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Limiting the List:
Human Rights and Intangible Cultural Heritage

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Abstract
UNESCO's Convention for the Safeguarding of Intangible Heritage came into force in April 2006, signalling a major expansion of the global system of heritage protection from the tangible to the intangible. It is an expansion that some heritage professionals see as opening up a Pandora's box of confusions and complexities. The conservation of inanimate objects—tangible sites and monuments and artefacts—is difficult enough; but the protection of heritage embodied in people raises new sets of ethical and practical issues. The paper canvasses these concerns and focuses on how the notion of human rights must be used as a way of limiting and shaping the Intangible List. In particular, it outlines the ways in which the protection and preservation of cultural heritage is linked to 'cultural rights' as a form of human rights. This linkage is not clearly recognised by cultural heritage practitioners in many countries, who view their work merely as technical, or even by human rights workers, despite the abundance of opportunities around the world to witness people struggling to assert their cultural rights in order to protect their heritage and identity.

1. Introduction

Just a few months ago, in April 2006, UNESCO's Convention for the Safeguarding of Intangible Heritage, which had been approved by the General Conference in 2003, entered into force. This signalled the expansion of the global system of heritage protection from the tangible (that is, monuments and sites—or heritage places—as well as material artefacts) to the intangible (which is described in Article 2 of the Convention as 'practices, representations, expressions, knowledge, skills'—that is, heritage that is embodied in people rather than in inanimate objects).

There has been some criticism that the Convention was prepared too rapidly, and approved with many key issues, such as the criteria for the new Representative List of Intangible Heritage, still needing to be clarified. And even if this is sorted out when the Intangible Convention gets a set of 'Operational Guidelines' like those for the World Heritage Convention, there remains a large gap between theory and what happens out there in the 'real world'.

In my paper today I want to canvass these concerns. In particular, I will focus on the issue of how we might—indeed must—use the notion of human rights as a way of limiting and shaping the Intangible List. I will outline the ways in which the protection and preservation of cultural

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1 This paper is an abridged version of W. S. Logan, 'Closing Pandora's Box: Human Rights Conundrums in Cultural Heritage Protection', in H. Silverman and D. Ruggles Fairchild (eds), Cultural Heritage and Human Rights, New York, Springer (in press).
heritage is especially linked to 'cultural rights' as a form of human rights. This linkage is too often ignored or inadequately understood by scholars working in the cultural heritage field as well as by cultural heritage practitioners in some countries who view their work merely as technical. And it seems, too, to be poorly understood by human rights workers, despite the abundance of opportunities around the world to witness people struggling to assert their cultural rights in order to protect their cultural heritage and their cultural identity.

2. Cultural Diversity

At the global level, UNESCO is the peak organisation engaged in shaping attitudes to, forming statements of principle about, and engaging with its Member States in projects aimed at protecting cultural heritage and cultural diversity. This objective was present in UNESCO's program from the outset, its Constitution referring to the preservation of the 'integrity and fruitful diversity of the cultures' of the Member States. During the period of rapid post-war decolonization, UNESCO's General Conference adopted in 1966 a Declaration on the Principles of International Cultural Cooperation, Article I of which states that: 'Each culture has a dignity and value which must be respected and preserved', that 'every people has the right and duty to develop its culture'. Following the 1982 World Conference on Cultural Policies in Mexico, an important conceptual shift occurred in the manner in which UNESCO considered culture in its work. The earlier definition focusing on traditional 'arts and literature' was replaced by a new, more anthropological definition that saw culture

in its widest sense, [as] the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society and social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs.

It was during the 1990s that the diversity theme, and especially the protection of diversity, began to emerge as a major focus of UNESCO activities, in large part to fears that globalisation is working against the survival of cultural diversity. The UN had declared the years 1988 to 1997 as a 'Decade for Cultural Development', with 'cultural diversity' as a key theme [4]. The World Commission on Culture and Development presented its final report under the title Our Creative Diversity in 1995. In 2000, the UNESCO Director-General, Ko-chiro Matsuura, established a scheme called 'Proclamation of Master Pieces of the Oral and Intangible Heritage of Humanity'. This became the advance guard of the 2003 Intangible Convention. The Proclamation was followed in 2001 by the UNESCO Universal Declaration on Cultural Diversity. This Declaration maintains that cultural diversity is the 'common heritage of humanity', 'a source of exchange, innovation and creativity', and 'as necessary for humankind as biodiversity is for nature' .

The UNESCO documents suggest, however, that conservation should be directed at all cultural heritages equally. But there are patently some dimensions of our own culture that we don't want to keep at all – and some elements of other people's cultures that we might hope they would abandon. Some cultural practices have been eradicated in the past, including social forms such as Chinese foot-binding, and economic forms such as 'New World' slavery. The Indian practice of suttee has largely died out. It was banned by the British in the 1820s, but continued to be practiced. The last Indian legislation was as recent as 1987. The difficulty with the anthropological definition of culture lies in its breadth, making it possible to claim almost all aspects of human behaviour as part of one's 'culture'. Thus even political behaviour like Ku Klux Klan rituals can be seen as a cultural manifestation – one example of many cultural forms held to be important by communities and groups within various countries.

Does recourse to the notion of human rights and to the human right instruments solve our problems completely? My argument is that we can, of course, and should take recourse to the
range of international statements (or ‘instruments’) concerning human rights and cultural heritage to support our endeavours... however this does not eliminate all our problems. Much of our difficulty lies in the fact that, within the human rights statements, cultural rights are treated as a residual category. When they are included, they come at the end, almost as an after-thought. This is largely by accident rather than design – the result of the relatively late recognition of cultural rights – but this lateness reflects a general perception that cultural matters are less critical than the economic, political and social. The lateness also means many issues have yet not been worked through.

Another difficulty in many of the human rights instruments, as well as in much of the human rights discourse, is that they are concerned more with individual than group, community or societal rights. This has changed over time. The International Covenant on Civil and Political Rights [8], moves more clearly beyond individual human rights, particularly in Article 27:

In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.

This approach, underlying the protection of minority group human rights, is strengthened by the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

However, both the 2001 Declaration on Cultural Diversity and the 2003 Convention for the Safeguarding of Intangible Heritage bring human rights right to the foreground. Article 4 of the 2001 Declaration deals specifically with human rights as the guarantor of cultural diversity and limits the application of the instrument to those aspects of cultural heritage that do not infringe human rights. The preamble of the Intangible Heritage Convention also starts by referring to existing international human rights instruments, and Article 2 includes the statement that:

For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

Diana Ayton-Shenker put the matter clearly in a 2003 background paper for a Commonwealth Parliamentary Association conference in Bangladesh [3], when she said:

Every human has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights, however, are not unlimited. The right to culture is limited at the point at which it infringes on another human right. No right can be used at the expense or destruction of another, in accordance with international law.

However, in practice the issue is not so clearly settled: Ayton-Shenker’s resolution, while having the appeal of apparently simplicity, is insufficient in theory and practice. Moreover, it is being ignored by many regimes around the world.

3. Theoretical Issues

I don’t want to dwell here on the theoretical issues, other than to highlight one difficulty that impacts seriously on human rights practice. The Academy of European Law [1] put its finger on this key difficulty when it said:

Cultural rights are torn between two different but linked meanings: first, as a sub-category of human rights, cultural rights are endowed with universal character,
which is a major characteristic and postulate of human rights as a whole; second, cultural rights are clearly related to cultural diversity and cultural diversity is an obvious challenge to the very idea of universal human rights.

That is, there is an apparent disjuncture between human rights, as universal and all-encompassing, and cultural diversity and cultural heritages, which are by definition culturally and temporally specific. This leads us inevitably into the thorny conflict between universalism and cultural relativism, but time prevents discussion of this.

4. Cultural Heritage, Cultural Rights and Cultural Politics

In the real world, the implications of the various cultural heritage instruments are, of course, deeply political. They have potentially major impacts, especially for suppressed minority cultural groups in many countries. But they are also highly significant for governments and for dominant ethnic groups which feel their power is being undercut by efforts to raise the status of minority groups and their cultures.

At least three broad types of conflict can be defined in which the inter-relationships between cultural heritage and human rights issues are implicated.

1. where the cultural right of minority groups to maintain their intangible cultural heritage is threatened;
2. where selective interpretations of cultural heritage are used to influence mainstream cultural identity and opinion to the detriment of human rights.
3. where groups claim a cultural practice as a human right, even though others may claim that the practice contravenes laws and/or fundamental human rights instruments.

Note that power – the power to decide and to enforce – lies at the heart of all three types.

4.1. Cultural right of minority groups to maintain their intangible cultural heritage is threatened

Let's take an example where Indigenous Australian intangible cultural heritage is on the line – language. Languages are in trouble globally. It is predicted that the current estimate of 6,000 languages will fall to some 600 by the end of the century. But, asks Scanlon [6],

*Should we be concerned about the loss of diversity of the world’s languages? After all, minority languages are, by definition, spoken by relatively few people. It might even be argued that fewer languages would be a good thing, an opportunity to cast off the curse and confusion of Babel*. 

Against this, others argue that language is the basis of culture itself, the window on to ways of thinking.

In Australia we tend to talk of Australian Aboriginals in a single breath, as if they were a unified community. Culturally, economically and even politically they are diverse. There are hundreds of languages and dialects, dozens of which are currently under threat of total disappearance. UNESCO intangible heritage experts have challenged Australia to save them. The Australian Government does have a commitment to Indigenous heritage through the Maintenance of Indigenous Languages and Cultures and media access programs administered by the Department of Communication, Information Technology and the Arts. The various human rights declarations suggest that it is certainly part of the Aboriginals' human rights and cultural rights to be able to continue to use their languages. But difficult questions arise. Is it, however, feasible to protect them all? How could this be done? Some languages have less than 100 speakers. Do the Indigenous language minority groups have the freedom to choose?
In some cases their desire for improved standards of living perhaps survival as a group of people depends on adoption of English, modern work practices, etc. Is language a necessary sacrifice?

4.2. Selective interpretations of cultural heritage are used to influence mainstream cultural identity and opinion to the detriment of human rights

Cultural heritage can, of course, be used to manipulate people. Governments commonly use cultural heritage to try to weld disparate ethnic groups into a more cohesive and harmonious national entity. They use cultural heritage to shape public opinion. All of these manipulative activities may be benign if they promote more tolerant societies based on human rights. Interpretations of the past can be opened out so as to recognise the roles played by minority groups in the national story, to engage them more fully in celebration of the nation’s achievements, and to recognise injustices done to them in the past. Efforts to rediscover ‘unpleasant’ episodes in our national histories can result in the empowering of Indigenous minorities.

But the use of heritage can malign as well as benign. In too many cases governments have used selective versions of the ‘national cultural heritage’ to force minority groups to adopt the dominant culture, effectively wiping out their own cultural identity. Worse, selective appropriations of the past are too often used by state leaders to boost jingoism and facilitate aggression towards others outside national borders. Despite the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 (often referred to as ‘The Hague Convention 1954’) and all the best efforts of the International Blue Shield Committee, it is still a deliberate strategy in wars to attack the physical manifestations of the enemy’s cultural identity and to lower the enemy’s morale by so doing. The destruction of the Mostar Bridge or the Sarajevo archives is a case in point.

This applies to civil wars as well as international wars, as evidenced in February 2006 by the bombing of the Askariya Mosque in Samarra, a major holy place of Iraqi Shiites, and the counter attacks on Sunni mosques. In Africa, where the chief forms of heritage are intangible, the deliberate slaughter of opponent tribes has been atrocious. I recall the speech of a Rwandan at the 2001 UNESCO international seminar making the point that his people’s heritage died with every victim of the genocide that occurred there in the 1990s. The catastrophe in Cambodia under Pol Pot very nearly wiped out the country’s rich cultural heritage of dance and music. Fortunately a few ageing women in the Cambodian diaspora have been able to return to train a new generation of young dancers and musicians in traditional techniques.

4.3. Cultural practice claimed as a human right, even though that the practice contravenes local laws and/or fundamental human rights instruments

What really is the cultural heritage value of the fine west Asian rugs and carpets in cases where they are made using child labour? The counter claim might be that it is the fundamental human right of families and communities to enjoy higher incomes and standards of living. In Australia there continues to be arranged marriages of girls in certain ethnic communities and the restriction of female student participation in certain school subjects, such as sport or music. The counter claim relates to cultural practices of the community that places high value on modesty.

Attempts to outlaw particular cultural manifestations within a society often reflect the prejudices of the majority and such biases are often fiercely resisted. Also related to cultural
practices insisting on female modesty, prohibiting the wearing of the Muslim veil in French schools caused bitter controversy in that country and beyond. Here the ambiguities and contradictions within the cultural rights and human rights instruments themselves contribute to the difficulties. In particular, there is the problem that cultural rights, as human rights, have both a collective and individual dimension. As rights with a collective dimension, they may come into conflict with individual human rights or individual perceptions of human rights. Disputes often arise over the state’s role in adjudicating between the collective and individual dimensions: To what extent should the state remain tolerant in respect of cultural practices that appear to restrict the enjoyment of some human rights by members of a community? To what extent should it enforce individual rights even in relation to religious, ethnic and cultural communities?

Take another example. The Indian Ocean island of North Sentinel has a population of about 250 people living in traditional manner – loin-clothed hunter-gatherers, with their Sentinelese language intact. The island is off-limits to the outside world, with Indian laws prohibiting visitors from landing. In February the Observer (12-2-2006) reported that two poachers from another Andaman Island had drifted ashore and had been slaughtered by Sentinelese tribesmen. According to the Observer, ‘The local authorities, under pressure from international preservation groups and a largely sympathetic local [Andaman] population, are reluctant to pursue the matter’. Here, it seems to me, the heritage (cultural rights) argument has to take back seat. Maintenance of human life must be seen as the highest ‘human right’ – our highest priority.

5. Human Rights, Intangible Cultural Heritage, and the Power to Decide:

As a conclusion to my talk, I would like to offer some suggestions about key challenges to be met by heritage conservation policy-makers, practitioners, researchers and educators, especially arising out of the extension of practice into the intangible cultural heritage field. I will illustrate this with a World Heritage (hence tangible) example - the Philippines Rice Terraces. These were listed in 1995 under the new ‘Cultural Landscape’ category as an ‘Organically evolved landscape’ of the sub-type: ‘Continuing landscape which retains an active social role in contemporary society associated with a traditional way of life and in which the evolutionary process is still in progress and where it exhibits significant material evidence of its evolution over time’.

Unfortunately for the listing, the local population have grown weary of the rigours of this traditional way of life and see better prospects in jobs elsewhere in the Philippines. In short, the problem here was that the decision to inscribe was made – not by the local population whose heritage it is – but by professionals and policymakers in Manila and Paris. Here again we see the underlying issue of power – who has the power to decide a place has heritage significance and to impose heritage controls. The inscription was imposed to protect an exotic landscape, but it overlooked the fact that the landscape depends on the intangible heritage bound up in the local community’s life style and skills in irrigation and terrace construction practices. In fact the inscription could only succeed if it denied the human rights of the local population – their right to determine their own life circumstances.

Situations like this can often be avoided where the local community is engaged in the decision-making process from the outset. The response of the professions globally has been to argue for greater involvement of the local communities in the processes of identification, inscription and management of World Heritage sites. Let the community choose – as best it can, given that community dynamics are far from perfect. Such involvement is part of ‘cultural rights’ as
defined in the instruments I have talked about, part of ‘human rights’. But, as we have seen, this ‘right’ is far from absolute. In practice it varies from country to country, regime to regime, totalitarian through to democratic. Moreover, in all countries, local ambitions do always need to be negotiated against broader community, regional and national interests and, indeed, between various interests within the same local community.

With intangible cultural heritage, the newcomer in the heritage conservation field, the practical problems are still to be broached in my country and most others. Even though, as ‘living heritage embodied in people’, the intangible heritage is the form of heritage most directly connected to human right principles and their abuse, the linkage is not clearly recognised by cultural heritage practitioners in many countries, who view their work merely as technical, or even by human rights workers, despite the abundance of opportunities around the world to witness people struggling to assert their cultural rights in order to protect their heritage and identity. In the heritage conservation field in most countries, we have yet to see a ‘sub-profession’ of intangible cultural heritage experts emerge to take up the challenge of thinking through the issues, developing appropriate policies and practices and implementing them at national and local levels.

6. References