

UNESCO's Convention for the Safeguarding of the Intangible Cultural Heritage and the 'goodness criteria'

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ABSTRACT

This paper discusses UNESCO's 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and specifically the challenges connected to article 2 and the 'goodness criteria' included in the Convention's definition of intangible cultural heritage (ICH). The interpretation of these criteria and the practical implementation of them has proven challenging, and the question of how to handle human rights considerations within the framework of the Convention is an unresolved problem. As the question whether a traditional practice is, for example, discriminatory is often a contentious matter, and as traditional practices sometimes fall within a 'grey area', the topic of discrimination tends to be easier to avoid than to address. Another important factor in this is the notion of heritage as 'good'. In contrast to the World Heritage Convention, the 2003

Convention does not recognise so-called negative, contested or difficult heritage. The inclusion of the goodness criteria can be seen as a fundamentally important statement, assuring that due attention is given to human rights considerations and that discriminatory practices are not to be included. At the same time, the goodness criteria have not been strictly applied, which can be seen, for example, in the handling of gender. In this paper, the author discusses problems related to the current approach to the 'goodness criteria', and as a hypothetical exercise, draws up four alternative scenarios.

Keywords

heritage, human rights, discrimination, tradition, equality, UNESCO, gender, convention

Introduction

This paper discusses intangible cultural heritage (ICH) and considerations pertaining to human rights; mutual respect among communities, groups and individuals; and to sustainable development. The author analyses and discusses UNESCO's 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, specifically the challenges connected to article 2. The 2003 Convention sets out to safeguard ICH while upholding standards of existing human rights instruments. Article 2 of the Convention, which defines intangible cultural heritage, also contains a number of criteria limiting the scope of what can be considered

ICH for the purposes of the Convention. These criteria, which the author refers to as the 'goodness criteria', state that 'consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development' (Convention for the Safeguarding of the Intangible Cultural Heritage, article 2.1). Arguably, this should mean that, for example, discriminatory practices should not be recognised within the framework of the Convention and should consequently not be inscribed on any of the Convention's lists.

However, the interpretation of these criteria and the practical implementation of them has proven challenging. As the question whether a traditional practice is, for example, discriminatory is often a contentious matter, and as traditional practices sometimes fall within a 'grey area', the topic of discrimination tends to be easier to avoid than to address. While standards of non-discrimination are easy to agree on in principle, the practical implementation can be less straightforward, evident in the number of State Parties that have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), while the practical implementation of gender equality standards is often a matter of contention. Underlying this dilemma is also the ideological conflict between two different approaches to human rights – universalism and cultural relativism. While the universalist approach calls for the human rights of every person to be recognised under any circumstances, the cultural relativist approach calls for a consideration and understanding of the cultural and social context. A point in question is who should have

the power to decide what is deemed as discriminatory. Also, a case in point is whose voices are being heard in these considerations. Against the background of the ideological conflict between these two approaches to human rights, Blake writes that it is sometimes difficult to determine whether a traditional practice falls inside or outside the 'human rights line' (2015, 286).

Blake also urges caution in applying a 'non-discrimination filter' lest it lead to either overly strict or simplistic approaches (Blake 2018, 216); Blake writes that a traditional practice being, for example, segregated by gender is not in itself a reason for discounting said practice. Instead, Blake argues that in applying a human rights-based approach to ICH, matters of discrimination must be determined by the members of the groups being discriminated against (Blake 2018, 216f). In such an approach, the emphasis is on the choice of the individual. In taking a human rights-based approach to culture, Donnelly (2003) emphasises individuals' freedom to choose



Figure 1
Keitoku Inari Shrine rice plantation festival in Kitakata, Fukushima Prefecture, Japan, 2 July 2022. Photographer: Helga Janse.

how to live their lives. Whether to adhere to traditional gender roles or to challenge them is a choice that is to be left to the individual in question (Donnelly 2003, 119-123).

However, in practice, there are obstacles to exercising such a choice (see 'Acknowledging and handling negative cultural practices' below). It cannot be assumed that such choices can always be made freely or that these choices are free from serious negative consequences for the individual. Furthermore, within the context of the 2003 Convention, limitations in the nomination and reporting system are making it hard for voices of discriminated or otherwise marginalised groups to be heard (see 'Current situation' below).

Furthermore, it could be argued that gender segregation and the room to make a choice as an individual appear to be contradictory. Here, it is relevant to make a distinction between tendencies and rules. That a lion dance is mainly performed by men and that women are restricted from participating are different. It might also be relevant to make a distinction between gender-coded roles and the gender or sex of the participants. For example, the role of *saotome* ('rice maiden') featuring in many rice cultivation rituals in Japan is in some places performed by men and in other places performed by women. In both cases, the role itself is coded as female.

The 2003 Convention's approach to heritage as 'good'

Blake (2018) discusses the problem of gender equality within the context of the Convention in terms of a conflict between an anthropological approach, focused on the reality of gender dynamics, and a human rights approach, focused on equality and freedom from discrimination. This conflict between different approaches can explain some of the problems relating to the wording and 'nature' of the Convention, as an anthropological approach focusing on realities and a human rights approach focusing on ideals will have different aims. It might also be interesting to note that, as Hafstein (2009) writes, the 2003 Convention – and specifically the Representative List of the Intangible Cultural Heritage of Humanity (RL) – is the result of a compromise between three different agendas, as some State Parties wanted a list of masterpieces, some sought a more neutral inventory and others preferred no list at all. Arguably, the three different approaches allow for differences in terms of what ought to be considered as ICH

within the scope of the Convention. An important factor in this is the notion of heritage as 'good'.

Challenging the idea of heritage as innately valuable, Smith (2006) has emphasised the performativeness of heritage and its values as associative rather than innate. Heritage can be seen as socially constructed by people associating and ascribing values and meanings to places, objects and actions. From this follows that there is no such thing as inherently 'good' heritage. As values are associated with and attributed to places, objects and actions by people, the values and meanings will differ depending on person, time, place and context.

However, the authorised heritage discourse is typically focused on heritage as grand, 'good' and monumental, and Smith notes that '[e]ven when it is the "bad" that is being preserved, it is very often the exceptionally "tragic" event that is commemorated, rather than unpleasantness that is more mundane or reflective of the general inequalities of human experiences' (Smith 2006, 23).

By the inclusion of the 'goodness criteria', the Convention is bound to recognise only practices that are consistent with standards of human rights instruments, sustainable development and mutual respect among communities, groups and individuals. As such, and in contrast to the World Heritage Convention (1972), the 2003 Convention does not recognise so-called negative, dissonant, difficult, dark or contested heritage. This point signifies an important difference between the 2003 Convention and the World Heritage Convention. Another key difference from the 1972 Convention is that the 2003 Convention only recognises traditions that are practised today and furthermore strives to uphold those traditions. As such, there is less room for, as in the case of the 1972 Convention, recognising painful memories, with the goal not to repeat the same mistakes.

However, the inscription of World Heritage Sites associated with painful and negative histories, using criterion (vi) of the World Heritage Convention operational guidelines, has not been without controversy and discussion. As the 'outstanding universal value' of the 1972 Convention is primarily associated with positive connotations, the nomination of Auschwitz in 1979 presented a difficulty for the Committee and prompted a restrictive change in the wording of criteria (vi) (Beazley and Deacon 2007). Criteria (vi) has been subject to several changes over the

years, reflecting contemporary domestic and international political interests (Beazley and Deacon 2007).

Yet another key difference between the two conventions is relevant to point out. While some inscriptions on the World Heritage List have caused controversy and drawn criticism on the basis of discrimination (see, for example, Okinoshima, Mount Athos, and the Kii Mountain Range, all of which are sites where women are prohibited access!), the 1972 Convention does not have a set of 'goodness criteria' of the same type as the 2003 Convention. In the 2003 Convention, these criteria are included in the very definition of ICH. As such, the scrutiny could arguably be expected to be even more strict in the 2003 Convention compared to the 1972 Convention.

The inclusion of the goodness criteria can be seen as a symbolically and fundamentally important statement, assuring that due attention is given to human rights considerations and that discriminatory practices are not included. At the same time, the goodness criteria have arguably not been strictly applied, which can be seen, for example, in the handling of gender. An evaluation of the Convention, conducted by the UNESCO Internal Oversight Service and published in 2013, described the unresolved and unaddressed matters relating to gender equality within the Convention as 'the elephant in the room' (paragraph 72). Blake suggests that the reluctance to address gender equality may stem from a nervousness on behalf of the State Parties and other stakeholders of the Convention, pointing to a concern that too strict testing of adherence with the standards of the Convention might render many traditional practices ineligible – including already inscribed elements – as 'much traditional culture, in one way or another, would seem to undermine human rights notions of gender equality' (Blake 2015, 182-183). However, the topic of gender as well as social inclusion in general has received increased attention in recent years. This is reflected in, for example, committee meeting summary records and in updates and additions to the tools of the Convention, such as the Operational Directives. At the General Assembly in 2016, a new chapter dedicated to sustainable development – including gender equality, social cohesion and equity, as well as lasting peace – was added to the Operational Directives (UNESCO 2016). In connection to this, it is also interesting to note that the Aalst carnival, criticised on the basis on racism and anti-Semitism, was removed from the RL in 2019 (see 'Hypothetical scenarios').

At present, the goodness criteria are in place while arguably not being regularly and thoroughly enforced. Nevertheless, regardless of their enforcement, the existence of the goodness criteria means that all elements that are inscribed or in other ways recognised within the framework of the Convention can be expected to have 'passed the test'. As such, they formally fulfil the criteria. Arguably, this lends validity in the sense of a 'goodness certification' to the elements in question.

Acknowledging and handling negative cultural practices

Discussions on negative, dissonant, difficult, dark or contested heritage typically centre on the remembrance of painful memories and events, often focusing on physical traces or manifestations thereof. Within the realm of ICH, there are also ample examples of customs relating to painful memories and events, both past (such as the observation of Good Friday) and more recent (memorial services for the dead, funerary rites, etc.),² as well as customs relating to handling unpleasantness (such as ritual purification and avoidance of ceremonial pollution). However, within the ICH discourse, there is a lack of addressing customs that can in themselves be considered harmful.

At the same time, negative cultural practices can be found addressed outside of the realm of heritage management. For example, at the international level, CEDAW aims to 'modify the social and cultural patterns of conduct of men and women', addressing 'prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women' (The Convention on the Elimination of All Forms of Discrimination Against Women 1979, article 5(a)), with a view of eliminating such practices.

At the same time, rights pertaining to gender, such as sexual rights, are still facing opposition in discussions at the global level (Ali, Kowalski and Silva 2015). Ali, Kowalski and Silva write that this opposition is commonly focused on two key points – namely, 'the rights of people of diverse sexual orientations and gender identities (SOGI); and the rights of adolescents, particularly girls, to be able to control their bodies, sexualities and ultimately their lives' (Ali, Kowalski and Silva 2015, 32). Such rights connect to freedom from harmful cultural practices, such as child

marriages and female genital mutilation, as well as to the ability of all individuals to participate in public life. While discussions have accelerated following two landmark UN conferences in the 1990s, and significant gains have been made for the global sexual rights movement, Ali, Kowalski and Silva point out that while many aspects of sexual rights have been agreed by consensus since then, the term 'sexual rights' itself continues to be contentious, as the term has systematically been removed in global agreements, with these interventions often coming at a late stage in the negotiations (Ali, Kowalski and Silva 2015).

The 2030 Agenda for Sustainable Development, including the 17 Sustainable Development Goals (SDGs), was adopted in 2015, with one of the targets of SDG 5 (Gender Equality) explicitly addressing the elimination of harmful practices – namely, child, early and forced marriage and female genital mutilation. At the same time, Brolan's (2017) analysis examines how the SDGs fail to encompass sexual and reproductive health and *rights* (SRHR). In the examination of the reasons for not fully including SRHR in the SDGs, one of the six identified reasons pertains to anxiety from a number of Member States in formulating SRHR as *rights*. Furthermore, a linkage between SRHR and LGBTQI rights appeared to make the inclusion of SRHR more difficult. Brolan observes that the tension between cultural relativism and universal human rights 'remains an ongoing and real point of contention influencing and impacting member state decision-making consensus in the development field' and points out that this tension is particularly visible in issues relating to the health of women, girls and LGBTQI individuals (Brolan 2017, 315).

Negative cultural practices are also handled by governments at the national level, for example, through legislation. Deacon (2018) discusses examples of how constitutions can place restrictions on customary practices considered harmful and contrary to human rights. In this, individuals are given the right to 'opt out' of participation in cultural practices they do not wish to take part in. However, while individuals are given that option in theory, ensuring the ability to exercise that power to negotiate participation remains a significant challenge (Deacon 2018).

Current situation

The current approach presents several problems. One

problem is that, since the inscription of an element on the RL may be perceived by some as a 'stamp of approval' of the practice in question, the inscription of an element containing discriminatory features also lends validity to those discriminatory practices. If the Convention text has a goodness criterion, it should follow that all inscribed elements have cleared those criteria and can thereby be argued to be non-problematic. As such, if a traditional practice involving, for example, gender-restricted access to participation is inscribed on the RL, and a discussion began in the local community on allowing more inclusive participation, the inscription could potentially be used as an argument to prevent increased inclusion.³

Another problem is the risk of 'sanitising' the nominated elements in official descriptions.⁴ While the act of inscribing a practice as an element on a list already itemises the practice (Hafstein 2009), and the local context where the practice is de facto practised is already separated from the context of the list, and the active performance of individuals is often rendered a collective transmission of bearers (Kirshenblatt-Gimblett 2004), a non-enforced goodness criteria risks increasing the existing gaps further. New nominations are evaluated based only on the information provided in the nomination file, which emphasises the importance of the official description in the nomination file. As such, there is a presumption of veracity where the information provided by the State Parties in the nomination files is taken at face value (Smeets and Deacon 2017). As noted in a recent Category VI expert meeting on the listing mechanisms of the Convention, this limitation was identified as a difficulty by members of the Evaluation Body (UNESCO 2021a, paragraphs 63 and 67). A majority of the experts agreed that the Evaluation Body should have the ability to 'consult information outside the file', and it was furthermore suggested that this option should primarily be used when 'there is strong evidence that the information in the file is inaccurate or contradictory' (UNESCO 2021b, paragraph 27).

A related issue pertains to the 2003 Convention's approach to the local communities. While the importance of the local communities is emphasised in the Convention text, a point in question is the practical handling – for example, in the inventorying and nomination processes. One could argue that a key concern is whose voices are being heard. When nominating an element for inscription, free, prior and informed consent is needed from the community. But who represents the community? In the

above-mentioned Category VI expert meeting, it was pointed out that the matter of active participation of the community and the acquisition of consent were problem-laden areas, as well as culturally sensitive topics (UNESCO 2021a, paragraph 46). It was suggested that it would be useful with **'[a] guidance note for obtaining free, prior and informed consent approached from different cultural perspectives,** particularly non-European ones, as well as guidance on **the right measure of community participation and gender balance'** (UNESCO 2021a, paragraph 47).

The inscription of the 'Yama, Hoko, Yatai, float festivals in Japan' can be used as an example to illustrate some of the difficulties in connection to this. In this nomination, written consent was obtained from the preservation associations connected to these festivals, as well as from the local mayors. However, as the author's previous research shows, these preservation associations are male-dominated, and many of them only have male members (Janse 2019, 2020). Furthermore, a large number of the festivals have restrictions in place, partially or completely preventing women from participating (in centre-stage roles). However, the gender-restrictive rules being upheld

in many of these festivals are and have been challenged, debated and changed in some places.⁵ It can be noted that existing gender restrictions and occurring debates about gender rules are not mentioned in the nomination file. While the nomination file represents a group nomination – 33 festivals are inscribed as a group – and the descriptions are therefore by necessity general rather than specific, it is nevertheless interesting to note that the description of the participants conveys an inclusive image.

The nomination file states that 'community members including men, women, the young and the elders share their tasks and responsibilities all year around preparing for the float festivals, the most important event of the year for them' (Nomination File for the Inscription of 'Yama, Hoko, Yatai, Float Festivals in Japan' on UNESCO's Representative List of the Intangible Cultural Heritage of Humanity, 4), and it describes an age-based system where tasks are assigned based on age groups. The community members start performing as children, often as musicians, and then move on to other tasks and responsibilities with growing age. Is it, however, not mentioned how these organisational structures of the festivals and the assignment of tasks traditionally not



Figure 2
Sawara float festival in Katori, Chiba Prefecture, Japan, 13 October 2018. Photographer: Helga Janse.

only rely on age but also on gender. As such, men are able to move between different centre-stage roles and advance in the festival organisation, while women are often restricted to supporting roles in the background or in the house, related to food, caretaking and service (Janse 2020). The nomination file mentions that 'in order to successfully prepare for and celebrate the festivals, each member of the communities takes charge of his/her specific role and works together. Such cooperation creates bonds within the communities that transcend age, status and gender' (Nomination File for the Inscription of 'Yama, Hoko, Yatai, Float Festivals in Japan' on UNESCO's Representative List of the Intangible Cultural Heritage of Humanity, 5), without mentioning the power hierarchies in the organisational structure, that role divisions are dependent on gender and that there are women who are being prevented from participation solely on the basis of gender despite expressing a wish to participate (Janse 2020).

Neither is it mentioned in the nomination file that the restrictions preventing women from participating in front stage roles in many of the festivals stem from a custom harbouring the religious idea of ceremonial blood pollution, conveying the notion that blood from menstruation and childbirth is defiling, thus rendering female bodies (innately) polluted.

The consent forms (67 in total) included in the nomination of this element have been issued by the 33 local preservation associations, the local mayors and the national preservation association. It may be noted that all signatories of these consent letters are men. Considering that the preservation associations are male-dominated and that many of them have only male members, it is relevant to pose the question of how well the expressed consent represents the consent of the members of the local communities. Are all relevant voices being heard? How are the voices of those persons being restricted from participation – in this case, women – being heard? How can the mechanism to assure consent be improved?

A related issue is the periodic reporting. Under the periodic reporting system, the State Parties periodically report on the implementation of the Convention and on the status of inscribed elements. The current version of the periodic reporting form, which has been aligned with the overall results framework, includes questions about inclusiveness in the inventory and the inventorying

process, policies and measures for inclusive social development and environmental sustainability, as well as inclusive plans and programmes that foster self-respect and mutual respect. The impact of this revised reporting system can be expected to be assessed in the coming years. Regardless, similar to the evaluation of new nominations, the periodic reporting system still suffers from a question of credibility, as independent reviews of the information provided by the State Parties are lacking (Smeets and Deacon 2017). As such, the lack of monitoring presents a problem in terms of assessing and enforcing the stipulated 'goodness criteria'. However, regarding nominations, it should also be noted that the public and other concerned parties have the ability to send correspondence about the nominations, which will be posted on the website of the Convention together with comments from the concerned State Parties, if the correspondence arrives at least four weeks before the meeting of the Evaluation Body (UNESCO 2012).

As discussed above, the current situation (where the goodness criteria are valid but not strictly enforced) entails a number of problems. As addressed above, an inscription on any of the international lists signals that the element in question has 'passed the test' and has as such been verified to be 'good'. In other words, it can be argued that the inscription functions as a 'goodness certification'. The risk entailed in the current scenario is that this goodness certification is awarded also to discriminatory and otherwise problematic practices. A related risk pertains to how the 'goodness certification' might be used.

Hypothetical scenarios

Against this background, in which future direction should the 2003 Convention proceed? As a hypothetical exercise, the author will envision four scenarios: a stricter enforcement of the goodness criteria, a removal of the goodness criteria, an altering of the wording of the goodness criteria and an expansion of the goodness criteria. The primary purpose of drawing up these four hypothetical scenarios is to illuminate some of the challenges pertaining to the current wording of the Convention. More practically implementable and politically acceptable solutions than modifications to the basic texts of the Convention will be discussed in future research papers (see section 'Final remarks and the way forward'). The primary purpose of this paper is to serve as a problem introduction.

- Baseline scenario: keeping the goodness criteria while not taking measures to strictly enforce them (current situation)
- Scenario 1: keeping the goodness criteria and adhering to them
- Scenario 2: removing the goodness criteria
- Scenario 3: altering the goodness criteria to make them less strict
- Scenario 4: expanding the goodness criteria to accommodate inclusive social development

Scenario 1: keeping the goodness criteria and adhering to them

Are the purposes of the Convention best served by keeping the Convention text intact and by starting to implement the goodness criteria more strictly? In that case, the character of the RL might arguably be expected to change somewhat – becoming more of a list of good examples. However, this scenario would require that the State Parties could agree and decide upon practical guidelines as to how to interpret the goodness criteria. This would include deciding on a clear line between what is to be seen as acceptable and what is not. Given the contentiousness of the topic of gender roles and gender equality, there is reason to assume that the discussions would not be easy. Furthermore, this scenario would arguably require a more thorough evaluation process than the current one. An issue connected to this is what would happen to already inscribed elements.

It could be argued that the Convention is already moving in the direction of increased focus on the goodness criteria. For example, the current version of the amended Operational Directives states that State Parties ‘shall direct their safeguarding efforts solely on such intangible cultural heritage that is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development’ (UNESCO 2022, paragraph 170). As such, an argument might be made that the goodness criteria have already been extended to the State Parties’ activities on the national level. However, a counterargument might be made that the inclusion of the goodness criteria in the very definition of ICH in the Convention indicates an assumption that only such traditions are to be acknowledged, let alone safeguarded, in the first place.⁶ Here, a distinction between the documentation of traditions on the one hand and measures to uphold the actual practice of traditions on the

other hand might have been relevant (see also Scenario 2 below). In that case, we could envision a scenario where the inventories drawn up by the State Parties could document all kinds of existing traditions and practices – without any criteria on adherence with human rights, mutual respect and sustainable development – and where the goodness criteria come into play only in the case of nominations and safeguarding efforts aiming to uphold the practice of said tradition. However, as the goodness criteria are included in the very definition of ICH, such a scenario is arguably currently not feasible.

A potential drawback of only acknowledging ‘good’ traditions is that the lists of the Convention would risk conveying an arguably skewed picture of what ICH is and what societal role it plays. This also prompts the question whether the RL could still be called representative. As argued in the introduction, ICH is not innately good. Furthermore, discriminatory traditional practices do exist and directly and indirectly affect the lives of people.⁷ By only focusing on ‘good traditions’, could this scenario risk serving to hide away problematic practices and thereby suppressing discussions on difficult topics? Or, contrarily, could a strictly enforced ‘goodness criteria’ serve to put focus on those difficult topics?

Regarding this scenario, the removal of the Aalst carnival (Belgium) from the RL in 2019 serves as an interesting case. The carnival was subject to criticism on the basis of racism and anti-Semitism and was subsequently removed from the RL. The decision to remove the element from the list is phrased as follows:

7. Considers, based on the elements brought to its attention by the Bureau and the Secretariat, that the ‘Aalst carnival’ no longer satisfies criteria for inscription R.1 as well as R.2 of the Representative List of the Intangible Cultural Heritage of Humanity as follows:

R.1: Since its inscription, the Aalst carnival has on several occasions displayed messages, images and representations that can be considered within and outside of the community as encouraging stereotypes, mocking certain groups and insulting the memories of painful historical experiences including genocide, slavery and racial segregation. These acts, whether or not intentional, contradict the requirements of mutual respect among

communities, groups and individuals. The Aalst carnival no longer satisfies criterion R.1.

R.2: Offensive representations have been used on several occasions during the Aalst carnival since its inscription on the Representative List. The inscription does not appear to have encouraged dialogue among communities and has even fostered mistrust between and among communities. The Aalst carnival no longer satisfies criterion R.2. (UNESCO 2020a, DECISION 14.COM 12)

The Committee deemed that the element no longer fulfilled the requirements of mutual respect among communities, groups and individuals and that it had not encouraged dialogue among communities. A decision was made to remove the element from the RL.

In seeking the removal of this element from the list, the Secretary stressed a distinction between the state of an element's inscription on the RL on the one hand and the local meaning and practice of a tradition on the other hand. In the summary records of the fourteenth session of the Committee in 2019, 'the Secretary underlined that this was not an attempt to determine what constitutes intangible cultural heritage for the communities of Aalst nor to prescribe whether and how these communities shall practise their own living heritage' (UNESCO 2020b, paragraph 891). Instead, stress was placed on the seeking of conformity with UNESCO's values, the definition of ICH in the Convention text and with the stated criteria of the RL. Concerning the former, the Secretary stressed the link between the principles of UNESCO and the object and purpose of the Convention, saying that 'the display of representations that overtly contradict some of the core values underpinning the existence of UNESCO, affected not only the credibility of the Convention and of the Committee, but also of the Organization as a whole' (UNESCO 2020b, paragraph 891). In other words, seen against this background, adhering to the goodness criteria is not about trying to force the communities to adapt or trying to change a certain tradition, but instead a matter of a certifying whether the tradition in question is suitable for inscription on a list with a certain set of criteria.

Are some types of discrimination easier to condemn than others, and in that case, why is that? As mentioned above, this scenario requires practical guidelines on how to interpret and implement the goodness criteria – including

clear definitions on what is to count as acceptable and what is not. This includes definitions on what is to be considered discrimination and what is not.

Scenario 2: removing the goodness criteria

Are the purposes of the Convention best served by removing the goodness criteria and focusing on displaying the diversity of traditional practices existing around the world – both 'good' and 'bad' – thereby also opening up discussions on complex topics such as power structures, discrimination and social norms? In that case, the goal could arguably no longer be to safeguard the continuation and transmission of the practices, but rather to document their existence.

An important point in question is what is to be safeguarded. Safeguarding the knowledge of a practice and safeguarding the continuation of the practice are different. While the documentation of knowledge of or information about the existence of a practice in most cases is arguably non-problematic, measures to uphold a practice may, depending on the practice in question, risk being problematic. Arguably, such a change in focus would require a shift in the goals of the Convention – from aiming to safeguard the continuation and transmission of traditional practices to simply documenting their existence.

However, this scenario is unlikely. It would indeed be inconsistent with UNESCO's commitment to human rights to remove an existing requirement of adhering to human rights in one of its cultural conventions (see discussion in Scenario 3). Furthermore, it would not be aligned with the overall aims of the Convention, centred on safeguarding the continuity and transmission of traditional practices and ensuring appreciation of the importance of ICH by virtue of its good aspects. This scenario would instead imply a focus on illuminating the functions and various roles that ICH play in society, thereby encouraging reflection and discussion.

Furthermore, removing the goodness criteria without purposely addressing that the new definition includes also potentially problematic traditions might involve risks, as the Convention is already well established and arguably already has a set 'image'. As Scenario 2 would bring change in the very character of the Convention, it might be warranted to think of this scenario as an entirely different Convention.

Scenario 3: altering the goodness criteria to make them less strict

A third option would be to alter the current wording of the goodness criteria – from a set of criteria to more of a guiding principle. For example, a statement along the lines of the following could bring the text closer to the current implementation practice: ‘in the implementation of this Convention, particular consideration should be given to existing international human rights instruments, as well as to the requirements of mutual respect among communities, groups and individuals, and of sustainable development’. This change would still keep the ‘spirit’ of the criteria but reduce the rigidity of the requirements.

However, such a change would also highlight the failure, or at least the difficulty, in sufficiently addressing and adhering to the original criteria thus far. Since it is a UNESCO Convention, a case could be made that removing the goodness criteria would be unacceptable. Particularly the requirements in regard to human rights could be expected to be non-negotiable, and this scenario would bring UNESCO’s commitment to human rights into question. Indeed, in the UNESCO framework, gender equality itself is considered a fundamental human right (UNESCO 2014).

Still, even in this scenario, the question of how to interpret the requirements, including deciding what is to be considered discriminatory and what is not, will not go away. This scenario (as well as the following scenario) also prompts the question whether there is a distinction to be made between implementing the Convention in a way that adheres to a goodness standard and recognising only elements that adhere to the goodness criteria. Or is the important distinction to draw the one between what exists and what is good – between preserving information about a practice and encouraging continuation of that practice?

Scenario 4: expanding the goodness criteria to accommodate inclusive social development

A fourth option would be to expand the ‘goodness criteria’ to accommodate for and even encourage change in the direction of increased social cohesion and equity and inclusive social development. The criteria could be rephrased along the lines of the following: ‘consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual

respect among communities, groups and individuals, and of sustainable development or, alternatively, such intangible cultural heritage as demonstrably signifies a step in such a direction’. This would move the emphasis of the goodness criteria from a question whether a tradition or practice is ‘already good’ to whether it is changing ‘in the direction of good’.

It would remove the pressure of being ‘solely good’ and allow for grey areas and change. At the same time, it would pronounce a requirement of social development in the direction of increased inclusion. As such, this scenario would potentially bring the Convention closer to its overarching goals, where ICH is seen as a positive force in society.

A potential downside of this scenario is that it might offer a loophole for State Parties interested in pushing nominations of discriminatory or otherwise problematic traditions by ‘painting them in a good light’. On the other hand, as long as the Evaluation Body lacks the ability to verify and procure additional information outside of the nomination file, the same concern is valid for Scenarios 1 and 3 as well. Another downside is that such a rephrasing would, as in Scenario 3, mean compromising on the requirements to adhere to human rights standards, albeit perhaps to a lesser degree than in the previous scenario. Similar to the previous scenario, this scenario would likewise mean that the ‘spirit’ of the criteria is kept intact.

A benefit that this scenario offers is that it would allow for and encourage social development. ICH can arguably be seen as reflections of societal norms and structures, and societies are not free from discrimination, and neither are they ‘fully developed’ nor stagnant. ICH plays a role in validating, reiterating and renegotiating societal norms and structures. In this scenario, the ‘goodness criteria’ can potentially be used to facilitate and encourage discussions on social dynamics in the communities. However, a potential downside to this approach is the aspect of ‘social engineering’, as the political and dynamic aspects of ICH are more pronounced in this scenario. ICH and social dynamics are linked, and the Convention in this case uses the potential for inscription as a tool to encourage inclusive social development. It is also highlighted that ICH is not something that is to be preserved in the sense of being frozen. It would instead embrace the stance that people change their traditions and societies continuously.

Conclusions

The 2003 Convention sets out to safeguard ICH while upholding standards of existing human rights instruments as well as requirements of mutual respect among communities, groups and individuals and those of sustainable development. In this paper, the author has discussed some of the problems pertaining to this. An underlying difficulty is that while heritage is in no way innately 'good', the Convention is formulated in such a way that only 'good' heritage can be recognised for the purposes of the Convention. This highlights the potential discrepancy between contemporary standards of human rights and the freedom from discrimination on the one hand and the rules and social power structures reflected in some traditional practices on the other. It also poses practical problems in terms of implementing the Convention in a way that adheres to its own criteria. These problems are coupled with a lack of monitoring, which further complicates any assessment and enforcement of the stipulated criteria.

In the four hypothetical scenarios discussed above, Scenario 1 would appear to be the most easily justifiable one, as it is a matter of only following already agreed-upon rules. Furthermore, in this scenario UNESCO's commitment to human rights is kept intact. Nevertheless, the necessary discussions in such a scenario would not be easy, as they will have to include the recognition of certain traditional practices as discriminatory. The criticism of a traditional practice is likely to be perceived as a criticism of the society in question in a wider context.⁸ Next, Scenario 2 is highly unlikely and would require a fundamental change in the direction and character of the Convention. As such, it might be thought of as a different convention. Scenario 3, while it could bring the Convention closer to its current implementation, is also highly unlikely and difficult to justify. Also, it would not remove the need for a discussion on what constitutes discrimination. Scenario 4, while also highly unlikely as it would require an altering of the Convention text, could presumably bring the Convention closer to its overarching goals. While the need for a discussion on what is discriminatory or not would not disappear in this scenario either, it would arguably take the edge off those discussions. The question would no longer be whether a traditional practice is 'non-offensive enough' to list, but whether said practice bears witness to positive (for example, defined as contributing to the attainment of the SDGs) change, which arguably ought to be easier for the State Parties to agree on. The discussions would

presumably also be more positive than in Scenario 1, both on local, national and international levels. Presumably, a discussion focusing on positive change is more encouraging than scrutinising traditions for flaws.

In addition to Scenarios 1, 3 or 4, and as mentioned in the discussion on Scenarios 1 and 2, a distinction between the documentation of ICH and the safeguarding efforts to uphold the practice of ICH might prove useful. Arguably, a goodness criterion is relevant in the latter, but problematic in the former. In practice, this could mean a distinction between the national inventories on the one hand and the international lists and national safeguarding efforts on the other hand in terms of (rigidity of) adherence to any goodness criteria. However, such a distinction would also require altering the basic texts of the Convention, as the goodness criteria are included in the very definition of ICH.

Final remarks and the way forwards

The discussion in this paper has focused on the aspect of gender in particular. A reason for this is that gender discrimination is a type of discrimination that tends to be commonly overlooked or defended, usually by explaining it in terms of culture, religion or tradition (Shaheed 2014). As such, focusing on gender can hopefully highlight the problems relating to agreeing on how to define and handle discriminatory practices within the framework of the Convention.

While this paper has focused mainly on the problems pertaining to the 'goodness criteria', without offering much in terms of practical solutions, the author intends to contribute to a difficult but necessary discussion that can hopefully lead to continued improvements of the tools and implementation of the 2003 Convention. As mentioned in the section on hypothetical scenarios, the purpose of this paper is to illustrate some of the problems that the goodness criteria pose, rather than proposing that the basic texts of the Convention be altered. The question of more plausible ways forwards will be addressed by the author in future papers, including as part of a currently ongoing research project. In said research project, the author will address the question of how a gender aspect can be meaningfully mainstreamed into the tools of the Convention. In this, the author will also address the point of making a distinction between the gendered coding of tasks and roles and the participants' ascribed gender labels.

The author would like to already now suggest some key points to be considered, namely: 1) Whose voices are being heard? 2) What is the underlying purpose or background of the problematic aspect of the tradition in question? (For example, what is the underlying purpose of the gender-based restriction?) 3) What contemporary power structures or relations are at play?

The matter of discrimination within traditional practices is indeed a sensitive topic to address. The inclusion of the goodness criteria in the definition of ICH in the 2003 Convention, however, necessitates the consideration of such difficult aspects. However uncomfortable, a (continuous) discussion on what is to be deemed acceptable and not in terms of practices recognised within the framework of the Convention is needed.

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ENDNOTES

1. For an analysis of the discourses surrounding the two Japanese sites, see for example DeWitt (2020).
2. Kubota (2019) writes about how ICH played an important part in the post-disaster revival of the communities hit by the Great East Japan Earthquake in 2011.
3. As a note on the significance of the mentioning or non-mentioning of gender in the official descriptions, the discussion surrounding whether or not to allow female musicians to participate in the Kyoto Gion festival might be used as an illustration. In the decision to allow female musicians, the non-mentioning of gender in the official description of the festival at the time it was designated as a protected heritage property under the Japanese heritage legislation system played a part (Inoue 2005, 64).
4. Regarding over-emphasizing women's centrality or gender neutrality in attempts to suit UNESCO standards, see Ceribašić (2014).
5. See for example Janse (2020), Brumann (2012, 198), Lancashire (2016, 179), and Nishi Nippon (2017, 2018).
6. A similar type of discrepancy was highlighted by the delegation of Hungary at the twelfth session of the Committee. In commenting on the Evaluation Body's report which read that some 'intangible cultural heritage practices may in fact be seen as reinforcing gender inequalities and thus not in the spirit of the Convention' (UNESCO 2017, paragraph 33), the delegation of Hungary pointed out that strictly speaking, due to the wording of the convention, such practices are not ICH under the convention in the first place (UNESCO 2018, paragraph 362).
7. As Shaheed (2016) has noted, on the topic of gender-based restrictions to heritage sites, the restrictions do not stop at the physical location – they have ramifications outside of the site as well, affecting for example a person's access to knowledge and therefor limiting their opportunities in life. Shaheed suggests that such practices need to be revisited 'in the light of contemporary realities and international human rights standards. For this, internal discourses are needed with communities using human rights standards as a reference point' (2016, 51).
8. Janse (2021) discusses a connection between gender structures in ICH and gender structures in wider society.

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