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Governing intangible cultural heritage commons[1]

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Introduction

The discourse on intangible cultural heritage (ICH) has involved matters concerning its nature and governance since the adoption of the 2003 UNESCO Convention. Little reflection has been done, however, on the nature of diverse ICH elements as shared resources and as goods – even though 'sharing' is essential for ICH transmission and existence. Thus, this paper aims to analyse ICH elements by approaching them through the lens of 'the commons', typology of goods and, in particular, through the concept of 'polycentric governance' developed by Vincent and Elinor Ostrom. The latter received in 2009 the Nobel Prize in economics for her research on the governing of the commons. The research question of this chapter is as follows: How might Ostroms' key concepts on the governance of the commons be useful in understanding the nature of ICH as commons, and in overcoming the challenges of governing ICH?

The wall of sovereignty

'Establishing institutional arrangements in which diverse types of collective actors can engage (…) remains a difficult challenge, particularly when these actors include national governments jealously guarding their sovereignty' (McGinnis, Ostrom, 1992, p. 31). Indeed, whenever civil society push 'too much' to be present, heard, and taken into account in the international ICH system, it is often reiterated that the Convention belongs to the States.[2] Having observed UNESCO's intangible heritage arena for almost a decade, I have to agree that 'on the international level, the wall of sovereignty seems to be impassable' (Skounti, 2017). However, the voice of communities is getting audibly louder. The participatory bottom-top approach paradigm as well as the need to share governance tasks between state and non-state actors are changing the discourse surrounding the 2003 Convention.

'It has become increasingly clear that we are poised between an old world that no longer works and a new one struggling to be born. Surrounded by an archaic order of centralized hierarchies on the one hand and predatory markets on the other, presided over by a state committed to planet-destroying economic growth, people around the world are searching for alternatives. (…) People want to emancipate themselves not just from poverty and shrinking opportunities, **but from governance systems that do not allow them meaningful voice and responsibility**' (Bollier, Helfrich, 2012).

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[2] 2nd meeting of the open-ended intergovernmental working group on the Global reflection on the listing mechanisms of the 2003 Convemtion (UNESCO 2022).

As a heritage scholar and practitioner, engaged in the field of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (the 2003 Convention), I became intrigued and practically challenged by the tension related to the choice of the most suitable mode of governance that should be applied to such complex, identity-driven resource.

I have engaged in the implementation of the 2003 Convention in Poland since 2011 sitting for five-year (2013-2018) in the Polish Intangible Heritage Council. This experience allowed me to taste policy-making dilemmas, also by crafting concrete heritage governance guidelines at the national level (e.g. drafting the rules for the Polish ICH List, the Polish Register of Best Practices in Safeguarding ICH, or the Rules of Procedure for the Polish ICH Council). At the same time, as an expert of the national delegation, I was closely following meetings of experts and of the organs of the 2003 Convention. Being a coordinator and co-author of the first Polish nomination to the Representative List (The Nativity Scene [*szopka*] tradition in Krakow) and following the life of the *szopka* community after their successful inscription in 2018 made me sensitive to the complex and context-based problems related to the ICH governance on different levels. This knowledge and experience have been further enriched by my engagement with the Intangible Cultural Heritage Council of the Capital City of Warsaw. This was an experience of 'observant participation' (Mosse, 2005) of the dilemmas underpinning the governance of ICH on all levels: local, national, and international. This also made me look for theoretical and methodological frameworks that would offer a different language from the one developed in critical heritage studies.

Governing the commons

Research on cultural heritage has focused on governance for quite some time (Leask, Fyall, 2006; Karpati, 2008; Schmitt, 2009; Bertacchini, Saccone, Santagata, 2011; Bendix, Eggert, Peselmann, 2012; Florea, Mirea, Susu, 2020).[3] Questions asked by heritage scholars include: How does a given community approach, define, and engage with its heritage resources? How should a given community govern heritage resources? What are the criteria for effective and ethical heritage governance? What will be the most appropriate methodology to address these issues? This discussion has also recently entered the field of ICH (Farah, Tremolada, 2015; Skounti, 2017, Kuutma, Vaivade 2021).[4]

The ambitious idea to pursue safeguarding efforts on all levels of ICH governance (bilateral, subregional, regional, and international) is expressed in Article 19 of the 2003 Convention. The question, however, of *how* to govern ICH on all these levels (taking into account the necessary connection to local and national ones as stipulated in Article 1c[5]) and in cooperation with communities concerned, is not answered by the Convention itself. It must be sought in other related instruments, such as the Operational Directives for the implementation

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[3] See also the website of the Global Political Economy of Cultural Heritage group at the Max Planck Institute for Social Anthropology: https://www.eth.mpg.de/3534616/heritage.

[4] See also the website of the UNESCO Frictions: Heritage-making Across Global Governance project: https://frictions.hypotheses.org.

[5] The purposes of this Convention are: (…) (c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof. (…)

of the Convention[6], the Ethical Principles for the Safeguarding of the Intangible Cultural Heritage[7], and national and local regulations (Cornu et al., 2020) – and is still not clear at all. Principle 12 of the Ethical Principles for the Safeguarding of the ICH states simply: 'The safeguarding of intangible cultural heritage (…) should therefore be undertaken through cooperation among bilateral, subregional, regional and international parties (…)'. The mode of this cooperation belongs however to the domain of governance.

In order to show the interconnectedness of all levels of ICH governance, which are at play after the inscription of an element on the Lists, let us call the sphere of ICH governing practices a 'glocal field': one that reflects the processes whereby institutional arrangements shift from the national scale both upwards to global scales and downwards to the scale of local, urban, or regional configurations[8].

It might seem surprising that the literature analysing the interrelated questions of *how* and *when* heritage is conceptualised as a 'shared resource', *what* is shared with *whom*, and *how* to govern ICH as a *shared* resource remains in its infancy (Cominelli, 2011, Bortolotto, 2020, Debarbieux et al., 2021). This makes Ostroms works especially relevant for answering them.

Elinor Ostrom offered an empirically-based analysis of the dilemma of how to govern resources shared by diverse communities effectively in a long term in her book *Governing the Commons: The Evolution of Institutions for Collective Action* (Ostrom, 1990). Based on wide ethnographic fieldwork (e.g. in the Philippines, Sri Lanka, Spain, Scotland, Switzerland), she identified a set of eight institutional design principles for sustainable community-based commons management (Ostrom, 1990, pp. 90-102): (1) Clearly defined boundaries should be in place (effective exclusion of external unentitled parties); (2) Rules in use are well matched to local needs and conditions.[9]; (3) Individuals affected by these rules can usually participate in modifying the rules; (4) A system for self-monitoring members' behaviour has been established[10]; (5) A graduated system of sanctions is available[11]; (6) Community members have access to low-cost conflict-resolution mechanisms[12]; (7) The right of community members to devise their own rules is respected by external authorities; (8) Nested enterprises—that is, appropriation, provision, monitoring and sanctioning, conflict resolution, and other governance activities—are organized in a nested structure with multiple layers of activities.

The community of scholars that use her concepts and methods has been steadily growing, and since the 1990s (McGinnis, Ostrom, 1992) more research has been focusing on the

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possibility of applying these principles to international regimes and global problems, e.g. climate change or cybersecurity (Haller et al., 2019, Shackelford, 2020).

From natural to cultural and heritage commons

Commons is 'a resource shared by a group of people that is subject to social dilemmas' (Hess, Ostrom 2007, p. 6, see more below). This, however, is not the only definition of the commons existing in the abundant literature on this topic. While commons were classically regarded as environmental, encompassing fisheries, forests, pastures, and irrigation systems (Hardin, 1968; Ostrom, 1990; Bollier, Helfrich, 2012), concepts of human-made 'new commons' have been introduced to refer to knowledge commons, digital commons, cultural commons, urban commons, etc. (Hess, 2008; Foster, Iaione, 2019). Knowledge commons were considered by Hess and Ostrom (2007, after Reichmann and Franklin 1999) as having a dual function: of a human need and an economic good (Hess 2012, p. 15). This dual function is also a characteristic of ICH.

Among the 'new commons', the concept of 'cultural commons' (Bertacchini et al, 2012) and 'cultural heritage commons' has emerged recently (Zhang 2012, Gould 2017, Lekakis 2020). A 'cultural commons' is characterised as 'a cultural resource shared by a group, which can generate one or more social dilemmas and is defined by the confluence of three dimensions: culture, space and community' (Bertacchini et al., 2012). According to Bertacchini, Bravo, Marrelli and Santagata, cultural commons matter because culture and creativity play an increasing role in economic, social and environmental development. Within such a broad definition, the ideas, knowledge, beliefs, rites, customs, and shared and participated productive techniques contribute to the making of a cultural commons (Bertacchini et al. 2012, p. 1-5). This definition of a cultural commons seems very close to the definition of ICH due to the centrality of ideas of sharing, collaboration and transmission. What is new for ICH scholarship here, however, is the focus on social dilemmas (Hess 2012).

The authors point to two main classes of social dilemmas. The first social dilemma is labelled as the 'free riding problem', in which individuals can try to exploit the commons without contributing to their maintenance, e.g. producing imitations of cultural products. The second social dilemma specific to cultural commons relates to the decision on whether and how to reproduce cultural resource, creating uncertainty in the transmission of the commons to the next generation (compare: Bertacchini et al., 2012, p.3, 13). This is also the central issue of safeguarding ICH as 'cultural maintenance' ('constant recreation' and 'viability' of ICH, as explained in Article 2 of the Convention) and the decisions on how to transmit ICH are of paramount importance. It is precisely this key social dilemma that distinguishes 'cultural commons' from any other commons as it is linked to cultural dynamics and may also imply a struggle between 'innovators and traditionalists' inside a given culture (Bertacchini et al., 2012, p. 7). As noted by Zhang (2012, p. 154): 'Even if cultural heritage may suffer from social dilemmas leading to over-exploitation and the destruction of its cultural values, this "tragic" destiny is not inevitable as strong and cohesive relationships among communities make self-governing institutional arrangements possible and especially important'. He also considers 'heritage commons' as belonging to 'cultural commons' and not needing a separate definition.

In order to make the definition of 'ICH commons' operational and close to the ICH definition from the 2003 Convention I nevertheless propose to define that *ICH commons is a cultural resource shared and transmitted within communities, groups or individuals which can generate one or more social dilemmas.*

Concept of 'sharing' and 'shared resource' are particularly relevant for our understanding of ICH (Bortolotto 2020, Debarbieux et al. 2021). Summary records from the meetings of the Intergovernmental Committee reveal that in 2012, the debate on this topic was particularly interesting. The experts suggested 'it was preferable not to refer to "similar" elements given that each manifestation was specific and unique to a given community' (UNESCO 2012, p. 134-136). Instead, it was stressed that a reference was to be made to 'shared heritage' and to 'elements with shared characteristics'; others invoked the notion of 'family' as a potentially useful one. Certain experts argued that multinational files should be further promoted to highlight 'shared ICH' (ibidem). Some delegations supported the notion of 'shared heritage', which in their opinion had a huge potential to create new platforms for building intercultural dialogue among countries that go beyond making lists (ibidem). The topic came back in 2017 when the delegation of Hungary commented on the work done by the Evaluation Body. The delegation wished to highlight that the inscription mechanism should in no way be used to appropriate intangible cultural heritage or as a means to authenticate such practice in a specific country: 'Intangible cultural heritage is shared among countries; this is the norm. It lives in the exchange and interaction between communities, and the boundaries of States do not respect those interactions' (UNESCO 2017, p. 83).

Sharing is here a defining element of ICH intended as a concept aimed at building bridges across nations and communities. However, the act of sharing always involves problems and dilemmas. Therefore, framing ICH elements as shared resources and goods – that is in terms of institutional economics – helps us to analyse the problems and dilemmas underpinning the governance of these elements.

Typology of intangible cultural heritage goods

Elinor and Vincent Ostroms' work and that of the researchers identifying with their research programme (the Bloomington School of Institutional Analysis) are linked with institutional economics (McGinnis 2021). The goods typology is a part of its disciplinary language.

Goods were classified by Ostrom and her husband Vincent into four categories: public, private, club/toll goods, or Common-Pool Resources (CPR) depending on the extent of their excludability and subtractability. Excludability refers to the ease or the difficulty with which goods can be protected from their use by others. Subtractability, in turn, evokes the sharable nature of the goods and varies on a low to high scale: if one person uses the good and thereby subtracts from the pool of available goods that can be used by others, then it is said for this resource to have a high subtractability (Shackelford 2020, p. 12).

Hess and Ostrom encountered a problem with subtractability, as high subtractability, which is usually a key characteristic of common-pool resources, does not apply to many knowledge (and heritage) commons that are traditionally relatively nonsubtractive. 'The more people who share useful knowledge, the greater the common good' (Hess, Ostrom 2007, p. 5). This seems

to apply to ICH as well: despite existing exceptions it is usually believed that the wider the tradition and practice are shared, the more vibrant, vivid and resistant to extinction they are. Hess and Ostrom even concluded that 'Consideration of knowledge as a commons, therefore, suggests that the unifying thread in all commons resources is that they are jointly used, managed by groups of varying sizes and interests' (ibidem).

However, the reality is more complex. The joint use of a commons by various groups with various interests may also make a commons more vulnerable or even subject to radical deterioration, decontextualization or damage. This applies to ICH as well as to many other heritage commons. The abuse of heritage elements due to their over-commercialisation and transformation into sheer touristic products that may eventually even lead to the loss of their initial purpose and meaning are well-known phenomena (Hulubas 2017). Appropriation of heritage practices by powerful actors is so frequent that it is a key concern for UNESCO and regarded as one of the main threats to ICH (Bortolotto 2021). UNESCO lists are regarded as responsible of this phenomenon, which was aptly called 'UNESCO-cide' (Ruttkowski 2017).

Some of the elements inscribed on the UNESCO lists, for example, yoga or tango, could be considered as belonging to the category of a classic public good (Hess, Ostrom 2003, p. 120, but also see the original source: Ostrom, Ostrom 1977). It is highly difficult to exclude anyone from exercising yoga or dancing tango and practising them does not 'diminish' yoga or tango remaining for others. However, yoga studios and yoga lessons are very much excludable (studios have doors) and subtractable (limited space). The ideas or knowledge of yoga or tango could thus be considered public goods, but the yoga or tango lessons as a service could be considered club goods. The same applies for e.g. to the sauna culture in Finland (inscribed in 2020). As the nomination claims: 'With 3.3 million saunas in a country of 5.5 million inhabitants, the element is readily accessible to all'[13] (unless they all decide to enter the sauna at the very same moment). Thus, on the one hand, the *knowledge* about sauna tradition is a public good that can be enjoyed by everyone in the world. On the other hand, concrete saunas in Finland have rather limited space. A similar consideration will apply to the Mediterranean diet or reggae music of Jamaica: it is highly unlikely that we will ever be able to exclude people from eating such food if they only wish and have capacity to eat according to Mediterranean diet principles (including access to extra virgin olive oil, fresh vegetables and fruits, whole grains) or ban listening, singing and dancing to reggae music of Jamaica. However, access to the food itself is a challenge in many parts of the globe and similarly, access to music could be dependent on the access to the technology that transmits it.

Some other ICH elements could be classified as belonging to the category of common-pool resources (CPR), such as the Beer culture in Belgium or the traditions related to the date palm: it is difficult to exclude anyone but at the same time one person's consumption at some point may subtract from the quantity available for others. Interestingly, among the current 529 inscriptions on the Representative List, there is one famous CPR that has been studied by Elinor Ostrom (Ostrom 1990, p. 71): the irrigation system in Valencia and Murcia (Spain), inscribed

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[13] https://ich.unesco.org/en/RL/sauna-culture-in-finland-01596.

into the UNESCO list in 2009 as Irrigators' tribunals of the Spanish Mediterranean coast: the Council of Wise Men of the plain of Murcia and the Water Tribunal of the plain of Valencia.[14]

		SUBTRACTABILITY	
		Low	High
E X C L U D A B I L I T Y	Difficult	**PUBLIC GOODS** Tango Mediterranean diet Yoga Reggae music of Jamaica Sauna culture in Finland	**COMMON-POOL RESOURCES** Irrigation systems in Murcia and Valencia Beer culture in Belgium Date palm: knowledge, skills, traditions and practices
	Easy	**CLUB GOODS** Falconry	**PRIVATE GOODS as sub-elements of ICH goods** Gloves (Falconry) Clothes (Yoga) Towels (Sauna culture in Finland) Shoes (Tango) Crops (Irrigation system in Murcia and Valencia) Greek salad (Mediterranean diet) Bottle of beer (Beer culture in Belgium)

Figure 1. Dynamic typology of intangible cultural heritage as goods based on the proposed classification of the chosen ICH elements inscribed into the Representative List of the Intangible Cultural Heritage of Humanity. Own elaboration based on Hess, Ostrom 2003, p. 120. **Note:** the dashed line between the squares intends to visualise the porous character of borders between these four categories and the possibility that many of them may find themselves somewhere in the middle between 'difficult' and 'easy' excludability, or 'low' and 'high' subtractability. It is also important to note that the institutional arrangements (management scheme) developed to govern particular ICH elements might change in time (are dynamic) and thus goods considered club in one particular setting might subsequently turn into public or the other way around. So, placing any ICH good in any of those pools should be regarded as conditional and subject to change.

Some inscribed ICH elements would belong to the category of club goods, such as Falconry: it is quite easy to exclude others from practising it, as the practise itself is highly specific and takes years of preparation. Falconers use their specific language and rituals and are

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[14] https://ich.unesco.org/en/RL/irrigators-tribunals-of-the-spanish-mediterranean-coast-the-council-of-wise-men-of-the-plain-of-murcia-and-the-water-tribunal-of-the-plain-of-valencia-00171. Interestingly, this CPR has also been inscribed in 2019 under the name Historical Irrigation System at l'Horta de València into Globally Important Agricultural Heritage Systems (GIAHS), the new heritage list under the auspices of FAO, the driving ideas of which evoke great similarity to Ostrom's concepts and approaches, see: the https://www.fao.org/giahs/giahsaroundtheworld/designated-sites/europe-and-central-asia/historical-waterscape-of-lhorta-de-valencia/en/.

often involved in making the necessary equipment (hoods, gloves, jesses, bells, etc.). They are also required to comply with applicable legislation, falconry tradition and ethics[15]. Joining falconers is much harder than joining a global group of yoga practitioners. The level of subtractability in Falconry seems also to be quite low.

There are no private goods inscribed on UNESCO Lists as such. It would be against the definition of ICH which is always shared, 'transmitted', 'recreated', and 'providing the sense of identity', therefore linked to a social group and a broader cultural context. However, private goods constitute important sub-elements of the inscribed ICH elements. For instance, when approaching the Beer culture in Belgium that is based on the brewing tradition, one cannot ignore the fact that a bottle of beer, which is bought and consumed, constitutes a private good (same as a towel brought to a sauna in Finland). The same relates to dates: tangible elements of much broader knowledge, skills and practices related to the date palm know-how or the irrigation system, which, taken as a complex social eco-system, constitute rather common-pool resources.

The Ostroms' goods typology, despite all concerns related to its dynamic character, makes it possible to introduce more clarity into thinking about governance of different heritage elements if we see them as types of goods. It shows that different goods (ICH elements) are associated with different types of rules and norms and thus represent different governance challenges: to production, consumption, management, and other collective or social dilemmas, which are likely to be associated with different types of property regimes or management schemes (that is, different configurations of rules and norms). Different types of goods pose different social dilemmas which are best approached through – usually quite specific – policy instruments. Very few regimes include rules for dealing with only one type of good. What is far more common are situations where the governance regime has to establish rules, norms, strategies that are suited to the dilemmas posed by the production, consumption, and management of all types of shared resources.

It is also important to note that classifying the good into a category cannot be taken for granted. The character of ICH goods as well as of institutional arrangements around them is dynamic and transformative, and thus the borders between categories should be regarded rather as 'porous', not 'impermeable'. Many of them may also find themselves somewhere in the middle between 'difficult' and 'easy' excludability or 'low' and 'high' subtractability, depending on the particular context. Thus, in a different institutional setting with different rules, ICH goods may change their very nature.

Therefore, it is clear that ICH commons consist of multiple types of goods and regimes. Different goods will certainly have different governance regimes. The governance of beer culture in the whole of Belgium will differ from the governance of traditions related to the date palm in several countries. But they both will also differ (change or transform) in time: the beer culture in Belgium or the date palm traditions in the nineteenth century were governed differently than they are governed in the twenty-first century. This opens up new research paths for heritage scholars to really 'dive into'[16] ICH and search for patterns used to govern – that is safeguard – these ICH elements.

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[15] See nomination file available at: https://ich.unesco.org/en/RL/falconry-a-living-human-heritage-01708.
[16] https://ich.unesco.org/en/dive.

Safeguarding is governing

'Safeguarding' is the main objective of the Convention. It is defined in Article 2 (3) as 'measures aimed at ensuring the viability of the intangible cultural heritage'. The governing bodies of the Convention are guided by this definition in their activities and all rules, norms and strategies are subordinated to this principle. The whole governance system of the Convention is aimed at determining which organ of the Convention shall have what kind of functions in order to ensure that the idea of safeguarding is enforced. The functions of the General Assembly of States Parties, the Intergovernmental Committee, and the Secretariat are also defined and listed according to the 'safeguarding' definition in Article 2(3). Governing intangible cultural heritage, according to the Convention's regime, therefore means safeguarding ICH. All safeguarding measures and activities proposed are in fact also governing measures: even if governing can be understood as a broad task that involves creating regulations or institutions whose effects may in practice be far from safeguarding, the very existence of those regulations and institutions would not be possible if the 'safeguarding principle' was ignored. This means that the term 'governance' might be equated with 'safeguarding' in the context of the 2003 Convention. As proposed by McGinnis: '(…) governance is the process through which the repertoire of rules, norms, and strategies relevant to a given realm of policy interactions are made, implemented, interpreted, and reformed' or subsequently: 'governance determines who can do what to whom, and on whose authority' (McGinnis 2020, p. 6).

As a consequence of equating 'governance' with 'safeguarding', a closer analysis of ethical principles for safeguarding ICH is needed, as they were adopted with the aim of guiding the governance of ICH.

Ethical Principles as a toolbox with polycentric governance rules

The Ethical Principles for the Safeguarding of the Intangible Cultural Heritage, adopted in 2015, have been elaborated in the spirit of the 2003 Convention and existing international normative instruments protecting human rights and the rights of indigenous peoples[17]. However, although the document does not contain any of Ostroms's key terms, its careful reading proves that they are integral as guiding governance ideas, starting with Principle 1: 'Communities, groups and, where applicable, individuals should have the primary role in safeguarding their own intangible cultural heritage'. Taken to heart, this first principle should result in the creation of rules allowing for the voices of communities to be heard also at the international level. 'Primary' means 'not the only one' but 'the one that cannot be replaced by anyone else'. An additional explanation of the 'spirit' of this governance is to be found in Principle 3. 'Mutual respect as well as a respect for and mutual appreciation of intangible cultural heritage, should prevail in interactions between States and between communities, groups and, where applicable, individuals'. Respect between States and communities can only be introduced if both sides are 'sitting at the same table' as equal partners; respect means that they listen to each other, affirm each other's rights to hold different opinions, can empathise

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[17] Ethical Principles Preamble, UNESCO 2015.

and search for solutions in which both sides are treated as *subjects*, not *objects* of the governance. In this way, both sides develop trust. More concrete suggestions on how to interact, cooperate, and collectively govern ICH are provided in Principle 4: 'All interactions with the communities, groups and, where applicable, individuals (…) should be characterized by transparent collaboration, dialogue, negotiation and consultation, and contingent upon their free, prior, sustained and informed consent'.

At first glance, it might seem astonishing that these principles, despite being created and adopted by UNESCO and States Parties, are undermined when it comes to discussions on concrete solutions securing the practical involvement of communities at the international level. Their practical invisibility is also noted in the UNESCO Internal Oversight Service's (IOS) report, which states that 'there is little data regarding ethical behaviour beyond the inclusion of communities, groups, and individuals. (…)… there is very little other information that provides indications of other aspects of ethical behaviour as described in Ethical Principles (…). Similarly, most reporting to date does not effectively document the quality and extent of community engagement in projects'[18]. This observation resulted in IOS Recommendation 6 directed to the Secretariat of the 2003 Convention to include 'sections in all project proposals and reports on ethical behaviour, especially the active participation of tradition bearers, the links with sustainable development and the consideration of rights-based approaches including gender equality'[19].

The Recommendation proves the challenge of glocal governance: without adequate mechanisms, institutions and procedures that could monitor the implementation of Ethical Principles, they will remain on the margins of, or even out of the governance system. Principle 7 insists that 'the communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others'. It is important to note in this regard that the rules on the use of a shared resource are the key components of Ostrom's sustainable governance principles. Collective decisions concerning the viability of ICH as well as of the communities who practise it are also a common denominator for both sustainable governance and Ethical Principle 9.

The pinnacle of all Ethical Principles is contained in Principle 12. 'The safeguarding of intangible cultural heritage is of general interest to humanity and should therefore be undertaken through cooperation among bilateral, sub-regional, regional and international parties; *nevertheless, communities, groups and, where applicable, individuals should never be alienated from their own intangible cultural heritage*' (emphasis added). This warning about the threat of community alienation from their heritage evokes the famous words of Elinor Ostrom: 'Trust is the most important resource. If a community has been forbidden from managing its resources for a long time, the main obstacle to overcome is the lack of trust and the effort to get organized in the first place. It's not a trivial matter' (after Escotet, 2010).

If trust exists, common resources are capable of being collectively managed by users in ways that support their needs yet sustain the resource over the long run (Foster, Iaione, 2019).

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[18] UNESCO, 2021, p. 24, repeated at p. 68.
[19] UNESCO, 2021, p. 47.

Ostrom and McGinnis found that sustainable and effective governance of commonly shared resources is based on polycentricity.[20] This was called 'polycentric governance' (see below; McGinnis, 1999a; 1999b; Ostrom, 2005; 2009). The relationship between the nature of the resource shared within a community and the mode of its governance (polycentric) remains inseparable; they are not only 'tied' but rather 'glued'.

According to McGinnis, Baldwin and Thiel (2020): 'In a system of polycentric governance, *a diverse array of communities and public and private authorities with overlapping domains of responsibility* interact in complex and ever-changing ways, and out of these seemingly uncoordinated processes of mutual adjustment emerges a persistent system of social ordering that can support and sustain capacities for individual liberty, group autonomy, and *community self-governance*' (emphasis added). This concept was originally introduced by Vincent Ostrom, Tiebout and Warren (1961) but the best-known application of polycentricity to real-world settings remains the pioneering research of Elinor Ostrom (1990; 2010) on community-based collective management of natural resources.

The definition itself shall 'ring a bell' for any ICH scholar analysing the community participation principle. The idea of participatory, collaborative, and community-based governance is a credo for the safeguarding of ICH and is widely discussed in the whole heritage research community (García et al, 2021; Sokka et al, 2021, Bortolotto, 2015).[21] Thus, Ostrom's focus on the agency of local communities is another important bridge to the 2003 Convention: the involvement of communities (groups and individuals) is at the centre of all safeguarding practices (Article 15 of the 2003 Convention; Lixinski, 2019); as it is the communities that are to be 'the heart' of this Convention[22]. This principle brings us closer to the question on the characteristics of polycentric governance.

There are eight characteristics that scholars have associated with the concept of polycentric governance, which I cite here after McGinnis, Baldwin and Thiel (2020, p.10). However, as they note – and contrary to the need to cumulatively meet the 8 principles of sustainable governance of the commons – here characteristics 1–4 seem to be of crucial importance:

1. Multiple decision centres (which may be of varying sizes and types).
2. De jure independence or de facto autonomy of decision-making authority for each decision centre.
3. Overlapping jurisdictions in the range of authority for different decision centres (in addition to spillover effects of outcomes).
4. Multiple processes of mutual adjustment among decision centres (taking each other into account).

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[20] More on this concepts: Stephan, Marshall, and McGinnis (2019).

[21] As noted by Jakubowski: 'In such context, it worth to mention that the International Law Association (ILA), the largest international law non-profit organization worldwide, established in 2017 the Committee on Participation in Global Cultural Heritage Governance (ILA Committee). Within its four-year mandate this body has sought to explore the engagement of communities and, derivatively, individuals in the governance of cultural heritage, including an examination of how community governance operates in other contexts not directly related to heritage'. See more: Jakubowski (forthcoming).

[22] UNESCO 2008, par. 36.

The precise relationship chosen is an empirical matter and depends on many factors such as the nature of collective action problems or the type of goods and services to be produced or provided, the legal-political landscape, cultural norms, and so on (Ostrom et al., 1961). Moreover, the specific ways in which polycentricity will manifest in different contexts depend on a host of factors: objectives and motivations of agents, background conditions, technological and political constraints, choice of rules at various decision centres across levels, and the resulting emergent processes (Rayamajhee, Paniagua 2021).

Conclusions

'Successful commons governance requires that rules evolve', argued Ostrom (Dietz, Ostrom, Stern, 2003). Indeed, her research confirms that the most sustainable and effective governance system is adaptive (Dietz et al., 2003), especially in the case of dynamically changing cultural and heritage commons. The adaptive character of the complex, multi-level ICH governance regime is reflected by regular amendements to the Operational Directives – but cannot be limited only to them.

The analysis presented above proves that effective and sustainable multi-level systems have to be based on the constant development of methods that assess the benefits and costs of particular strategies, the strong commitment to finding ways of embracing diverse actors (from local to global level) and their needs, as well as never-ending efforts aimed at building the trust and consensus around the understanding of the nature of the shared resource and of the values associated with that resource, which the international ICH community (embracing states and non-state actors) considers crucial for the sustainable existence of this regime.

The governance of ICH seems to be destined to sharing and to 'commoning'; otherwise, it cannot retain its credibility. This has been the real essence – and the real sense – of the 2003 Convention from the very beginning. However, existing dilemmas and tensions also prove that the ICH regime, in order to remain sustainable and adaptive, must be at the same time inclusive, and governed in a polycentric manner – because people want 'governance systems that allow them meaningful voice and responsibility'[23]. And this is still an important 'work in progress', 20 years after the Convention was adopted.

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[23] See Bollier, Helfrich 2012 as cited in the introduction to this chapter.

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