diplomas of Inscription into the National ICH List. Ceremony closing the Forum in Sukiennice (Cloth Hall), Kraków, October 2016. Photo by Paweł Kobek, © National Heritage Board of Poland.

ments inclusive, safe, resilient and sustainable. In the framework of this goal, task 11.4 is formulated: strengthen efforts to protect and safeguard the world's cultural and natural heritage. It is, however, the only place in the Agenda in which the term 'heritage' appears.

Inscribing sustainable development into the heart of the safeguarding system materialised thanks to the adoption of a separate Chapter VI in the Operational Directives of the Convention on June 2016, on the session of the General Assembly of States Parties to the Convention. The 2003 Convention thus became the first act of international cultural heritage law, which inscribed the concept of sustainable development into its safeguarding system in a way that was very concrete and legally binding. Another challenge is ensuring that the concept of intangible cultural heritage will be considered and implemented in practice during the creation of programmes and strategies of sustainable development on various levels and by various subjects (Duvelle 2014, 41). For as the system of safeguarding intangible cultural heritage treats sustainable development with utmost importance, the same cannot be (or at least not yet) said when considered from the perspective of globally and nationally implemented programmes of sustainable development.

How can we, therefore, practically translate the idea of sustainable development to the scope of the 2003 Convention? This is what the authors of this publication are considering. They tackle different topics connected to the concept of sustainable development – so crucial from the perspective of the Convention and important in the system of intangible heritage safeguarding (see the text by Timothy Curtis). Adina Hulubaş notices that, in the context of intangible heritage safeguarding, the sustainable development goal can be realised only if the young generation together with the older generation are both engaged in the process. It also leads to its balancing through ensuring that the safeguarding practices are attended by at least two generations. Anita Vaivade, in turn, states that the core of sustainable development lies in treating phenomena holistically, and ensuring various methods of their safeguarding, including – interestingly – a guarantee of the right to refuse the participation in these measures, which was inscribed into the Latvian ICH safeguarding act adopted in 2016 by the Latvian Parliament. This serves to reinforce the basic idea that it is the community that should independently decide on what is good for them and on the way of protecting their cultural traditions. In this perspective, sustainable development means a balance and variety of safeguarding measures and leaving the decision of choosing them to the communities themselves.

Katarzyna Smyk, in turn, sees the potential to realise the ideals of sustainable development through the 2003 Convention in its auto-reflective effect on the bearers and in making them



more conscious about their engagement in safeguarding measures. In this way, the own actions of communities, groups and individuals (bottom-top), as well as the actions inspired externally (top-bottom), become balanced and thus – sustainable.

Mirela Hrovatin (this volume), while analysing this issue, also notices that the implementation of sustainable development in practice is based primarily on engaging the bearers and the entire local community into each step of planning the development projects. She notices: ‘not all the solutions can be reached for all types of ICH on the theoretical or universal levels. Thus, the more local and specific approach to ICH, the better’. This perspective is also about sustainability; this time, of the proposed safeguarding measures, created internationally as theoretical and proposed solutions, as well as of their practical aspects, adjusted to the local conditions. Eva Románková-Kuminková, consecutively, writes about the potential and real dangers for sustainable development, which are connected with the inscription of a given element onto the UNESCO lists and points out to the fact that considering the expressions of intangible cultural heritage on the heritage lists will not ensure sustainable development on its own. It is necessary to complement it with conscious actions made by communities, groups and individuals, among which one can find the decision to refuse to inscribe one’s practices to the national inventory, not to mention the UNESCO list itself (in this volume).

Therefore, taking into consideration the great variety of the tackled topics relating to sustainable development, we can see that the concept itself has such a wide scope that it becomes incredibly blurred and indistinct; an ideal concept for disputes and deliberations for researchers but incredibly difficult to explain to the communities in practice and hard to translate into concrete solutions. In summary of the deliberations on it in this volume, the centre of gravity should be shifted from the category of ‘development’ to the category of ‘sustainable’. It seems much easier to operate and practically implement, as well as to establish whether it is realised in practice, which is pointed out by the authors themselves.

Remark 10: the Convention is the biggest achievement of the contemporary international cultural heritage law, and at the same time it leads to its further fragmentation.

In 2003, intangible heritage became incorporated into the previous heritage regimes made for various dimensions of heritage (cultural, natural, underwater) functioning within UNESCO, and –



what is important from the perspective of countries participating in the Forum – other regional organisations, including the Council of Europe (embracing architectural, audiovisual, archaeological heritage – see below).

The multitude of definitions of ‘cultural heritages’ is accompanied by a multitude of legislative solutions, which results in a fragmentation of both the concept of cultural heritage and of its international safeguarding regimes. The term ‘fragmentation’ was popularised by Martti Koskenniemi in 2006, in the report for the United Nations Commission on Human Rights that was devoted to this phenomenon (Koskenniemi 2006).¹¹ It can be understood as the branching out of law into highly specialised fields (boxes), which claim the right to be relatively mutually autonomous and independent of the law in general sense (namely, of the general acts and rules of international law) (Koskenniemi 2006, para. 13). One of such fields is the current international cultural heritage law, which led to the creation of a specific group of experts in the area of heritage studies, including international lawyers, who deal specifically with this field.¹²

The fragmentation of international law also takes place within its respective fields, leading to a further internal fragmentation. This is the case with the concept of cultural heritage and with the regimes of its international safeguarding; it is already particularly visible during the analysis of the legislative *acquis* of the two organisations that have adopted the largest numbers of international legal regulations devoted to this matter: UNESCO and the Council of Europe.¹³ In UNESCO alone, we are dealing with distinct concepts and regimes of underwater heritage (2001 Convention), cultural heritage (1972 Convention), natural heritage (1972 Convention), natural & cultural heritage (1972 Convention), and intangible heritage (2003 Convention).

If we analyse the field of European regulations, the primary organisation that adopts treaties on cultural heritage under its auspices is the Council of Europe. Inside its framework, we are dealing with architectural heritage (1985 Convention),¹⁴ archaeological heritage (1992 Convention),¹⁵ audiovisual heritage (2001 Convention),¹⁶ and the 2005 Faro Convention on the Value of Cultural

¹¹ For the newest publications on this phenomenon, see e.g. Jakubowski and Wierczyńska 2016.

¹² Regarding the community of expert lawyers-heritologists, see e.g. Lixinski 2013. See also the creation of the separate Committee on Cultural Heritage Law in the framework of the International Law Association, directed by Prof. James Nafziger.

¹³ Thus excluding from analysis the dissipated regulations that regulate access to cultural heritage and the possibility to care for it within the framework of human rights protection, for example the Universal Declaration of Human Rights from 1948, or the International Covenant on Civil and Political Rights from 1966. See more in: Schreiber and Budziszewska 2015.

¹⁴ Dziennik Ustaw 2012 item 210.

¹⁵ Dziennik Ustaw 1996 no. 120 item 564.

¹⁶ Not ratified yet.



Heritage for Society.¹⁷ In practice, both organisations cooperate with each other in this field only on a very limited scale. They in fact copy, create similar solutions or altogether ignore the efforts and reflections made in this field by the other organisation (vide: the works on the Delphi convention performed by the Council of Europe).

These constructed definitions of ‘heritages’ subsequently grow into having their own institutions, procedures and criteria, even within the same organisations that rarely ‘communicate’¹⁸ with each other. This situation results in splintering into fractions: communities, groups and individuals; experts, government and non-government institutions. Thus, we have experts: (art) historians, conservators, archaeologists, (landscape) architects, ethnographers, linguists, and others, who take care of their own respective fields, protecting them against the intruders from other ‘regimes’ and organisations, thus literally and metaphorically ‘guarding’ their cultural heritages (this phenomenon is referred to as the expertisation of cultural heritage; see Lixinski 2013). Therefore, even though cultural heritage is officially regarded as inseparable and in need of an integrated or holistic approach¹⁹ – and as one that should not be separated into tangible and intangible – the existing separate legal solutions and distinct institutions, in fact, contribute to sustaining the prevalence of sectors. This leads to a situation, in which – as in an endless loop – the legal, organisational, and expert fragmentation is still supported, both on the local, national and on the international level. An important aspect of this process is the continuous professionalisation of the discussion and of the formulation of solutions in respective fields, which in turn results in the creation of conditions that sustain the prevalence of specific ‘regimes’. This term has been a subject of in-depth scrutiny of Regina F. Bendix, Aditya Eggert and Arnika Peselmann (2013).

These authors indicate that they use this term in the way it was defined in the theory of international regulation (Bendix, Eggert, and Peselmann 2013, 12–13), in which ‘international regime’ (the 2003 Convention should be treated as such) pertains to the norms and regulations that have been negotiated between the actors on the international level (here: in the form of regulations and norms written down in the 2003 Convention). Such regime leads to the emergence of new

¹⁷ Not ratified yet.

¹⁸ Exceptions include the recent cooperation between teams of experts, for example the 1954 Convention, the 1970 Convention, and the 1972 Convention related to the identification of threats to cultural heritage in the Middle East and North Africa. Although the UNESCO Cultural Conventions Liaison Group was founded in 2012, which was comprised of the secretaries of the respective conventions, the activity of this group does not result in the actual tightening of the cooperation between these conventions.

¹⁹ See e.g. European Commission 2014; Human Rights Council 2015, para. 8.



institutions (e.g. the organs of the Convention), whose task is to make decisions and generate rules, also in response to new issues (here: for example, the issue of sustainable development and its regulation through accepting the new Chapter VI into the Operational Directives).

Another practical, almost mundane problem connected to the fragmentation of the safeguarding of cultural heritage and to the presence of many different regimes is also the growing financial problem on the level of international organisations which have to manage the increasing number of conventions and the growing number of member states.


The report presented in UNESCO in 2013 directly highlighted the fact that ‘while the work of the convention secretariats has increased over the years, the financial resources of the secretariats have not been in tandem with the workload’ (UNESCO 2013a, 7).

In order to approach this problem, the Cultural Conventions Liaison Group (CCLG) was formed in 2012, comprising of secretaries of respective conventions and senior management of the Culture sector. Its task was to foster coordination and efficiencies among the convention secretariats, which, after all, share similar problems and challenges. However, the opinion about the effectiveness of this Group’s actions is rather moderately optimistic, and even sceptical (Duvellé 2017, in print), and if there are no radical, diametrically different steps, the process of fragmentation will deepen further. And even though countries, as well as international organisations, might be interested in sustaining this fragmentation status quo, it leads to many difficulties from the perspective of the coherence of the safeguarding actions – and their administrative realisation. Solving the existing contradictions thus seems to be beyond the capabilities of states. The largest potential and possibility of stopping or even reversing the process of fragmentation lies therefore in a vision and a specific programme, which can be presented by an international organisation and in obtaining the support for it by states that in fact are its part. This scenario, however, seems implausible.



Conclusions

The 2003 Convention, by placing communities, groups and individuals in the centre of attention has at the same time made central the question of the ethics of conduct in issues related to the human and his cultural identity. These ethics are situated – in many cases – on the pole that is opposite to politics. The 2003 Convention, as every instrument of international law which is ratified by countries, gathers the representatives of these countries and constitutes a platform of their



interests, has a political character, however, it is the attempts to break the rules of its functioning in a political-free space that are the most significant threat to it. The system of checks and balances that is forming before our eyes after 10 years of its functioning, which entails the cooperation of the bearers of heritage (communities, groups and individuals), delegates of countries (also with the participation of the Convention Secretariat), and the representatives of the scientific world (experts), requires constant concern to keep them in the right balance. The pessimistic, however realistic assessment of this challenge suggests that the 'implementation optimism' stemming from the nearly universal ratification of the 2003 Convention, together with the pressure of countries to be 'on' the lists, will never free the Convention entirely from politics and the attempts to increase the role of states at the cost of the other two elements of this system. At the same time, a realistic assessment of this situation can yield solutions (procedures) which will allow to practically strengthen the role of bearers themselves, which will in turn highlight the importance of ethical principles encompassing their heritage and ultimately make the criteria of evaluation of the inscription on the lists as well as those of the Convention itself more objective, thus reducing – however not entirely eliminating – the processes that lead to it politicisation. Thus, a creation of a functioning system of checks and balances is possible, however, it will require efforts of all sides of this convective 'three-partite division of power', including bearers (communities, groups and individuals), representatives of states, and experts. The concessions made by the strong for the weak in this present system might perhaps be the biggest challenge in the subsequent 10 years of the functioning of the 2003 Convention. It is they, however, that might constitute the crucial difference distinguishing it from other acts of international cultural heritage law and ultimately lead to a situation in which the widely-known statement of its 'revolutionary' character fully 'enters into force'.

The texts gathered in this volume allowed to extract key issues that characterise the underlying assumptions, the philosophy of safeguarding, and the practical applications of the 2003 Convention. The 10 remarks presented above definitely do not exhaust what can be and needs to be said about it. Fortunately, the proliferation of research and the rapid increase in awareness related to the 2003 Convention among states, together with the growing engagement of ICH bearers into its identification, transmission and development raises hope that in the next 10 years the issues analysed here

will have at least partially changed their shape and character for the better, and the most burning problems will have been at least partially solved. It certainly should be wished to the 2003 Convention itself, to the states parties, and to its 'guardian' – UNESCO, but most of all, it should be wished to those to which it owes its existence: the bearers of intangible cultural heritage.

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