Philosophies behind the Intangible Cultural Heritage Convention:
Equality in Heritage Protection, Community Recognition and Cultural Diversity

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INTRODUCTION

In an international legal context, the understanding of cultural heritage has long been determined by the 1972 Convention for the Protection of World Cultural Heritage and Natural Heritage (hereinafter World Heritage Convention). Cultural heritage, in this context, was understood to mean monuments and sites carrying an outstanding universal value. This understanding proofed to be beneficial for Europe and the United States, which have a wealth of monumental buildings and phenomenal natural sites.[1] For the world's rich history of rituals, dances, songs, chants and all other forms of intangible cultural heritage, the World Heritage Convention had no meaning at all. Several initiatives were taken to have international organizations specifically address intangible forms of cultural heritage, in the hope that an international legal instrument would follow.[2]

The view of several countries that intangible cultural heritage should have a position equal to monuments and sites can be seen as the major philosophy behind the eventual adoption of the Convention for the Safeguarding of Intangible Cultural Heritage in 2003 (hereinafter ICH Convention). However, a deeper analysis of the events and documents leading up to the ICH Convention reveals that the ICH Convention has a much broader philosophical basis. These broader philosophies focus on the content of the legal instrument, rather than on the choice of form of the legal instrument. This paper will argue that these content influencing philosophies behind the ICH Convention are

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[1] Blake, J., *Developing a New Standard-setting Instrument for the Safeguarding of Intangible Cultural Heritage: Elements for Consideration*, Paris: UNESCO Publishing, 2002, p. 72; Deacon, H., *Legal and Financial Instruments for Safeguarding our Intangible Heritage*, Available HTTP: http://www.international.icomos.org/victoriafalls2003/papers/C3-2%20-%20Deacon.pdf (accessed 27 November 2007)

[2] In chronological order: the Bolivian proposal to add a Protocol to the UNESCO/WIPO Universal Copyright Convention of 1952 (1973); the adoption of the Tunis Model Law on Copyright for Developing Countries (1976); the adoption of the UNESCO/WIPO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (1982); the development of the UNESCO/WIPO Draft Treaty for the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (1984); the adoption of the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore (1989) and its implementation in the Living Treasures Program and the Masterpieces of Oral and Intangible Heritage of Mankind.

community empowerment[3], to which sustainable development in all its aspects belongs, and the assurance of cultural diversity. For each of these philosophies, the paper will further describe how these philosophies have been reflected in the ICH Convention.

Section II will go deeper into the motive behind the earliest efforts to create an international legal instrument for intangible cultural heritage was, without doubt, a desire to achieve international recognition for intangible cultural heritage that is equal to that of tangible cultural heritage, monuments and sites.   The final impetus for adopting a binding legal instrument (i.e., a convention) was the criticism that the existing soft law instruments did not adequately recognize the communities' proper role in the safeguarding process, being the active involvement of the communities. Accordingly, section III will deal with the recognition of the communities' proper position in the safeguarding process. The communities' proper position will be deducted from the relationship the community has with its intangible cultural heritage. It will be further demonstrated that the development debate, including sustainable development, fortifies this position. Before concluding, section IV will cover UNESCO's increasing involvement in the protection of cultural diversity in a globalized world, and how it affected the safeguarding of intangible cultural heritage.

EQUAL PROTECTION WITHIN THE INTERNATIONAL HERITAGE REGIME

The adoption of the World Heritage Convention in 1972 can be situated in a changing socio-economic environment aggravating the natural threats of damage to, and destruction of, monuments, buildings, sites and, eventually, landscapes[4] having an outstanding universal value.[5] The adoption showed that it was possible to reach a

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[3] As shown below, the term of "community" is essential for the adequate and efficient safeguarding of intangible cultural heritage despite the fact that it is heavily criticized as vague and useless in academic literature; *see*, e.g., Hillery, G., 'Definitions of Community: Areas of Agreement', *Rural Society*, 1955, vol. 20, p. 111; Watts, M.J., Contested Communities, Malignant Markets, and Gilded Governance: Justice, Resource Extraction, and Conservation in the Tropics, in C. Zerner (ed.) *People, Plants, and Justice: The Politics of Nature Conservation*, New York NY: Columbia University Press, 2000, p. 21; Amit, V., and Rapport, N., The Trouble with Community: Anthropological Reflections on Movement, Identity and Collectivity, London: Pluto Press, 2002. For a more recent analysis of this term, see Herbrechter, S., and Higgins, M., (eds) *Returning (to) Communities: Theory, Culture and Political Practice of the Communal*, Amsterdam: Rodopi, 2006.

[4] Hereinafter consistently referred to as monuments and sites.

[5] UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention [UNESCO Doc. WHC/2/Revised]; Kuruk, P. 'Cultural Heritage, Traditional Knowledge and Indigenous Rights: An Analysis of the Convention for the Safeguarding of Intangible Cultural Heritage', *Macquarie Journal of International Law and Comparative Environmental Law*, 2004, vol. 5, p.1 Available HTTP: <http://www.austlii.edu.au/au/journals/MqJICEL/2004/5.html> (accessed 11 June 2007)

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consensus for the protection of this particular area of tangible cultural heritage.[6] The fact that another part of cultural heritage, the intangible one and the tangible expressions of it, was excluded from the drafting process further supports such a view.[7] In excluding intangible cultural heritage, the international political scene disregarded an important part of the world's cultural heritage of protection.[8] The international disregard is regrettable, especially because the neglected part of cultural heritage is for a great deal the origin of the other part of cultural heritage. Indeed, monuments and sites could only have reached the level of outstanding universal value due to the knowledge and skills gathered over time and transmitted to the next generation. The interdependence between tangible and intangible cultural heritage can also exist in the opposite direction. Monuments or sites are often valued only because of the myths and legends linked to them. Hence, it is the intangible cultural heritage that gives the symbolic meaning to the monument or site rather than the "authenticity of their physical fabric."[9]

Interdependence between the monuments and sites on the one hand and intangible cultural heritage on the other hand is one way of arguing that both should be treated with equal respect within the international heritage regime. However, intangible cultural heritage does not always have to find its expression in a monument or site in order to be worthy of protection.[10] Intangible cultural heritage can be materialized in other forms, such as paintings, clothes and carvings. Often it is not even important for intangible cultural heritage to be materialized at all, e.g., in the case of rituals, dance, or music.[11] All these forms of intangible cultural heritage can be of equal importance to people as

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[6] Kuruk, op.cit., p.1

[7] The preparatory works of the World Heritage Convention reveal that the inclusion of intangible cultural heritage was considered at the time of its drafting. The final version of the draft for the World Heritage Convention, the one that was eventually adopted, had no sign anymore of such an intention. Blake, op. cit., p 72 and p. 72 n. 402

[8] Ashworth, G.J., Graham, B., and Tunbridge, J.E., Pluralising Pasts: Heritage, Identity and Place in Multicultural Societies, London: Pluto Press, 2007, p. 36; Kuruk, op. cit., p 2; Blake, op. cit., p 72

[9] Logan, W.S., Hanoi: Biography of a City, Sydney: University of New South Wales Press, 2000, p. 261; A similar argument is made by Deacon, H., 'Intangible Heritage in Conservation Management Planning: the Case of the Robben Island', *International Journal of Heritage Studies*, 2004, vol. 10, p 31; Munjeri, D., Tangible and Intangible Heritage: From Difference to Convergence, *Museum International*, 2004, vol. 56, pp. 13-14

[10] Kuruk, op. cit., p. 1, in which he points out that movable tangible property may be associated with intangible cultural heritage; Van Zanten, W., 'Constructing New Terminology for Intangible Cultural Heritage', *Museum*, 2004, vol. 56, p. 39, in which he gives instruments as an example of movable tangible cultural heritage that cannot be built without the necessary knowledge and skills.

[11] Kurin, R., 'Safeguarding Intangible Cultural Heritage in the 2003 UNESCO Convention: a Critical Appraisal', *Museum*, 2004, vol. 56, p. 67

part of their identity, and therefore worthy of protection.[12] The World Heritage Convention's failure to address these issues has been identified as a weakness and a shortcoming, which had to be rectified. With the adoption in 2003 of the ICH Convention, intangible cultural heritage and the tangible expressions of it acquired a the legal status equal to the one of tangible cultural heritage in the form of monuments and sites within the international heritage regime. It should, however, be understood that an equal legal status is not identical to stating that intangible and tangible cultural heritage in the form of monuments and sites are identical forms of cultural heritage.[13]

From the outset, however, it was not obvious that an instrument similar to the World Heritage Convention should be created. Bolivia, in 1973, called for copyright protection for popular arts.[14] The choice for copyright as a method for protection would limit the framework in which the safeguarding of intangible cultural heritage is situated. This was pointed out in three intergovernmental meetings organized by UNESCO between 1973 and 1978.[15] The outcome of these meetings stressed that popular traditions should be preserved as part of cultural heritage protection.[16] This mindset did not allow for UNESCO and WIPO to jointly develop an international normative instrument to protect intangible cultural heritage, at that time usually referred to as folklore.[17] A definite stance was taken in the 1985 Committee of Governmental Experts on the Safeguarding of Folklore in Paris,[18] where the experts favored a cultural heritage perspective above an intellectual property rights approach.[19] The experts further agreed that this cultural

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[12] See infra, *Communities and Intangible Cultural Heritage*

[13] Arguing that intangible cultural heritage is identical to tangible cultural heritage would imply that a single legal framework could be developed to protect both forms of cultural heritage. Both forms of cultural heritage, however, have unique characteristics demanding specific legislative approaches. The need for different legislative approaches does not mean that integrated approaches are excluded. Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Cultural Heritage (20-23 October 2004, Nara, Japan)

[14] Ibid.

[15] In Yogyakarta (1973), Accra (1975) and Bogota (1978)

[16] Blake, op. cit., 2002, 32

[17] The decision of the UNESCO's intergovernmental committee led to a fragmented international approach towards the issue of safeguarding and protecting intangible cultural heritage.Whereas UNESCO decided to focus on the heritage aspect, WIPO continued to emphasize the intellectual property right issues related to the protection of intangible cultural heritage. *See* WIPO, *Creative Heritage Project: IP Guidelines for Documenting, Recording and Digitizing Intangible Cultural Heritage*, *available at* http://www.wipo.int/tk/en/folklore/culturalheritage/index.html (last visited 9 Jan. 2008)

[18] The Committee of Governmental Experts on the Safeguarding of Folklore was established in 1982. Within the Committee, UNESCO set up a special Section for the Non-physical Heritage.

[19] Janet Blake describes this priority in the following words: "[i]t was felt that the intellectual property aspects of the international protection of folklore – to be addressed jointly with WIPO – should only be dealt with after the question of the international protection of folklore had been clarified through the Recommendation text." Blake, op. cit., 2002, p. 32

heritage perspective had to be inscribed in an international normative instrument, but they were convinced that a non-binding instrument with general principles that could guide the Member States in adopting legislative or administrative measures, would be the best option.[20] The general principles would focus on the issues of definition, identification, conservation, preservation and utilization of folklore.

In 1987, the General Conference adopted a Resolution urging that a Recommendation aimed at safeguarding folklore be drafted. A Special Committee of Governmental Experts set up for this purpose produced the definitive draft text of the Recommendation on the Safeguarding of Traditional Culture and Folklore, which was then adopted by the General Conference in 1989. The 1989 Recommendation, being the "first attempt to safeguard intangible cultural heritage, i.e. 'traditional culture and folklore', through an international instrument"[21] meant little in practice. As soft law, it was only able to raise awareness, and even then, only to a limited extent,[22] for the hitherto neglected part of cultural heritage.[23] Mere awareness raising was not sufficient to provide an equal status for intangible cultural heritage. Intangible cultural heritage could only gain an equal status in the international heritage regime if it were protected by means of a binding convention. An early attempt to achieve this form of protection by broadening the scope of the World Heritage Convention via its Operational Guidelines did not yield a satisfactory result.[24] The World Heritage Convention had too

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[20] Ibid.

[21] Blake, op. cit., 2002, p. 37

[22] Kurin, R., The UNESCO Questionnaire on the Application of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Preliminary Results, in P. Seitel (ed.) *Safeguarding Traditional Cultures: A Global Assessment,* Washington DC: Smithsonian Institution, 2001, p. 30

[23] Whereas the 1989 Recommendation stimulated some countries, such as Brazil and the Dominican Republic (Discussion Guidelines, III Round Table of Ministers on 'Intangible Cultural Heritage – A Mirror of Cultural Diversity', Istanbul, 16-17 September 2002, p. 6, Available HTTP: < http://www.unesco.org/culture/ich/doc/src/00073-EN.pdf> (accessed 25 November 2007)), to set up national mechanisms of identification and enhancement of intangible cultural property, few countries seemed to be aware of the existence of this soft law. See Kurin, R., The UNESCO Questionnaire on the Application of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Preliminary Results, in P. Seitel (ed.) *Safeguarding Traditional Cultures: A Global Assessment,* Washington DC: Smithsonian Institution, 2001, p. 30; Among the countries aware of this soft law, just a handful of them submitted reports to UNESCO regarding the intangible cultural heritage. See ibid.

[24] In 1992, the World Heritage Committee took advantage of the situation to study the question of extending the subject matter of the World Heritage Convention. The study resulted in an amendment of the Operational Guidelines in order to take 'associative cultural landscapes' into consideration. The outstanding universal value of the landscapes and sites falling within this concept is related to their religious, artistic or cultural elements, rather than to their materialized state. In a later stage, customary practices were added. The Operational Guidelines incorporated intangible values, such as social and aesthetic ones, since they were finalized in 1977. These values have traditionally not been used to identify monuments or places as cultural heritage. A significant shift occurred in 1992. There have been four categories under which places associated with intangible cultural heritage have been inscribed onto the

many technical impediments to properly safeguard intangible cultural heritage.[25]

A real breakthrough in the search for international recognition of intangible cultural heritage equal to that of tangible cultural heritage came at the Washington Conference, titled *A Global Assessment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Local Empowerment and International Cooperation.* This conference, jointly organized by UNESCO and the Smithsonian Institution in 1999, concluded that the 1989 Recommendation was much too focused on, among other things,[26] the tangible form of intangible cultural heritage, such as archives and other documentation centers, implying that the products rather than the cultural communities and practitioners were important to safeguard.[27] Furthermore, it was pointed out that the role of the communities in the safeguarding process was too minimal regarding the fact that it is 'their' heritage that the 1989 Recommendation deals with.[28] The conference's Action Plan called for UNESCO to study the feasibility of a binding convention, in which intangible cultural heritage would be regarded as living traditions, and communities would take a central and participatory role in the safeguarding process.[29] During the international Round Table of experts in Turin, the experts repeated this call by formulating the recommendation to prepare a new international normative instrument on the safeguarding of intangible cultural heritage.[30]

World Heritage List, being cultural routes, cultural landscapes, sites that evoke a legend or myth, and commemorative sites. Deacon, *op. cit.*, 2003, p. 7

[25] One of the biggest impediments of the World Heritage Convention seems to be the concept of authenticity and integrity. For detailed coverage of this aspect: Blake, J., op. cit., 2002, 74. The concepts of authenticity and integrity have been the subject of several expert meetings: Expert Meeting on 'Authenticity', held in Nara on 1-6 November 1994 [UNESCO Doc. WHC-94/CONF.003/INF.008] Expert Meeting on 'Authenticity and Integrity in an African Context', held in Zimbabwe on 26-29 May 2000 [UNESCO Doc. WHC-2000/CONF.202/INF.13]; See also Munjeri, *op.cit.*, pp14-16; Aikawa, op. cit., p. 142, where the author states that an additional protocol to the World Heritage Convention would only be possible if core parts of that convention would be redrafted.

[26] Besides the issue of the way of safeguarding in all its aspects, the Washington Conference also pointed out that the 1989 Recommendation had problems in relation to concepts, such as folklore and awareness raising.

[27] Aikawa, N., An Historical Overview of the Preparation of the UNESCO International Convention for the Safeguarding of the Intangible Cultural Heritage, *Museum*, 2004, vol. 56, p. 140

[28] McCann, A., et al., The 1989 *Recommendation* Ten Years On: Towards a Critical Analysis, in P. Seitel (ed.) *Safeguarding Traditional Cultures: A Global Assessment*, Washington DC: Smithsonian Institution, 2001, p. 56

[29] Action Plan, Appendix 7 of the Final Report, International Conference *A Global Assessment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Local Empowerment and International Cooperation,* in P. Seitel (ed.) Safeguarding Traditional Cultures: A Global Assessment, Washington DC: Smithsonian Institution, 2001, pp. 303-306

[30] International Round Table on 'Intangible Cultural Heritage – Working Definitions', Turin, 14-17 March 2001. The issue was formulated in both the Background Paper, Available HTTP: < http://www.unesco.org/culture/ich/doc/src/00075-EN.pdf > (accessed 25 November 2007) and Final Report, Available HTTP: < http://www.unesco.org/culture/ich/doc/src/00077-EN.pdf > (accessed 25

The adoption of the ICH Convention in 2003 finally gave intangible cultural heritage – the form of heritage neglected by the World Heritage Convention– international protection. At last, intangible cultural heritage had a legal instrument equivalent to the one existing for a specific part of tangible cultural heritage. Not soft law, but binding hard law would from now on stipulate how countries should deal with their intangible cultural heritage. Due to this choice countries are forced to perform a positive act that will reveal the awareness of the existence of the ICH Convention. They have to express their consent to be bound by the convention in the form of a ratification, acceptance, approval, or accession. Showing awareness alone is not sufficient. The choice to be bound by the ICH Convention requires that the countries implement the obligations stipulated in the convention. Even though the inventory-making obligation of article 12 is the most eye-catching one,[31] the ICH Convention requires its Member States to engage in legislative activity in order to take all necessary measures to ensure the safeguarding of intangible cultural heritage.[32] By taking this obligation, inscribed in article 11, together with the definition of safeguarding as stipulated in article 2, the ICH Convention has the characteristics of a framework convention.[33]

The hard law instrument has given intangible cultural heritage a position equal but not similar to monuments and sites within the international heritage regime. The creation of a separate instrument creates the impression that intangible cultural heritage requires a different safeguarding approach than the one applicable to tangible cultural heritage in the form of monuments and sites. Indeed, authenticity and integrity have been put forward in the context of this tangible cultural heritage, but they have been deemed irrelevant in the context of intangible cultural heritage, which is constantly recreated.

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[31] Ibid., p. 72; The author describes the inventory making as the most significant obligation imposed by the ICH Convention, as it will be a huge and never ending task.

[32] Ibid.; See also Kuruk, op.cit., p. 2

[33] Van Uytsel, S., Inventory Making and Fairy Tales: The Process of Safeguarding Intangible Cultural Heritage in a Historical Perspective, in T. Kono (ed.), *Intangible Cultural Heritage and Intellectual Property: Communities, Cultural Diversity and Sustainable Development*, Antwerp: Intersentia, forthcoming 2008. A framework convention does not differ from any other convention except for the fact that it provides a framework for later and more detailed treaties, national legislation or operational directives. These different instruments will elaborate the principles declared in the framework convention. Aust, A., Modern Treaty Law and Practices, Camdrige: Cambrdige University Press, 2000, p. 97. As to the ICH Convention, the text in relation to the safeguarding has been shaped in a general way with only a few specifications. The general text has to be further specified either in national legislation or in the operational guidelines. The former will mainly focus on the measures states will take in order to safeguard the intangible cultural heritage in their territory, while the latter will stipulate the implementation measures at the international level.

Furthermore, intangible cultural heritage does not need to find its expression in monuments or sites. Notwithstanding these differences, this paper has indicated that intangible and tangible cultural heritage can be interdependent in various ways. The ICH Convention is silent on the interdependence issue though. This silence should not lead to a complete ignorance of the issue, something which several experts asked for in the *Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Heritage*.[34] Given the fact that the ICH Convention has the characteristics of a framework convention, it may be the instrument by which national legislation can take up the issue of interdependence and implement an integrated approach. In addition, the issue can also be taken up in the Operational Directives [35] dealing with the Representative List of Intangible Cultural Heritage of Humanity. Similarly, the Operational Guidelines of the World Heritage Convention could provide for this integrated approach in relation to monuments and sites.

COMMUNITY EMPOWERMENT, DEVELOPMENT, AND CONTINUITY
Communities and Intangible Cultural Heritage

Bolivia has been advocating for the protection of intangible cultural heritage equal to that established for tangible cultural heritage in the form of monuments and sites. Bolivia's focus was on copyright, meaning that it saw the importance of intangible cultural heritage for specific communities.[36] By granting copyright or any equivalent right, the communities would be able to decide how others can legally make use of their intangible cultural heritage. This view would have put the communities at the center of the protection system. This can be explained by the fact that early ancestors of that community have created, shaped and re-created the intangible cultural heritage. Very often this process happened in response to the outside world. Intangible cultural heritage may thus have originated from contacts with the natural environment, such as nature,

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[34] Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Cultural Heritage. The Yamato Declaration was the outcome of the International Conference on the Safeguarding of Tangible and Intangible Heritage, held in Nara, 20-23 October 2004, Available HTTP: <http://portal.unesco.org/culture/en/ev.php-URL_ID=31373&URL_DO=DO_TOPIC&URL_SECTION=201.html> (accessed 26 November 2007)

[35] Article 7, e) stipulates that for the implementation of the ICH Convention, the Intergovernmental Committee has to prepare operational directives. The draft of the operational guidelines will be submitted to the General Assembly for approval. The operational guidelines are a sort of 'administrative act' guiding the Intergovernmental Committee in taking decision under the convention. Boisson de Chazournes, L., Treaty Law-Making and Non-Treaty Law-Making: The Evolving Structure of the International Legal Order, in R. Wolfrum and V. Röben (eds.) *Developments of International Law in Treaty Making*, Berlin: Springer, 2005, p. 473

[36] Even though the ICH Convention talks about communities, groups and individuals in article 15, the present paper will consistently use the word community. It should be understood that the concept of communities in this paper replaces the long phrasing of the ICH Convention.

landscape or climate.[37] Intangible cultural heritage may also be a reflection of their reaction to the social environment, including their history or interactions with other communities and cultures.[38] As the intangible cultural heritage shaped itself as a way to survive or to communicate, the ancestors have passed them through to future generations. As this process repeated itself, this intangible cultural heritage became associated with the communities.[39]

The close association of intangible cultural heritage with the communities that formed it logically demands involvement by those communities in any activity related to the intangible cultural heritage, including safeguarding. For a long time, however, this view was not widely shared. As has been indicated in the previous section, neglecting the role of communities in the 1989 Recommendation triggered fierce criticism in the Washington Conference.[40] The primary focus of the criticism was on the safeguarding process. By putting too much emphasis on documenting, archiving, and researching,

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[37] The traditions of nomads significantly differ from those of communities which settled down and concentrated on agricultural use and exploitation of land. Similarly, the ways of traditional life in rainy forests considerably diverge from those of communities living in deserts, prairies or tundra. While the people living in deserts must learn how to survive in such conditions without water for a long time, those living in the areas with rainy seasons must know when and how to plant crops in order to maximize their harvest. For discussion about various kinds of traditional knowledge, *see*, *e.g.*, van Beek, W.E.A., and Jara, F., "Granular Knowledge". Cultural Problems with Intellectual Property and Protection, in F.W. Grosheide and J.J. Brinkhof (eds.) *Intellectual Property Law 2002: Articles on Cultural Expressions and Indigenous Knowledge*, Antwerp: Intersentia, 2002, pp. 35-57.

[38] In addition to natural environment, the communities also react through traditional cultural expressions and practices to their social environment, including their history, interactions with other communities and cultures. In the territories where several communities live together, cross-cultural borrowings and communications occur on a daily basis. The result is that similar fairytales, legends, songs or fabric designs can be found in different communities living in such territories. Nowadays, the processes of cross-cultural borrowings and communications are even more magnified by recent social phenomena such as globalization, urbanization, modernization and the like, which have a crucial stance in the globalizing world. For instance, the Javanese "classical" shadow theatre was on the edge of extinction despite several attempts to preserve it in the 1980s. All of them failed, until some performers came with new instruments and comic interludes, which were not used traditionally. Suddenly, this traditional cultural expression became popular and an integral part of modern Javanese culture. *See* Sears, L.J., 'Comment', Current Anthropology, 2002, vol. 43, p. 147. Although someone might criticize such a "modernization" of tradition cultural expressions, the only entities which can judge it are communities. Cultural expressions become traditions and parts of intangible cultural heritage only when they work, *i.e.* when they are passed on through generations. *See* Kockel, U., Reflexive Traditions and Heritage Production, in U. Kockel and M.N. Craith (eds.) *Cultural Heritages as Reflexive Traditions*, Basingstoke: Palgrave Macmillan, 2007, p. 28.

[39] For a more profound analysis on how communities understand individual traditional cultural expressions as their belongings, *see* Brown, M.F., Who Owns Native Culture?, Cambridge MA: Harvard University Press, 2003. *See also* Rowlands, M., Cultural Rights and Wrongs: Uses of the Concept of Property, in K. Verdery and C. Humphrey (eds.) *Property in Question: Value Transformation in the Global Economy*, Oxford: Berg, 2004, pp. 207-23 (analyzing the conflicts in cases where several communities claim their proprietary interests to the same cultural heritage).

[40] Supra Equality in the International Heritage Regime

intangible cultural heritage was isolated from the environment from which it emerged. During the conference, it was pointed out that the essential focus of safeguarding intangible cultural heritage should be to ensure the living nature of this heritage. In other words, the safeguarding of intangible cultural heritage should be done *in situ* in order to prevent the intangible cultural heritage from being abstracted from the natural and socio-economic environment of the community and so become fossilized.

Intangible cultural heritage is often considered fragile, in part because it links a community to its natural and socio-economic environment and stems from the community's response to that environment. However, it is also crucial to see that, due to the continued transmission of the intangible cultural heritage, it has provided communities with a sense of identity and continuity.[41] Indeed, it often reflects the spirit of a community.[42] Through its intangible cultural heritage, one community can distinguish itself from others and highlight their specialties and differences. Intangible cultural heritage thus allows individuals to identify themselves with a particular community by showing how the traditions of other communities differ from theirs.[43] A community's self esteem can thus be enhanced when their members appreciate the uniqueness of their traditions; intangible cultural heritage thus plays an important role in the processes of self-recognition and self-determination of communities.[44] The relationship between communities and their intangible cultural heritage is thus a two-way interaction. Communities not only shape and recreate their traditions. At the same time, traditions contour and influence the affected communities and their members.

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[41] *Compare* Handler, R., Who Owns the Past? History, Cultural Property, and the Logic of Possessive Individualism, in B. Williams (ed.) *The Politics of Culture*, Washington D.C.: Smithsonian Institution Press, 1991, pp. 63-74, *with* Coleman, E., Cultural Property and Collective Identity, in S. Herbrechter and M. Higgins (eds) *Returning (to) Communities: Theory, Culture and Political Practice of the Communal*, Amsterdam: Rodopi, 2006, pp. 161-71. *See also* Ashworth, Graham, and Tunbridge, op. cit., pp. 4-5.

[42] The origins might be found in the concept of *Volksgeist* as presented by J.G. Herder and G.W.F. Hegel. *Compare also* Hall, S., Whose Heritage? Un-settling "the Heritage", Re-Imaging the Post-Nation, in J. Littler and R. Naidoo (eds.) *The Politics of Heritage: The Legacies of "Race"*, London: Routledge, 2005, p. 25 (arguing that that "the nation slowly constructs for itself a sort of collective social memory" in a "discursive practive") with Scot, D., Refashioning Futures: Criticism after Post-Coloniality, Princeton NJ: Princeton University Press, 1999 (presenting that consensus and discord play an important role in this process).

[43] Douglas, N., Political Structures, Social Interaction and Identity Changes in Northern Ireland, in B. Graham (ed.) *In Search of Ireland: A Cultural Geography*, London: Routledge, 1997, pp. 151-2.

[44] For example, Kockel, op. cit (describing how intangible cultural heritage is used in the formation of identity in case of Ulster-Scots in the Northern Ireland).

Even though intangible cultural heritage is a reflection of a community on their environment, the heritage may nonetheless develop an economic value over time.[45] One of the most prominent examples of this is Jamaica's music industry. The Jamaican music industry is a very vibrant and dynamic segment of the Jamaican economy.[46] It is estimated that the music industry provides employment and income for 6000 to 12000 people. Other studies put this figure at 15000. The impact of the music industry is most certainly disproportionate to the small number of persons that it employs. Their product is a major form of capital for Jamaica. It further provides Jamaica a highly valuable public image. The value of the affinity to Jamaica created by its music may perhaps be gauged by the fact that remittances are now more than 15 to 20% of all exports and are more than twice the net factor of incomes going abroad. With respect to the contribution of the industry to the GDP, the gross revenues from music and music related activities amounted to 10% of the GDP in 2000.[47]

The Jamaican example proves that economically remunerative intangible cultural heritage can contribute to the economic development of the community it belongs to. Here economic development is understood narrowly to mean the process of economic growth, and a rapid and sustained expansion of production, productivity and income per head. [48] Intangible cultural heritage can thus be a valuable instrument for economic development, supporting the argument that it is worthwhile to protect this heritage. While making a reference to the Report of the World Commission on Culture and Development, Janet Blake commented favorably on this idea. She supports her view by citing the area of handicrafts as an example. The economic development of the producers of handicrafts is proven, as handicrafts represent almost a "quarter of

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[45] Sen, A., How Does Culture Matter?, in Rao, V. and Walton, M. (eds.) *Culture and Public Action*, Stanford: Stanford Social Presses, 2004, p. 39. Amartya Sen makes an explicit reference to dance and music.

[46] Jamaica is the home of world famous reggae music. Many Jamaican reggae performers became internationally known, such as Bob Marley, Monty Alexander, Dennis Brown, Beenie Man, and Jimmy Cliff. Even though reggae is the most recognized genre of Jamaican music, Jamaican music is much broader and also includes dance hall, rock steady, ska, folk music, jazz and gospel. United Nations Conference on Trade and Development, Electronic Commerce and Music Business Development in Jamaica: a Portal to the New Economy, UNCTAD/ITE/TEB/8, 2002, p. 10, Available HTTP: <http://www.unctad.org/en/docs/iteteb8_en.pdf> (accessed 9 February 2006)

[47] Nurse, K., The Cultural Industries and Sustainable Development in Small Island Developing States, Available HTTP: < http://portal.unesco.org/en/file_download.php/b53a9208f4f4172298eb47e4b1177d4cCLT3.doc> (accessed 9 February 2006)

[48] Pérez de Cuéllar, J. (ed.), Our Creative Diversity: Report of the World Commission on Culture and Development, Paris: UNESCO Publishing, 1995, p. 22

micro-enterprises in the developing world."[49]

However, not all intangible cultural heritage will be economically remunerative. Yet, intangible cultural heritage without obvious economic value may still have an extremely important meaning for, or function in, the community, and in this capacity may contribute to the development of that community. Since this kind of development is non-economic, the concept of development had to be reconfigured. An early step in this process is the 1982 World Conference on Cultural Policies, held in Mexico City,[50] where it was declared that "balanced development can only be insured by making cultural factors …[[51]] an integral part of the strategies designed to achieve it; consequently, these strategies should always be devised in the light of historical, social, and cultural context of each society."[52]

In order to investigate this issue in detail,[53] the General Assembly of UNESCO adopted in 1991 a resolution requesting the Director-General, in co-operation with the Secretary-General of the United Nations, to "establish an independent World Commission on Culture and Development comprising women and men drawn from all regions and eminent in diverse disciplines, to prepare a World Report on Culture and Development and proposals for both urgent and long-term action to meet cultural needs in the context of development."[54] This request was endorsed by a resolution adopted by the General Assembly of the United Nations a few weeks later. In November 1992, Boutros Boutros-Ghali and Federico Mayor appointed Javier Pérez de Cuéllar as president of the Commission. The Commission finished its work with its 1995 report *Our Creative Diversity*.[55] The all-pervasive message emerging from this report is that development, besides an economic dimension, also embraces a dimension that can

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[49] Blake, op. cit., 2002, p. 4 footnote 15; *See also* Pérez de Cuéllar, op. cit., p. 191

[50] This conference has become known as the Mondiacult Conference.

[51] "the whole complex of distinctive spiritual, material, intellectual, and emotional features that characterize a society or social group. It includes not only the arts and letters, but also the modes of life, the fundamental rights of the human being, value systems, traditions and beliefs." (*does a reference need to be added here??*)

[52] Arizpe, L., The Intellectual History of Culture and Development, in Rao, V. and Walton, M. (eds.) *Culture and Public Action*, Stanford: Stanford Social Presses, 2004, p. 174

[53] By the mid 1980s, the link between culture and development was further consolidated by the resolution declaring 1988-97 as the *Decade for Cultural Development (1988-1997); See* Graber, Ch., Handel und Kultur im Audiovisionsrecht der WTO: Völkerrechtliche, ökonomische und kulturpolitische Grundlagen einer globalen Medienordnung, Bern: Stämpfli Verlag, 2003, p. 86

[54] Pérez de Cuéllar, J., President's Foreword, in Pérez de Cuéllar, J. (ed.), *Our Creative Diversity: Report of the World Commission on Culture and Development*, Paris: UNESCO Publishing, 1995, p. 9

[55] Pérez de Cuéllar, J. (ed.), Our Creative Diversity: Report of the World Commission on Culture and Development, Paris: UNESCO Publishing, 1995

provide the "opportunity to choose a full, satisfying, valuable, and valued way of living together."[56] This dimension is known as human development.

The extended concept of development implies that culture is a constitutive part of development. Development, in this regard, is defined as a process that enhances the effective freedom of the people involved to pursue whatever they have reason to value. In pursuing this definition, development shifts from an objectively defined concept to a subjectively defined concept. Poverty of life does not any longer mean the lack of essential goods and services, but also the lack of opportunities to choose a fuller, more satisfying, more valuable and valued existence. The latter part of the definition essentially means that the evaluation has to be made by the people. If external elements prevent people from making that evaluation, serious questions must be asked as to whether an environment has to be created in which such an evaluation is possible. This implies two different elements. First, it implies an analysis that identifies the obstacles preventing people from enjoying a valued existence, in order to create the proper environment to guarantee such an existence. Second, given the subjective nature of human development, it implies that the people concerned are also those involved in setting up this environment.

For intangible cultural heritage, human development means the contribution of intangible cultural heritage to the enrichment of human life. Since the judgment of whether intangible cultural heritage enriches human life is subjective in nature, a proper approach to this cultural heritage requires the involvement of those for whom the intangible cultural heritage is valuable. This implication for intangible cultural heritage has been dealt with in the development debate at the Stockholm Intergovernmental Conference on Cultural Policies for Development of 1998.[57] Integrating intangible cultural heritage in a development agenda implies the recognition of the importance of the cultural bearer, something which had not been done before. Indeed, the 1989 Recommendation's focus was more on the safeguarding of intangible cultural heritage for the needs of researchers and government officials.[58] The role of the outsiders in the process of identification, dissemination and conservation was given too much emphasis. Moreover, the 1989 Recommendation did not address the role of the cultural bearer in relation to the use of their respective intangible cultural heritage.[59]

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[56] Arizpe, op.cit.,2004, p. 178
[57] Deacon, op. cit., 2000, p. 3
[58] Blake, op. cit., 2002, p. 37
[59] Ibid., p.37; Aikawa, op. cit., p. 140

Communities, Continuity and Sustainable Development

The fact that intangible cultural heritage is closely related to the identity of a community suggests that continuity of the heritage is indispensable. Without the intangible cultural heritage, the community loses at least a part of its identity. In the worst case, the community will cease to exist, as the distinguishing characteristics will disappear together with the intangible cultural heritage.[60] The idea that the community needs its intangible cultural heritage to exist today and tomorrow, links with the whole debate on sustainable development. Deeply ingrained in the concept of sustainable development is continuity, as it emphasizes the availability of something not only for present generations but also for future ones.[61] The most commonly referred to definition of the concept, to be found in the Brundtland Report,[62] formulates the issue as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[63]

Even though the concept of sustainable development and its understanding of inter- and intra-generational equity has been coined in the context of economic development, current scholarship, mainly under the impulse of Amartya Sen, extends the concept far beyond the economic aspects of development. Sen has introduced the above-discussed broader concept of human development in the debate regarding sustainable development. Development, according to Sen, should be seen as a process that enhances the effective freedom of the people involved to pursue whatever they have reason to value. Thus, the furtherance of well-being and freedoms that we seek in development cannot but include the enrichment of human lives through literature, music, fine arts, and other forms of

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[60] Ashworth, Graham, and Tunbridge, op. cit., pp. 8, 24-27, 73-76 (enquiring into the process of assimilation).

[61] Throsby, D., Economics and Culture, Cambridge: Cambridge University Press, 2001, pp. 54-56; Boyle, A. and Freestone, D., Introduction, in Boyle, A. and Freestone D., (eds.) *International Law and Sustainable Development,* Oxford: Oxford University Press, 1999, pp. 12-15; Throsby, D. On Sustainability of Cultural Capital, Available HTTP: < http://www.econ.mq.edu.au/research/2005/cult_cap_throsby.pfd> (accessed 9 February 2006); Anand, S. and Sen, A., Sustainable Human Development: Concepts and Priorities, Available HTTP: <http://www.undp.org.in/hdrc/APRI/Event/Colombo/resources/ppr/sustainable%20human%20developme nt%20abstract.pdf> (accessed 9 February 2006);

[62] The 1987 Report of the World Commission on Environment and Development, *Our Common Future* (commonly referred to as the Brundtland Report in honor of Gro Harlem Brundtland, the Prime Minister of Norway, who chaired the World Commission) is generally viewed as the source of the term sustainable development. World Commission on Environment and Development, Our Common Future, New York: Oxford University Press, 1987

[63] Ibid., p. 27

cultural expression and practice, which we have reason to value.[64]

The report *Our Creative Diversity*, even though not dealing explicitly with intangible cultural heritage, argues in a similar direction. It dispels an economic interpretation of sustainable development. Indeed, the Introduction argues that cultural sustainability should not be interpreted in a way that confines culture to the role of an instrument that sustains some other objective.[65] The chapter on *Culture and the Environment* argues that treating culture merely as an instrument for sustaining something else, such as economic development, and treating it as static, is wrong.[66] Building on this report, the scholarship of Lourdes Arizpe argues that development is a process that "enhances the effective freedom of people everywhere to create cultural expressions and to exchange them broadens the widely accepted notion of human development."[67] Culture is the end of development, "seen as the flourishing of human existence in all its forms and as a whole."[68]

A direct consequence of the conceptualization of development as enhancing capabilities is that intangible cultural heritage should not be situated in the economic sphere. Even without contributing to the economic wellness of a community, intangible cultural heritage can be important. This importance, as we have indicated before, is related to the identity of a community, which is in turn linked to quality of life. Sustainable development adds an ethical aspect, whether it is based on distributive equity or deontological terms,[69] to this enhancement of the quality of life. It does so by requiring that the enhancement via intangible cultural heritage by the present generation should not jeopardize the possibilities of future generations to enjoy the same enhancement. Sudhir Anand and Amartya Sen point out that the way in which the present generation sees its quality of life enhanced does not need to be identical to how future generations will enhance their quality of life.[70] What is important is that future generations are able to discover a way of enhancing their quality of life via the intangible cultural heritage, making the transmission of intangible cultural heritage almost a *conditio sine qua non*. In this perspective, education, as Anand and Sen point out, can provide a means to increase the capabilities of future generations.[71]

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[64] Sen, op. cit., 2004, p. 39
[65] Pérez de Cuéllar, op. cit., pp 24-25
[66] Ibid., pp. 206-209
[67] Arizpe, op. cit., 2004, p. 178
[68] Ibid., p. 178
[69] Anand and Sen, op. cit.
[70] Ibid.
[71] Ibid.; Throsby, op. cit, p.56

The 1989 Recommendation carries this message in the paragraph dealing with 'preservation of folklore'.[72] Preservation requires particular attention for transmitting intangible cultural heritage. In this respect, special protection should be given to the transmitters of intangible cultural heritage. However, the guidelines given in this paragraph put little emphasis on the role of bearer of intangible cultural heritage for transmission. The only evidence of this importance is embedded in the guideline to provide "moral and economic support for individuals…holding items of folklore."[73] All the other guidelines might be interpreted in such a way as enabling researchers or their institutions to transmit folklore. Involving researchers and their institutions in identifying, collecting, recording and archiving intangible cultural heritage is one way of safeguarding intangible cultural heritage. There is no doubt that this way of safeguarding preserves access to information related to that heritage. But archived intangible cultural heritage cannot likely guarantee the viability of that intangible cultural heritage, as the link with the cultural bearers is cut off.

Countries like Japan and Korea understood quite early that the cultural bearer is necessary for transmitting intangible cultural heritage.[74] They have established living human treasures programs.[75] The government of the Republic of South Korea, recognizing the importance of this program, argued for an internationalization of the human treasures program.[76] Therefore, in 1993, South Korea proposed that the UNESCO Executive Board establish a UNESCO 'Living Human Treasures' program, honoring outstanding persons who possess a very high degree of the knowledge and skills required to perform or create specific elements of the intangible cultural heritage.[77] Rather than establishing an international Living Human Treasures scheme, the Board adopted a decision inviting UNESCO Member States to set up such a scheme in their respective countries. Several countries paid attention to the call to set up Living Human Treasure schemes.[78] In doing so, they assisted the bearers in continuing to

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[72] Recommendation on the Safeguarding of Traditional Culture and Folklore, Paragraph D
[73] Ibid., Paragraph D (d)
[74] The first Living Human Treasures System was created in Japan in 1950. The Republic of Korea established its system in 1964. Discussion Guidelines, op. cit., p 5
[75] Kurin, op.cit., p. 68
[76] UNESCO, Guidelines for the Establishment of National 'Living Human Treasures' Systems, p. 2, Available HTTP: <http://www.unesco.prg/culture/ich/doc/src/00031-EN.pdf> (accessed 30 October 2007)
[77] Ibid., pp. 2-3; The Republic of Korea proposed to the 142nd session of the UNESCO Executive Board, in 1993, the establishment of a UNESCO "Living Human Treasures" program and the Board adopted a resolution inviting Member States to establish such systems in their respective countries.
[78] Six other countries - Philippines, Thailand, Romania, France, the Czech Republic and Bulgaria - have set up systems that vary quite substantially from one another. Deacon, op. cit., p. 8

develop and improve their skills and knowledge and passing it on to future generations. The empowerment of the local communities has been further developed in the program of the Masterpieces of Oral and Intangible Heritage of Humanity. Even though the main focus of the program was to raise the awareness of the value of intangible cultural heritage, one of the selection criteria was the setting up of a bottom-up approach towards safeguarding.[79]

Community Empowerment and its Development in the ICH Convention

The importance of intangible cultural heritage for their communities and vice versa has been a much-debated issue. Whereas the urge for the equality of intangible cultural heritage and tangible cultural heritage in the international heritage regime does not prescribe substantive content, the community debate has much to do with the content of the international legal instrument to be developed. Yet, the conceptualization of the mutual interconnectedness of the community and its intangible cultural heritage remained an issue of debate during the drafting of the ICH Convention. Interconnectedness, as such, was not the point of controversy,[80] but the concept of communities was. Communities, in the end, differ from one another in their structures, organizations, customs and habits all around the world. Furthermore, some countries perceive the recognition of their communities as a threat to national integrity. This is particularly the case for communities whose territories span several states, or for those demanding autonomy or complete independence from their central government.[81] Other countries are often willing to grant to those communities only the rights that are recognized by their own governments.[82] The rationale of such approach is to avoid the overextension or abuse of those rights.

After taking the concerns related to communities into consideration, the drafters of the ICH Convention decided in the end not to include a definition of "community." In doing so, they shifted the main burden in relation to communities to the implementation stage. UNESCO and ACCU, in the Expert Meeting organized on March 2006 in Tokyo, took the first step. The experts pointed out, *inter alia*, the following fundamental issues that will arise in the implementation stage: the proper identification of communities and

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[79] UNESCO Doc.155 EX/15, Paris 25 Aug.1998; Blake, op. cit., 2002, p 47
[80] At an expert meeting in the UNESCO's headquarters in June 2002 the experts adopted definitions regarding the safeguarding of intangible cultural heritage reflecting this interconnection.
[81] Ashworth, Graham, and Tunbridge, op. cit., pp. 8, 24-27, 73-76 (enquiring into the process of assimilation).
[82] Ashworth, Graham, and Tunbridge, op. cit., pp. 8, 24-27, 73-76 (enquiring into the process of assimilation).

their representatives; and that inventorying intangible cultural heritage, which is recognized by communities, must be done only with the communities' free and prior informed consent, while respecting customary practices governing the access to the intangible cultural heritage.[83] These issues were further discussed during several sessions of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage[84] and will undoubtedly attract more attention in the following process of the implementation of ICH Convention.

The lack of any definition of community contrasts sharply with the emphasis of the ICH Convention on safeguarding. By defining intangible cultural heritage in a way that requires it to be "compatible …with the requirements … of sustainable development,"[85] the ICH Convention combines the idea of economic and human development with continuity. In order to reach this, the community has to be actively involved in all processes related to their intangible cultural heritage. Therefore, the ICH Convention further stipulates that competent authorities are thus to "endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management."[86] The involvement of communities is especially important in the initial process where individual elements of intangible cultural heritage are identified and defined for the purposes of their safeguarding. In order to maximize the efficiency of community involvement, the ICH Convention anticipates that the communities are to be approached in order to educate them and to explain the importance of safeguarding intangible cultural heritage and their possible role in this endeavour.

CULTURAL DIVERSITY, IDENTITY AND GLOBALIZATION

The close association of intangible cultural heritage with their communities has been an argument to empower these communities in relation to the management of their heritage. Whereas the empowerment movement should be seen mainly as an inbound movement, it is important not to forget that intangible cultural heritage has an outbound meaning as well. Intangible cultural heritage, as part of a community's identity, allows a community

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[83] UNESCO/ACCU, Expert Meeting on Community Involvement in Safeguarding Intangible Cultural Heritage: Towards the Implementation of the 2003 Convention, 13-15 March 2006, Tokyo, p. 10.

[84] Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, *Decisions Adopted*, Second Session, Tokyo, 3 to 7 September 2009, ITH/07/2.COM/CONF.208/Decisions, p. 13 (Decision 2.COM 8).

[85] Art. 2 ICH Convention

[86] Art. 15 ICH Convention

to define itself towards other communities.[87] As the source of distinctiveness for communities, intangible cultural heritage contributes to a cultural diversity around the world. It should not be forgotten that, at least partially, the distinctiveness is the result of interaction among communities.[88] Indeed, interaction with other communities is one of the environments that a community has to deal with, giving intangible cultural heritage the status of enabling the community to "thrive in dialogue with other cultural groups."[89] Interaction between cultures has existed from the earliest of times. Whereas these interactions used to be a long and slow process, allowing the migrated cultural elements to gain distinctiveness, trade liberalization and technological development, both characteristics of globalization, have accelerated and intensified the contacts between cultures.[90] An often-heard critique to this frequent interaction is that it might lead to the homogenization of cultures and pose a threat to cultural diversity,[91] potentially jeopardizing a community's identity and ability to smoothly interact with other cultures.

Tyler Cowen convincingly demonstrates in his work *Creative Destruction* that this permanent cultural interaction does not necessarily lead to homogenization.[92] Rather, he contends, interactions lead to the development of a new, hybrid form of culture. In this sense, cultural diversity is not threatened by globalization. Nevertheless, this process may threaten culture either by eliminating claims to culture that are equally acceptable and respectable, or by trivializing cultural claims by extracting the cultural meaning. Rephrased in Sen's words, globalization entails the threat of "…denial of cultural liberty, exclusion from social interactions, rejections of one's sense of identity or lack of recognition of one's cultural priorities…"[93] Every form of culture, as an expression of "the cultural dimension of human lives"[94], should be regarded as part of the cultural diversity and thus protected. Taken the words of Sen literally, there is no

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[87] Arizpe, L., Intangible Cultural Heritage, Diversity and Coherence, *Museum International*, 2004, vol. 56, p. 131

[88] Ibid., p. 132; Bernier, I., A UNESCO International Convention on Cultural Diversity, in Ch. B. Graber, M. Girsberger, M. Nenova (eds.), Free Trade versus Cultural Diversity: WTO Negotiations in the Field of Audiovisual Services, Basel: Schulthess, 2004, 66, the concept of cultural diversity points to a "systematic perspective, in which each culture develops and evolves in contact with other cultures"

[89] Discussion Guidelines, op. cit., p. 12

[90] Arizpe, op.cit., 2004, p. 132

[91] Aikawa, op. cit., p. 140; Nas, P.J.M., Masterpieces of Oral and Intangible Culture: Refelctions on the UNESCO World Heritage List, *Current Anthropology*, 2002,Vol. 43, p. 142

[92] Cowen, T., Creative Destruction: How Globalization is Changing the World's Cultures, Princeton: Princeton University Press, 2003

[93] Sen., A., Culture, Identity and Human Development, Paper presented at a UNDP meeting, 2003, quoted in Arizpe, op. cit., 2004, p. 133

[94] Ibid.

doubt that any form of culture, also intangible cultural heritage, is important to cultural diversity.

Notwithstanding the obvious link between intangible cultural heritage and cultural diversity, the cultural diversity debate initially did not focus on the meaning of intangible cultural heritage for cultural diversity. Instead, the main focus of the cultural diversity debate was about accommodating popular culture within the trade regime.[95] Popular culture was too often depicted in a commodified way, which triggered fierce reaction especially from Canada and France.[96] Both countries insisted on a treatment of popular cultural goods and services distinct from mere goods and services.[97] At the regional level, exceptions for cultural goods were inscribed in free trade agreements. However, at the multilateral level, such a far-reaching compromise could not be reached within the trade regime. As this debate reached a deadlock in the trade regime, it became even more visible in other international regimes, like UNESCO.[98] The focus of the diversity debate in UNESCO shifted from development to the position of culture in the market.[99]

Nonetheless, cultural diversity remained a contentious issue in the context of trade and

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[95] Neuwrith, R.J., The Cultural Industries in International Trade Law: Insights from the NAFTA, the WTO and the EU, Hamburg: Verlag Dr. Kovač, 2006, pp. 15-19; Obuljen, N., From *Our Creative Diversity* to the Convention on Cultural Diversity: Introduction to the Debate, in N. Obuljen and J. Smiers (eds), *UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Making it Work*, Zagreb: Culturelink, 2006, pp. 19-35

[96] Harvey, S., Trading Culture in the era of the Cultural Industries, in S. Harvey (ed.), *Trading Culture: Global Traffic and Local Cultures in Film and Television*, Eastleigh: John Libbey Publishing, 2006, pp. 4-7; Azzaria, G., Culture et Commerce: La Rhétorique de l' Équilibre, in G. Gangé, La Diversité Culturelle: Vers une Convention Internationale Effective, Québec: Fides, 2005, pp.63-79; In relation to Canada, e.g., Bernier, I. op. cit., pp. 70-72; Owen-Vadersluis, S., Ethics and Cultural Policy in a Global Economy, New York: Palgrave Macmillan, 2003, 126-152; In relation to France, e.g., Matterlart,A., Kultur und Globalisierung: Marktmacht gegen Vielfalt, Zurich: Rotpunktverlag, 2006, pp. 120-123 (Bodo Schultze, trans.)

[97] Voon, T., Cultural Products and the World Trade Organization, Cambridge: Cambridge University Press, 2006, pp. 70- 119 and 175-183; Graber, Ch. B., op. cit., 2003

[98] Meeting of the Experts Committee on the Strengthening of UNESCO's Role in Promoting Cultural Diversity in the Context of Globalization, Working Document, Available HTTP: <http://portal.unesco.org/culture/en/files/25631/11074412905documentenglish.pdf/documentenglish.pdf> (accessed 2 November 2007)

[99] 1996 - Report of the World Commission on Culture and Development: Our Creative Diversity, UNESCO; 1998 - Intergovernmental Conference on Cultural Policies for Development, Final Report, UNESCO, Stockholm; 1998 - World Culture Report: Culture, Creativity and Markets, UNESCO; 1999 - Symposium of experts: Culture, a form of merchandise like no other? 14-15 June, UNESCO, Paris; 2000 - Culture, Trade and Globalization, Questions and Answers, UNESCO, Paris; 2000 - International Flows of Selected Cultural Goods, 1980-98, Institute for Statistics, UNESCO, Paris; 2000 - Round Table of Ministers of Culture 2000-2010: Cultural Diversity: Challenges of the Marketplace, 11-12 December, UNESCO, Paris; 1999 - Round Table of Ministers of Culture: "Culture and Creativity in a Globalized World", UNESCO, Paris

globalization for quite a while. For example, at its 30th session, the General Conference adopted a resolution in which it underlined the importance of promoting cultural diversity in light of the WTO Doha Round of trade negotiations and the implications these negotiations could have for the status of cultural goods and services.[100] The resolution further called for the setting up of a working group of experts to follow up this particular issue, something the Director-General did.[101] This working group discussed several working hypotheses that UNESCO could pursue to tackle the issue of cultural diversity in a globalizing world. Whether the working group sees the role of UNESCO as an intellectual forum, assistance providing and cooperation stimulating forum, a normative forum, or a plan of action developing forum, the constant factor in the role models for guaranteeing cultural diversity by UNESCO is the search for a proper position of cultural goods and services on the market.[102]

The pressing need to define the position of cultural goods and services in the market diverted UNESCO's attention from the fact that other cultural objects, activities and expressions are also part of cultural diversity. The more the cultural diversity debate matured in UNESCO, the better the diverse layers of the concept of cultural diversity were dissected. One of these layers is the importance of heritage, including intangible cultural heritage, to the concept of cultural diversity. Contributing considerably to this view was the 2000 World Culture Report on *Cultural Diversity, Conflict and Pluralism*.[103] In this report, heritage, both tangible and intangible, is described as the origin of and guarantee for cultural diversity.[104] This line of thinking was further

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[100] UNESCO, Working Document on the Strengthening of UNESCO's Role in Promoting Cultural Diversity in the context of Globalization, September 2000, p. 2 [CLT/CIC/BCI/DC.DOC 5E]; Draft of the resolution: UNESCO General Conference, Amendment to the Draft Programme and Budget for 2000 and 2001 (30C/5) [UNESCO 30 C/DR.13 Rev.]

[101] UNESCO, op.cit., September 2000, 2

[102] Ibid., pp. 8-10

[103] UNESCO, World Heritage Report 2000: Cultural Diversity, Conflict and Pluralism, Paris: UNESCO, 2000

[104] Aikawa, N., Intangible Cultural Heritage: New Safeguarding Approaches, in UNESCO (ed.) *World Heritage Report 2000: Cultural Diversity, Conflict and Pluralism*, Paris: UNESCO, 2000, p. 174 ("Intangible heritage, as a mainspring of creativity, in turn contributes to the diversification of contemporary creativity."); Mason R. and De La Torre, M., Heritage Conservation and Values in Globalizing Societies, in UNESCO (ed.) *World Heritage Report 2000: Cultural Diversity, Conflict and Pluralism*, Paris: UNESCO, 2000, p. 171 ("On the face of it, heritage conservation seems to work against diversity. By maintaining older, existing cultural experiences and forms, conservation would appear to divert resources from the creation of new expressions and cultural forms. However, the two impulses work together in fundamental ways. First, conservation, far from setting existing cultural works in stone, is emphatically a means of reinterpreting and reproducing cultural meanings in the here and now. Acts of conservation do not simply 'maintain' a cultural artifact and its meanings and values; conservation is itself an act of interpretation, selection and valorization and can respond quite directly to calls for greater diversity. Second, maintaining the 'stock' of a culture through conservation is a fundamental condition for

pursued in the discussions leading to the *Universal Declaration on Cultural Diversity* (Universal Declaration) in 2001.[105] The Universal Declaration calls for the preservation, enhancement and transmission of all kinds of heritage, as heritage fosters creativity and understanding between cultures.[106] It is only after stating this aspect of cultural diversity that the Universal Declaration deals with cultural goods and services as commodities,[107] thus linking it to the original, and much-emphasized, debate on trade and cultural diversity.

However, the tone for a broader view on cultural diversity was set. The decision of the 31st Session of the General Conference to safeguard intangible cultural heritage by means of an international convention has, not surprisingly, been immediately directed to the cultural diversity debate at the 3rd Round Table of Ministers of Culture. The Round Table, called 'Intangible Cultural Heritage – A Mirror of Cultural Diversity', embraced a concept of cultural diversity much broader than the one envisaged in the trade debate.[108] Even though the discussion guidelines of the Round Table refer to the widespread liberalization of trade and the economy, a fair amount of attention is paid to the role of intangible cultural heritage not having an economic value.[109] Intangible cultural heritage is praised as a means for building links "between generations, between geo-cultural areas separated by distance, and between societies separated by systems deemed to be incompatible."[110] This perspective on intangible cultural heritage goes to the heart of what intangible cultural heritage is all about. Intangible cultural heritage is the way that people respond to their environment. As the environment differs, different responses will grow, constituting diversity. The diversity of responses is another environment people have to deal with. Hence, they have to find a response to that as well. Intangible cultural heritage is thus not only the source of cultural diversity, but also the guarantee for cultural diversity.

The preamble to the ICH Convention endorses at least the former view in no uncertain terms. By referring to the 1989 Recommendation, the Universal Declaration and the Third Round Table, the drafters of the ICH Convention stated in the third paragraph of

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cultural continuity, but also for creativity, which continually draws on this stock (consciously or not).")
[105] UNESCO Universal Declaration on Cultural Diversity, Adopted by the 31st Session of the General Conference of UNESCO, Paris, 2 November 2001, Available HTTP: <http://unesdoc.unesco.org/images/0012/001271/127160m.pdf> (accessed 26 November 2007)
[106] Ibid., Article 7
[107] Ibid., Article 8
[108] Discussion Guidelines, op. cit., 2002
[109] Ibid., p. 2, 4 and 12
[110] Ibid., p. 3

the preamble that intangible cultural heritage should be considered as important due to the fact that it is the mainspring of cultural diversity. The sixth paragraph then describes how intangible cultural heritage can help to enrich cultural diversity by the production, safeguarding, maintenance and recreation of it by communities. More indirectly, the preamble confirms the latter view. The fourth paragraph stipulates that due to the lack of resources to safeguard intangible cultural heritage, it is possible that a changed environment will detrimentally affect the existence of intangible cultural heritage. Hence, the existence of intangible cultural heritage is necessary to cope with changing environments, which would then not be able to pose a threat to the existence of intangible cultural heritage.

CONCLUSION

The paper has argued that the adoption of the Convention for the Safeguarding of Intangible Cultural Heritage has been driven by three main philosophies: equality within the international heritage regime, community empowerment, and cultural diversity.

The quest for equality has had its main impact on the form of the standard setting instrument. Only a binding legal instrument at the international level could assure that intangible cultural heritage could enjoy safeguarding equal to the one provided in the World Heritage Convention.

Community empowerment and cultural diversity are both related to the content of the standard setting instrument. Whereas the former stresses the active involvement of the community in the safeguarding process, the latter focuses on the role intangible cultural heritage plays for its community in relation to other communities. Further, community empowerment has been linked with sustainable development to indicate that community involvement is important in order to reach beyond the present generation.

Cultural diversity, on the other hand, has been discussed in relation to globalization and the increased interaction that it causes among cultures. Rather than arguing that globalization leads to homogenization, it has been argued that it affects the capabilities in relation to culture.