UNESCO and the Shaping of Intangible Cultural Heritage: Exploring its Significance and Implications

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ABSTRACT: This paper does not seek to comprehensively enumerate the constituent elements making up cultural heritage, as the latter encompasses a wide range of tangible and intangible entities. These include archival materials, artifacts, architectural structures, natural landscapes, archaeological sites, as well as intangible aspects such as traditions, cultural expressions, languages, and expertise. Although the division between these forms of heritage is often perceived as artificial due to their interconnectedness (e.g., ancestral practices reliant on associated objects or sites), it does serve to emphasize how the definitions of cultural heritage have evolved alongside the concept of culture. However, due to the constraints of length and scope inherent in this paper, it is regretfully impractical to discuss all categories of cultural heritage. This paper exclusively focuses on intangible cultural heritage, aiming to delineate its principal constituents and expound upon its growing recognition and significance on the international stage.


The notion of intangible cultural heritage is recent, and by looking back over the years, it was not until the late 1960s, at least at the international level, that there was a gradual awareness and change in attitude towards it. While UNESCO’s actions and philosophy were until then essentially oriented towards a universalist approach and were guided by the belief-conscious or not-that cultural traditions flourish and are spontaneously transmitted from generation to generation, the 1960s (and the following decades) have indeed been the scene of two major changes on the international stage that considerably transformed the actions of the international organization.

The first shift towards a multiculturalist approach in UNESCO took place following the accession of many newly independent states on the one hand, and the emergence of indigenous claim movements on the other. These new states in Asia, Africa, Latin America, and the Caribbean, as well as indigenous actors continued to promote their own holistic conceptions of culture and be critical of heritage lists, on which European and North American properties are over-represented compared to those in other regions of the world. On the international scene, for these new actors, the system of identification and enhancement of heritage established by the 1972 Convention gave basis to the criteria of value and beauty developed in the west, and therefore failed in its claim to universality since the Eurocentric values thus protected were not shared by the whole world or by all
civilizations\textsuperscript{1}. During the negotiations of the UNESCO World Heritage Convention, some states pointed out that the scope of the Convention\textsuperscript{2} was too narrow. Bolivia, in particular, proposed in vain the adoption of an additional protocol to the Copyright Convention to ensure the better protection of folklore\textsuperscript{3}.

At the same time, another challenge was emerging in the face of globalization. In the 1960s, the international community became aware of the fact that the intensification of contacts between populations could lead to cultural uniformity or even to the imposition of certain cultural models compared to others\textsuperscript{4}. At the 1960 UNESCO General Conference, in particular, the representative of Mali, Amadou Hampâté Bâ, urged UNESCO to save Africa’s oral heritage. By pointing out that "in Africa, when an old man dies, it is a library that burns", Mr. Hampâté Bâ stated that "the preservation of the oral traditions of African countries was an urgent necessity"\textsuperscript{5}.

Faced with these new challenges and the risk of irreversible losses in terms of language, know-how and customs, UNESCO not only reoriented its policies so as to emphasize the cultural diversity, value and originality of each culture in the face of the risks of cultural standardization and extinction, but also became aware of the need to redefine the notion of cultural heritage and extend the scope of protection due to its intangible aspects\textsuperscript{6}. The first step in this enlargement was then a gradual integration of the intangible dimension of heritage into the instruments related to tangible heritage.

Thus, in the 1972 Convention, criterion No. 6, established by the World Heritage Committee, stipulates that sites may be inscribed on the World Heritage Lists when they are "directly or tangibly associated with events or living traditions, ideas, beliefs or artistic and literary works of outstanding universal significance"\textsuperscript{7}. However, the inscription of such sites remains exceptional and can only be done if they meet at least one other cri-
It is only since 2001, following lengthy debates in which several states have argued that without the possibility of invoking criterion No. 6 European architectural heritage would continue to be over-represented in the lists, that the Committee has adopted a more flexible formula according to which it is simply preferable to use this criterion in combination.

Intangible aspects have also been taken into consideration from 1992 onwards with the addition of the category of "Cultural Landscapes", which focuses on interactions between people and their environment. Associative cultural landscapes, in particular, are then characterized by the strength of association of the religious, artistic or cultural phenomena of the natural element, the tangible traces of this association being only "insignificant or even non-existent." In Vanuatu, for example, the inscription of Chief King Mata’s estate on the World Heritage List in 2008 was based mainly on the oral traditions of the community and on some tangible evidence. In the same year, UNESCO also approved the inscription of 11 sacred Kenyan forests because of their holy nature regarding the beliefs and the worship of Mijikenda ancestors.

Finally, for Brumann (2013), the intangible dimension of tangible heritage is also reflected in the reconstruction and restoration of damaged property and buildings. In 1994, the Nara Document on Authenticity in Restoration provided a list of criteria for assessing the authenticity of restorations, some of which are intangible, in particular, “traditions, techniques, and management systems; [...], language and other forms of intangible heritage; spirit and impression[...]”.

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8 Criterion No. 6 was used only until 1996, when the Hiroshima Peace Memorial was controversially inscribed. In 1997, fearing that it might encourage the inscription of properties that could only be associated with famous people, and thus encourage certain nationalisms and other particularisms, the use of the combined criterion (VI) became mandatory; Brumann, C. (2013). Comment le patrimoine mondial de l’UNESCO devient immatériel. Gradiva, (2013), p. 27; See also UNESCO. (2001). Document de synthèse sur l’application du critère culturel (vi). Paris: UNESCO

9 The first 6 Criteria of selection as set by UNESCO are: “(i) to represent a masterpiece of human creative genius; (ii) to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design; (iii) to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; (iv) to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history; (v) to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change; (vi) to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria) [...].” UNESCO. (n.d.). The Criteria for Selection. Retrieved August 7, 2021, from https://whc.unesco.org/en/criteria/


11 Ibid., p. 30.

12 Ibid.

13 Ibid., p. 31.

14 Ibid., pp. 31-37

Although these developments gave greater importance to the intangible dimensions of heritage, only physical properties and sites were inscribed on the lists. Therefore, the second step in dealing with the criticism raised against the persistent Eurocentrism of the criteria regarding the recognition of cultural heritage consisted of the adoption of instruments devoted explicitly to the intangible dimension of heritage.

In 1982, the Mexico City Declaration on Cultural Policies\(^\text{16}\) adopted at the World Conference on Cultural Policies proposed a new and more holistic definition of cultural heritage, stating that:

> “The cultural heritage of a people includes the works of its artists, architects, musicians, writers and scientists and also the work of anonymous artists, expressions of the people’s spirituality, and the body of values which give meaning to life. It includes both tangible and intangible works through which the creativity of that people finds expression: languages, rites, beliefs, historic places and monuments, literature, works of art, archives and libraries.”\(^\text{17}\).

On 15 November 1989, following the same logic of protecting cultural diversity and broadening the notion of Cultural Heritage, the General Assembly of UNESCO adopted its Recommendations on the Protection of Traditional Culture and Folklore\(^\text{18}\). Although these recommendations were restricted to the manifestations of traditional cultures and their concrete impacts were considered minimal\(^\text{19}\), they still constitute the first international legal instrument related to intangible heritage and represent a significant innovation in that they highlight the importance of culture for societies and their identity, and insist on the need for protection of this heritage by and for the communities concerned\(^\text{20}\).

Between 1993 and 2003, UNESCO also established the Living Human Treasures Program, the objective of which was, on a national basis, to “grant official recognition to talented tradition bearers and practitioners, thus contributing to the transmission of their knowledge and skills to the younger generations.”\(^\text{21}\). Then, in 2001, 2003 and 2005, UNESCO successively adopted three Proclamations of Masterpieces of the Oral and Intangible Heritage of Humanity. Following the same principle as that applied to the tangible heritage of outstanding universal value, the objective of this program was to raise awareness on the importance of intangible heritage by establishing a new form of

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\(^\text{17}\) UNESCO. (1982). Mexico City Declaration on Cultural Policies, art. 23.


international distinction\textsuperscript{22}. While these proclamations contribute to the popularization of the notion of intangible heritage, the notion of "masterpiece" remains nevertheless the subject of significant criticism in that it implies the existence of a hierarchy of values between cultural practices\textsuperscript{23}. Eventually, this program was abandoned in 2006 when the Convention for the Safeguarding of the Intangible Cultural Heritage entered into force.

It took nearly 20 years for the good intentions formulated at the Mexico City Conference to take on a legally binding form, and it was only in the early 2000s that UNESCO began to draft an international instrument devoted to the field of intangible cultural heritage. In a report submitted in 2001 following a series of regional consultations, Koichiro Matsuura, the Director-General of UNESCO concluded that neither the instruments already adopted in the field of cultural heritage, nor the instruments related to intellectual property provided adequate protection for intangible cultural heritage and that a new international standard-setting instrument, specifically designed, should be developed. His report also affirmed the need for a more inclusive terminology to protect not only artistic products, but also the knowledge and values that enable their production, the creative processes themselves, and the ways in which these products are received, recognized and appreciated by their respective communities\textsuperscript{24}.

It is in this perspective that in 2003, the Convention for the Safeguarding of the Intangible Cultural Heritage\textsuperscript{25} was finally adopted, the first binding instrument that extends legal protection to the field of intangible heritage. Indeed, Article 2 of the Convention stipulates that intangible cultural heritage includes:

“the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. [...]”\textsuperscript{26}.

Article 2 (2), on the other hand, contains a list of five areas in which it can be applied, namely:

(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
(b) performing arts;


\textsuperscript{26} Ibid., art. 2.1.
c) social practices, rituals and festive events;
(d) knowledge and practices concerning nature and the universe;
(e) traditional craftsmanship.

Given the diversity of intangible cultural expressions, the Convention obviously did not
propose an exhaustive list of what intangible heritage is, especially since its provisions
refer to an infinite diversity of national or regional interpretations by the states that must
ensure its implementation. However, it can be seen that several factors emerge
explicitly or implicitly from this definition, in particular, the role of communities, groups
or individuals in the identification of heritage (as opposed to the "objective" and "uni-
versal" value of tangible heritage) and, above all, the principle of the transmission and
"permanent recreation" of this heritage, which implies taking into account the evolving
dimension of culture. In parallel with the development of this instrument specifically
dedicated to intangible heritage, the adoption of instruments related to the preservation
of cultural diversity closely linked to the safeguarding of cultural heritage is also worth
mentioning. In 2005, in particular, following the Universal Declaration on Cultural Di-
versity of 2001, the Convention on the Protection and Promotion of the Diversity of
Cultural Expressions defined it as follows:

"[…] the manifold ways in which the cultures of groups and societies find
expression. These expressions are passed on within and among groups and so-
cieties. Cultural diversity is made manifest not only through the varied ways in
which the cultural heritage of humanity is expressed, augmented and transmit-
ted through the variety of cultural expressions, but also through diverse modes
of artistic creation, production, dissemination, distribution and enjoyment,
whatever the means and technologies used."

27 Ibid., art.2.2.
28 Ibid., art.2.2. Hottin, C. (2013). Du patrimoine immatériel dans les politiques patrimoniales. In M. Cornu, J. Froma-
recherche, p. 33.
France: UNESCO.
32 Ibid., art. 4.1.
In this perspective, the Convention calls upon States Parties, in particular, to protect and promote the diversity of cultural expressions, and to create the conditions for cultures to flourish and interact freely in a mutually enriching manner\textsuperscript{33}.

The recognition and importance of intangible heritage have also been strengthened by the adoption of instruments related to the protection and rights of minorities, namely those of indigenous people\textsuperscript{34}. They have been particularly active on the international scene in promoting their own conceptions of culture, focusing in particular on a holistic dimension, on the central role and meaning of land and natural resources, on their role as collective and intergenerational "guardians" (and not owners) of these resources and, in general, on the symbiotic relationship between tangible and intangible heritage elements\textsuperscript{35}.

For example, the International Labor Organization (ILO) convention concerning Indigenous and Tribal People (No. 169)\textsuperscript{36}, adopted in 1989, provided, inter alia, for States Parties to "recognize and protect the social, cultural, religious and spiritual values and practices of these people"\textsuperscript{37}. Also in 2007, after a long process of negotiations, the United Nations General Assembly adopted its Declaration on the Rights of Indigenous People\textsuperscript{38}. With particular regard to the cultural aspect, the Declaration once again adopted a broad and inclusive concept of heritage by declaring in Article 31, the following:

"Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."\textsuperscript{39}.

\textsuperscript{33} Ibid., art.1 (a) and (b).

\textsuperscript{34} There are various nuances and important debates about the terminology that should be used to refer to indigenous people. At the international level, the English term "indigenous" is increasingly used instead of "aboriginal". On the other hand, French texts retain the term "autochtone", preferred to "indigènes" and "aborigènes", translations that are considered pejorative. Tonina Simeone, for example, noted that several Canadian Aboriginal communities have rejected the use of the word Aboriginal, and recommended talking about members of the Aboriginal people with specific reference to their identity or nation. Simeone, T. (2015). Peuples autochtones : terminologie et identité. Notes de la Colline. Retrieved September 3, 2021, from https://notesdelacolline.ca/2015/12/14/peuples-autochtones-terminologie-et-identite/.


\textsuperscript{37} Ibid.


\textsuperscript{39} Ibid., art 31.
The Declaration also emphasizes that indigenous people have the right to access, observe, and revitalize their cultural traditions. Article 12, paragraph 1, reads as follows:

"Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains."\textsuperscript{40}

Finally, the most recent work of the World Intellectual Property Organization (WIPO) opening up to traditional knowledge is also worth mentioning. Indeed, although WIPO does not currently recognize indigenous or traditional customary law applicable to the ownership and management of knowledge and cultural property, in 2000, it established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) the mandate of which is to develop one or more international legal instruments that ensure the effective protection of genetic resources, traditional knowledge, and traditional cultural expressions.\textsuperscript{41}

Initially reserved for tangible goods (monumental, movable or immovable), the notion of heritage as Bortolotto (2011) claimed\textsuperscript{42} has thus been gradually "anthropologized" extending to its intangible and living dimensions. Since the adoption of the Convention for the Safeguarding of the Intangible Heritage and successive instruments related to cultural diversity and indigenous people, the definition of cultural heritage has moved away from the universalist model, now referring to the "cultural whole", and tacitly copying those that anthropology and sociology have tried to develop in culture, seeking to preserve its relative, holistic character and permanent changes.

However, this evolution could not have taken place without difficulties. From a political and philosophical point of view, the increasingly recognized role of communities in the identification of intangible heritage constituted a considerable break with UNESCO’s previous approaches. These approaches considered states as the only bearers of cultural heritage and raised the problem not only of the definition of the term “communities,” but also of their recognition by the states in which they are located and their real invol-

\textsuperscript{40} Ibid., art 12.


vement in the processes of heritage identification. On the other hand, the creation of the Representative List of the Intangible Cultural Heritage of Humanity and the List of Intangible Cultural Heritage in Need of Urgent Safeguarding presented additional challenges from a practical and methodological point of view.

Indeed, identifying and making an inventory of intangible traditions is a particularly complex task since they are extremely numerous and can be shared by different groups that have integrated so many variations into it. Moreover, the inscription of heritage on inventory lists that are by definition static may lead to the fossilization of these practices contrary to the principle of the evolving nature of cultures, or it may even encourage the creation of new practices or the artificial resurgence of traditions that are now extinct and devoid of any real meaning. Moreover, the existence of these lists – and of the criteria for inclusion (to be included) – still implies a certain cultural hierarchy according to which certain practices would be "more valuable" than others and would therefore deserve greater recognition. Finally, according to Brumann (2013), there is still a certain rivalry between specialists in tangible and intangible heritage:

"To some extent, this rivalry reflects disciplinary boundaries: architects, art historians, and archaeologists dominate the discourse of expertise and advisory bodies on the (cultural) World Heritage side, while anthropologists, folklore specialists, and musicologists are more likely to be consulted for intangible cultural heritage."45

Despite these various obstacles, it can be noted that the Convention for the Safeguarding of the Intangible Heritage has met with undeniable success: it has now 180 States Parties, while 584 properties have been inscribed on the lists of intangible heritage and many measures and initiatives for the recognition and preservation of the intangible heritage.

43 For Bortolotto, this role of communities raises additional issues. On the one hand, if the "national heritage" and tangible heritage were identified with a circumscribed territory, the intangible heritage of communities leaves strictly territorial boundaries to open up to culture in motion. On the other hand, by not proposing a definition of the term "communities", the 1972 Convention does not seem to consider the risks of internal conflict and is open to all interpretations by states that apply this concept on different scales: local, regional, or national. For the author, the reluctance of states to clarify this sensitive term would stem from the fear that it could legitimize the claim of cultural rights by minorities and thus undermine their sovereignty. Ibid., pp. 32-35 ; Blake, J. (2013). Quelques réflexions sur la signification et les conséquences de la participation des communautés à la sauvegarde du patrimoine culturel immatériel. In M. Cornu, J. Fromageau, & C. Hottin (Eds.), Droit et patrimoine culturel immatériel (pp. 113-131). Paris, France : Le Harmattan.

44 Blakely, M. R. (2013). The Value Problem in Law and Intangible Cultural Heritage. Edinburgh Student Law Review, p. 79. The craze for intangible heritage also raises an outcry from critical anthropologists who accuse UNESCO of reviving a salvage ethnology, applying "biological" principles long since buried by anthropological theory, or of reducing cultural interpreters to "living archives".


have been taken at the national, regional and international levels following its adoption.47 Such success is, above all, a testament of the awareness of the importance of cultural heritage in all its forms and in the construction and survival of communities.

**Bibliography**


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