The Spirit of the *Convention* – Interlocking Principles and Ethics for Safeguarding Intangible Cultural Heritage.

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ABSTRACT

Since December 2015, a set of twelve Ethical Principles for Safeguarding Intangible Cultural Heritage enriches the paradigm of the 2003 UNESCO *Convention*. At the meeting of its Intergovernmental Committee at Windhoek where those principles were endorsed, and where a whole chapter of new operational directives was fine-tuned in order to respond to the 2030 *Agenda for Sustainable Development* (UN General Assembly, 25 September 2015), the UNESCO Secretariat was instructed to build an on-line platform with a toolkit about ethics and safeguarding intangible heritage. Accredited NGOs were also finally invited to collaborate and play a role in developing and updating the 2003 UNESCO *Convention* and its operational directives. This is a major breakthrough. In this article we trace and discuss this 'hop' (1999), 'skip' (2012-2015) and 'jump' process (2016 onwards) in the emerging paradigm of safeguarding ICH. Why twelve principles and not a super-model code of ethics for (safeguarding) intangible heritage? How do innovations like 'sustained free and informed consent' or 'benefit sharing' open new doors? What do anthropology, folklore studies and museology have to offer? Is the online platform a good idea, in the light of recent developments in international conventions on biodiversity, bioethics or the work of WIPO and other organisations ?

Keywords

Operational Directives, Intergovernmental Committee, Ethics, Prior and Informed Consent, Benefit sharing, Sustainable development, Anthropology, Folklore studies, Cultural brokerage, PIC-ABS

In December 2012, the Intergovernmental Committee of the *Convention for the Safeguarding of the Intangible Cultural Heritage* invited the UNESCO Secretariat *to initiate work on a model code of ethics and to report on it to a next session of the Committee*. The Secretariat of the Section of Intangible Heritage at UNESCO refers to this decision as '7.COM.6.11.'–i.e. the sixth item on the agenda of the seventh session of the Intergovernmental

Committee, the decision about which appears in paragraph 11. As time progresses, the accumulated series of decisions of the General Assembly and the Intergovernmental Committee becomes a matrix of guidelines and precedents, with global impact on the emerging paradigm of the *Convention on the Safeguarding of Intangible Heritage.*

In December 2015, the work of the Secretariat, of invited experts and of the members of the Intergovernmental Committee resulted in decision 10. COM 15.a, which included a set of twelve Ethical Principles for Safeguarding Intangible Cultural Heritage. This is major new development. [Plates 1 and 2]

1. 'Hop, freeze and skip'

After ten years of the relative failure of the 1989 *UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore*, an assessment in 1999 pointed out that several economic and social challenges were not being well addressed with that instrument. These concerns included commercialisation, sustainable development, gender issues and the broad involvement of many stakeholders. The *Recommendation* had to be redefined in many ways, starting with the number of relevant actors and stakeholders. One of the specific suggestions in 1999 was:

> *... to include the kinds of ethical protocols followed by members of many scholarly societies, such as those governing the giving of informed consent, to be studied, maintaining secrecy of traditions and of particular sources of information where necessary, compensation for participation in research, and proper attribution of contributions to research. This re-situates and expands the call for an international code of ethics.* [1]

After ten years of the relative success of the 2003 *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage*, ethics were on the agenda again, alongside sustainability, commercialisation and gender sensitivities. The word 'ethics' does not figure in the authoritative text of the 2003 UNESCO *Convention*, nor does the mantra 'prior and informed consent'. But in all the versions of the *Operational Directives* produced between 2008 and 2014, the words 'codes of ethics' and 'prior and informed consent' can be found. In Chapter IV.1.2 of the *Operational Directives* (2014) about 'awareness raising' on the local and national levels, paragraph 103 states that:

> *States Parties are encouraged to develop and adopt codes of ethics based on the provisions of the Convention and these Operational Directives, in order to ensure appropriate ways of raising awareness about the intangible cultural heritage present in their respective territories.*



Plate 1
Head Table at the 10th Session of the Intergovernmental Committee of the 2003 *Convention*, Namibia.
Photo: UNESCO/Fousy Kambombo, December 2015.



Plate 2
Chairperson and Secretary, 10th Session of the Intergovernmental Committee of the 2003 *Convention*, Namibia.
Photo: UNESCO/Fousy Kambombo, December 2015.

In the chapter about the accreditation of NGOs, paragraph 93 specifies that these organisations *should abide by applicable domestic and international legal and ethical standards*. But until now this provision has not really been applied or tested. Which ethical standards - domestic and/or international - are applicable? Where can we find them? Is there some official guidance or reference for ethical safeguarding? [Plates 3 and 4]

Although ethics were clearly on the agenda at the time when the 2003 *Convention* was in the making, ten years later, codes and other tools of ethics are back again as an urgent item on the agenda, on which to 'initiate' work. Why this delay? When drafting the *Convention* text and the first versions of the *Operational Directives*, debates tended to get heated when issues like tourism, copyright, marketing, folklore-isation, cultural industries, generating and sharing financial benefits, commercialisation or, for example, animal rights were on the table. These are precisely the same issues touched upon in the 1999 conference in Washington D. C., and the resulting publication in 2001 seemed to be such an obstacle that it could block a swift text drafting process. At the same time, another cultural convention was being negotiated in UNESCO that addressed challenges like sustainable development, cultural industries and dealing with free market forces. The UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* would be adopted in 2005.

In the Flemish language and Belgian politics, 'putting a problem in the fridge' is an expression that refers to the technique of obtaining a partial compromise and moving on, by postponing the discussion about difficult issues to a later, unspecified date. This is what happened during the Experts' and Intergovernmental Meetings that yielded the 2003 *Convention* text and the first versions of the *Operational Directives*. The group dynamics led to the construction of a masterpiece of compromise and vagueness, a.k.a. the 2003 *Convention*, shelving the burning issues identified in 1999 'in the fridge' for a later date. But not only in many scholarly case-studies of the effects of listing (e.g. as a Masterpiece of Oral and Intangible Heritage or in a softer version as an item inscribed on a so-called *Representative* List), but also in the work on specific nomination files by the Secretariat, the Intergovernmental Committee or the subsidiary, consultative and other evaluation bodies, the real challenges identified in the 1999 conference could not be ignored. Particularly, after the start of the global financial crisis in 2008 and the budgetary problems in UNESCO since 2011, and in the light of growing sensitivity to the role of culture for sustainable development which eventually led to the 2030 *Agenda for Sustainable Development of the United Nations* and the *COP21-Agreement* adopted in 2015, the call for additional instruments grew stronger. Hence, the next steps were to draft a new chapter of the *Operational Directives* on sustainable development,[2] decision 7.COM.6.11 and the work on ethics in 2012-2015: thus the 'skip'.





Plates 3 and 4
ICHNGO-Forum at Windhoek on 29 November 2015 (the day before the 10th session of the ICH Committee): 'Towards a Code of Ethics for ICHNGO's'
Photos: Albert van der Zeijden / Dutch Centre for Intangible Heritage, November 2015

Today it would be useful to open the fridge and reconsider reflections from the conference in Washington D. C. In 1999, Bradford Simon identified several 'Global Steps to Local Empowerment in the Next Millennium'. He discussed concerns about (1) authorisation, (2) informed consent, (3) maintaining secrecy, (4) compensation, (5) attribution, (6) preventing distortion, (7) continuing folkloric traditions, and (8) education.[3] Some of his suggestions are still very fruitful, relevant and under-explored today, notably his references to the issue of the 'informed consent' of indigenous groups in respect of the recording of genetic information under the Human Genome Diversity Project and the Mataatua Declaration of 1993.[4]

Bradford Simon also linked his reflections about local empowerment, informed consent and ethics, to contemporary critique and discussions about the 1972 *Convention*. In order to understand the current problems with the *Representative List* (article 16 of the 2003 *Convention*) and the ethical tensions involved, the following quote can serve as a memorial, both remembering, warning and predicting:

> *In its preamble, the 1989 Recommendation sets forth several justifications for the protection of folklore, including a statement that folklore "forms part of the universal heritage of humanity." ... However, the phrase "universal heritage of humanity" has been historically used to justify appropriation and therefore should be used, if at all, with some qualification. But when the "objects" of regulation are ongoing practices of living communities, declaring those practices part of "universal heritage" encourages, and may even justify, a way of thinking neither shared by the communities involved nor beneficial to their long-term interests. ... At best, the phrase shows a misunderstanding of how folklore is created and perpetuated, and at worst, its claim is yet another act of appropriation and colonisation, especially in the minds of many local and Indigenous people. ... Even if the intent is not to appropriate, declaring folklore part of "universal heritage" may place it in the "public domain," where it may be used without consent, compensation, or attribution.*[5]

Bradford continued by discussing procedures and techniques related to intellectual property and copyright law. In practice, when drafting and later developing the 2003 *Convention*, these issues were (and still are) not really dealt with, because it is the core business of WIPO. Understand: they were sent to the special 'fridge' in Geneva!

2. Codes of Ethics in Anthropology, Folklore Studies or Museology?

What did and do the disciplines that consider the phenomenon called intangible cultural heritage as their core business or object of study, have to offer in the 21st century? Codes of ethics? Do note right from the start that the 2003 *Convention* is about the *safeguarding* of intangible cultural heritage and that these methods (that are much broader than just research) do not tend to be the core business of one discipline, but are trans-disciplinary, and many stakeholders have to be involved. As the request to 'initiate' work in 2012 suggests, neither anthropology nor folklore studies nor heritage disciplines like museology could provide a silver bullet in the form of a ready-to-use ethical code. Let us examine the biggest networks in the world, in particular the scholarly networks in the United States, starting with the Association of American Anthropologists.

The first code of ethics of the AAA (1971) was constructed while the Vietnam War was raging. The last code (2009/2012) was made while the USA was once again engaged in armed conflicts (Iraq, Afghanistan, the 'War on Terror') at times when anthropologists and their knowledge and products could be, and were, used for military purposes. Ethics evolve. Today the AAA uses a flexible blog for its *Statement on Ethics. Principles of Professional Responsibility*. Every one of the seven principles is in fact a hyperlink to more explanations, comments and reflections.

1. Do No Harm
2. Be Open and Honest Regarding Your Work
3. Obtain Informed Consent and Necessary Permissions
4. Weigh Competing Ethical Obligations Due Collaborators and Affected Parties
5. Make Your Results Accessible
6. Protect and Preserve Your Records
7. Maintain Respectful and Ethical Professional Relationships

In the hyperlinked explanations, not only are relations with (groups of) persons discussed, but also with objects or customs. The following sentence linked to 'do no harm' is powerful and, in my view, directly relevant for the safeguarding intangible heritage paradigm

> *Anthropological work must similarly reflect deliberate and thoughtful consideration of potential unintended consequences and long-term impacts on individuals, communities, identities, tangible* [and] *intangible heritage and environments.*[6]

The 2009/2012 version claimed to be a central point of reference for several subfields, ranging from cultural, linguistic, historical-archaeological and physical/ biological anthropology. Carolyn Fluehr-Lobban remarked that this last variety, in particular because it is dealing with the remains of human and other life forms in archaeology, will have to be developed, due to the rapid developments in bio-technology (cfr. bioethics).[7] In the 2000s in 'anthropology', one of the most interesting conclusions reached was not to isolate ethics. Lynn Meskell and Peter Pels emphasised the importance of being 'ethically aware' and to move from thinking in terms of codes to embedding ethics in anthropological practice.[8]

In 2015, the smaller, related field of (North-American) Folklore Studies still works with a *Statement on Ethics or set of Principles of Professional Responsibility*, that was launched in 1987 by the Executive Board of the American Folklore Society (AFS).[9] It was presented as a final draft in 1988/1989 awaiting comments and additions by members. More than a quarter of a century later, it is still the central reference on the AFS website. On the one hand there are concerns about the relations with 'those studied', the primary responsibility:

> *When there is a conflict of interest, these individuals must come first. Folklorists must do everything in their power to protect the physical, social, and psychological welfare of their informants and to honor the dignity and privacy of those studied.*

It seems useful to expand the word 'study' to 'safeguard' and to connect this principle to (the spirit of) article 15 of the 2003 *Convention* about the involvement of *communities*, *groups and if applicable individuals*. For example:

> *d. There shall be no exploitation of individual informants for personal gain. Fair return should be given them for all services …*
>
> *f. The anticipated consequences of the research should be communicated as fully as possible to the individuals and groups likely to be affected.*

On the other hand, the American statement mentions the responsibilities of 'folklorists' 'to the public' - understood as 'all presumed consumers of their professional efforts' *-for the good reputation of the discipline and its practitioners* (with special mention of students and the warning to be fair, non-exploitative, committed and to give appropriate credit, to sponsors, including one's own and host governments).

Via the fora of the Folklore Fellows (FF) in Finland, Ulrich Marzolph tried in the 1990s to get European networks interested in discussing codes of ethics like the ones their American colleagues developed.[10] Lauri Honko pleaded for a 'narratological' analysis of codes, in order to try and find 'background narratives' which lend cohesion to the list of propositions in a specific historical context: *Without a knowledge about the particular settings of ethical dilemmas we may not be able to grasp the actual meaning of propositions*. Another insight Honko emphasised was that there is no stable or permanent ethical code: *What we see is a continuous negotiation of the main ethical concerns whereby certain aspects of ethics gain importance while others become less visible.*[11] A meeting in Turku in November 2000, did not in the end yield an 'FF Code of Ethics'. It came to the conclusion that:

> *…the ethical code is in a constant state of flux and too comprehensive and complex to be codified in well-polished verbal formulations. On the other hand, the most important thing, ethical reflexivity and awareness of the dimensions of ethical conduct, seems to be growing and becoming a reality in all research, folkloristic and other.*[12]

Honko advised his European colleagues not to adopt their American colleagues' 1988/9 AFS draft, because it was too much a copy-and-paste from the AAA-codes[13] and because it did not use the specific vocabulary or international instruments available at that moment, like the 1989 UNESCO *Recommendation* and WIPO documents.

In the 21st century, the European Folklorists or Ethnologists, (in FF - or SIEF - or other fora) have not yet got their act together and have not developed adequate instruments of ethics. In addition AFS has yet to update its draft code. In October 2011 AFS did react very defensively to attempts to apply the type of ethical procedures used in medical science or sociology. The AFS made some remarkable statements about ethics in order to be exempted from new procedures, like using forms for informed consent or rules about making information anonymous. On the other hand they did offer an interesting alternative suggestion that we can go along with:

> *Folklorists have historically studied marginalized or disempowered populations: minorities, women, workers, and rural people. Over our century and a half of disciplinary existence, we have learned to stop treating people as generic members of a social category or as passive "tradition-bearers."... Individuals typically want credit for their knowledge, experience, and creativity.* [14]

Among the different fields of heritage practice, museum ethics is probably the most developed. In 2011, Routledge even published a *Companion to Museum Ethics*.[15] Ethical codes evolve as do the definitions of what a museum is and does. A *Code of Professional Ethics* adopted by the International Council of Museums in 1996, was rechristened a *Code of Ethics for Museums*. When Tristram Besterman pointed out that the code had not followed the changing definition of a museum, he quoted the old 2002 definition:

> *Perhaps reflecting the difficulty of amending a code that requires international consensus, the 2001 ICOM Code expresses a more traditional museum ethics, in which responsibilities for collections take a more prominent place than obligations to society.*[16]

Since the pivotal year 2003, the definition of a museum has evolved to include intangible heritage. Besterman also indicated that ethical museum practices have been shaped and changed by many other published codes and guidelines in many nations and by many important museums. One of the most interesting lessons is the idea that responsibilities for people, institutions and societies in the future also have to be taken into account.

> *The museum's stakeholders range from long dead benefactors and makers to future generations of users, from local audiences to overseas source communities* ....[17]

In particular, a whole new set of frames of references have influenced the discourse about how to deal with human remains in museums, ranging from postcolonial views to bio-ethics. In 2004, when the ICOM General Conference took place in Seoul, safeguarding intangible heritage was on the agenda, but more than a decade later it seems to have been a 'hop', but the 'skip and jump' have yet to follow.

Just like 'heritage', the word 'ethics' has a very diverse, evolving and expanding semantic meaning. In the first ten years, only fragments of this huge field were explicitly on the radar (the *Operational Directives*, the forms and the records) of the Organs of the 2003 UNESCO *Convention*, primarily via the notions of 'codes of ethics' and 'prior and informed consent'.

The concept of a 'code of ethics' is often associated with a particular perspective on ethics, called 'professional deontology'. This involves a normative position that judges the morality of an action based on one or more rules. As far as intangible cultural heritage is concerned, there is not one profession or discipline that can claim a monopoly, not even anthropology, folklore studies, heritage studies or management. So which code of which discipline (in which country) is applicable? And what are the consequences of the adjectives in constructions like domestic, international or universal 'codes of ethics'? Are they, by definition, national, linked to regulatory regimes, jurisdiction, legislation, and professional organisations in nation-states? Even if anthropology is supposedly universal, its ethical frameworks and toolkits usually remain within the frameworks of national associations or of internationalism (relations between sovereign nation-states and their views about jurisdiction or legal systems). Peter Pels suggested that a 'global anthropology' should not only examine and criticise *the limits that national sovereignty imposes on the ethical practice of an anthropological association*. It should also try to overcome it, for instance by the collaboration of practitioners beyond national citizenship and national associations.

In this evolution, the non-legalistic notion of informed consent and the trend for collaborative methods seem to be able to transcend borders. 'Free, prior and informed consent' is used most extensively for issues connected to living beings. Informed consent has been part of medical practice since the Second World War and the condemnation of atrocities that Nazi doctors committed. The first sentence in the Nuremberg Code (1947) is crystal clear: *The voluntary consent of the human subject is absolutely essential.*[18] In the 21st century, this remains the standard in medical practice, particularly in the context of experimentation and research. Instruments like forms for 'prior and informed consent' have proliferated in the academic world. Thanks to its inclusion, since 2008, in the first three and most visible paragraphs of the *Operational Directives*, paragraph 1 (U4), 2 (R4) and 3 (P5), this notion, was introduced, almost en *passant*.[19]

3. 'Initiating' and working on a super-model code of ethics

We started this article with 7.COM.6.11., referring to § 103 of the Operational Directives but also connected to much broader challenges. The catch-all 'awareness-raising' in *the Operational Directives* had to cover too much ground and left crucial aspects about sustainable development in the shadows. In Decision 8.COM 13.a, taken in Baku in December 2013, the door was pushed open:

1. *Further recalling that the relations among safeguarding, commercialization and sustainable development have figured into the reports of recent Subsidiary Bodies and Consultative Bodies and into the debates of the Committee: 4. Recommends to the General Assembly that a new chapter of the Operational Directives on safeguarding intangible cultural heritage and sustainable development at the national level be drawn up for examination by the Assembly at its sixth session* [in 2016].

This was repeated and affirmed by the General Assembly in June 2014 (Resolution 5.GA 5.1). It is precisely in the domains covered by the future new chapter that guidance on/or ethics will be very useful, relevant and necessary.

In order to facilitate the process, the ICH Secretariat produced a rich working document that could henceforth serve as a point of reference. It provides an overview of the most relevant literature on ethics in general and on codes of ethics in particular, both in and outside the field of intangible

BOX 1:

Ten Commandments? Or ten recommendations?

1) Thou shalt not confuse the 2003 Convention with the 1972 Convention.
2) Thou shalt not freeze intangible cultural heritage.
3) Thou shalt not use inappropriate language.
4) Raise awareness of the importance of the intangible cultural heritage and of ensuring mutual appreciation thereof.
5) Collaborate! And ensure the widest possible participation of stakeholders, communities, groups and, if applicable, individuals who create, maintain and transmit such heritage, and involve them actively in its management, with their sustained (prior, during and after) free and informed consent.
6) Only consider intangible cultural heritage that is compatible with existing international human rights instruments and with the requirements of mutual respect among communities, groups and individuals, and with sustainable development.
7) Respect customary practices governing access to intangible cultural heritage, in particular secret and sacred aspects.
8) Ensure that the communities, groups and, if applicable, individuals concerned benefit from the actions taken to raise awareness about their intangible cultural heritage or other safeguarding measures.
9) Do no harm.
10) Respect or be aware of the tools and codes of ethics, standards and guidelines in relevant professional disciplines, cultural brokerage roles and expertise, when implementing safeguarding programmes, projects and activities.

cultural heritage.[20] In 2015 the Spanish government and the UNESCO Secretariat organised an Expert Meeting *on a model code of ethics for intangible cultural heritage* in Valencia. Immediately criticism about the title of the draft document and the meeting itself was voiced: it should be about 'ethics for safeguarding intangible cultural heritage'. Furthermore the question was raised as to whether a (super) code of ethics was a good idea.

During the meeting in Spain the idea crystallised that a two track process was in order. On the one hand, a detailed set of codes, forms, instruments, blogs, courses and ethics commissions would be welcome. On the other hand, it would be helpful to have a very limited set of points that could go on a sheet of A4 or one webpage, that could be translated, widely distributed and used, a set that captures and develops the spirit of the 2003 *Convention* and its *Operational Directives*. Should it be something like the Ten Commandments? A repertoire of rules of thumb? A set of principles? Or could it be restricted to one ('Do no harm') or two ('Build on consensus building') statements? In reflecting about professional ethics, Carolyn Fluehr-Lobban emphasised that the various codes should not be used as commandments but as tools to be used for active decision making at every stage of the process - recognising from the outset that planning and acting ethically is crucial. In the Valencia meeting there were several proposals to actually try and invent 'Ten Commandments' for implementing the 2003 UNESCO *Convention*, some more serious and comprehensive than others (see Box 1 for an example, one of my proposals at the Valencia meeting), but all were rejected.

The UNESCO Secretariat did a remarkable job of making a synthesis of the debate and coming up with concrete proposals. They took into account the sharp criticism of some aspects of their working document (in particular in refocusing ethics on safeguarding rather than on intangible heritage itself). The Secretariat produced a very clever and useful draft decision document (ITH/15/10.COM/15.a) that was amended and slightly elaborated during the tenth session of the Intergovernmental Committee meeting at Windhoek in December 2015. [21]

4. 10.COM/15.a: a set of ethical principles and an online platform with toolkit.

On the one hand, the Intergovernmental Committee officially accepted a set of twelve principles, and was ready to embark on its worldwide translation and distribution. [See Box 2] On the other hand, it was decided to create an interactive platform on the UNESCO website for actors involved in safeguarding intangible cultural heritage to find, share and update tools for addressing ethical issues and challenges.

The Twelve Principles fit on an A 4-page and can be counted on ten fingers and two ears. They are introduced with a brief explanation:

> *... a set of overarching aspirational principles that are widely accepted as constituting good practices for governments, organizations and individuals directly or indirectly affecting intangible cultural heritage in order to ensure the viability of intangible cultural heritage, thereby recognizing its contribution to peace and sustainable development.*

Do note the sustainable development and 'stakeholder' language, a new vocabulary inspired by the 2030 *Agenda* of the United Nations and by article 13 of the 2005 UNESCO *Convention*.[22] Furthermore, reference is made to the spirit of the 2003 *Convention*, but also to existing international normative instruments protecting human rights and the rights of indigenous peoples. The set of principles could serve as a basis for the development of specific codes of ethics and tools adapted to local and sectoral conditions.

If we take a closer look at the set of principles it is clear that the greatest emphasis is put on, and inspiration is found, in an article that forms a bridge between the articles in the 2003 *Convention* about safeguarding at the national level on the one hand (articles 11-15), and the international level on the other (articles 16-28). We are, of course, referring to the pivotal article 15 on the participation of communities, groups and, if applicable, individuals.

Do note two interesting innovations in the set of twelve principles, because they link to ethical instruments, tools and practices in other domains. In Principle 4 the alternative notion of free, sustained and informed consent is introduced. Sustained consent? This is compatible with what turned out to be a significant theme in the 10.COM-

BOX 2

Ethical Principles for Safeguarding Intangible Cultural Heritage

1) Communities, groups and, if applicable, individuals should have the primary role in safeguarding their own intangible cultural heritage.
2) The right of communities, groups and, if applicable, individuals to continue the practices, representations, expressions, knowledge and skills necessary to ensure the viability of the intangible cultural heritage should be recognised and respected.
3) Mutual respect as well as a respect for, and mutual appreciation of intangible cultural heritage, should prevail in interactions between States and between communities, groups and, if applicable, individuals.
4) All interactions with the communities, groups and, if applicable, individuals who create, safeguard, maintain and transmit intangible cultural heritage should be characterised by transparent collaboration, dialogue, negotiation and consultation, and contingent upon their free, prior, sustained and informed consent.
5) Access of communities, groups and individuals to the instruments, objects, artefacts, cultural and natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage should be ensured, including in situations of armed conflict. Customary practices governing access to intangible cultural heritage should be fully respected, even where these may limit broader public access.
6) Each community, group or individual should assess the value of its own intangible cultural heritage and this intangible cultural heritage should not be subject to external judgements of value or worth.
7) The communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others.
8) The dynamic and living nature of intangible cultural heritage should be continuously respected. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage.
9) Communities, groups, local, national and trans-national organisations and individuals should carefully assess the direct and indirect, short-term and long-term, potential and definitive impact of any action that may affect the viability of intangible cultural heritage or the communities who practise it.
10) Communities, groups and, if applicable, individuals should play a significant role in determining what constitutes threats to their intangible cultural heritage, including the de-contextualisation, commodification and misrepresentation of it, and in deciding how to prevent and mitigate such threats.
11) Cultural diversity and the identities of communities, groups and individuals should be fully respected. In respect of values recognised by communities, groups and individuals and sensitivity to cultural norms, specific attention to gender equality, youth involvement and respect for ethnic identities should be included in the design and implementation of safeguarding measures.
12) The safeguarding of intangible cultural heritage is of general interest to humanity and should therefore be undertaken through cooperation among bilateral, sub-regional, regional and international parties; nevertheless, communities, groups and, if applicable, individuals should never be alienated from their own intangible cultural heritage.

meeting in Windhoek: regular updates Safeguarding plans and measures, for instance, need to be updated periodically. This also implies that free and informed consent has to be sought and renewed with the updated plan. Note particularly the importance of principle 7:

> *The communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others.*

This seventh principle opens the way to working on 'access and benefit sharing', another powerful tool next to 'prior and informed consent' and linking up to the biodiversity instruments developed in the 21st century.

Not only is the set of twelve principles endorsed by

the Intergovernmental Committee (10.COM/15.a, 7), States Parties and other national and local organisations (point 8) are encouraged to use those principles to develop and update their work and instruments on *ethics through a participatory process involving communities, groups and relevant stakeholders*. In 10.COM/15.a, 9. the Intergovernmental Committee:

> *... requests the Secretariat to develop an online platform with a toolkit based on the ethical principles annexed to this decision and comprising practical guidance and examples of existing codes of ethics to facilitate the development of specific codes by national and local entities, as encouraged in paragraph 8 of the present decision.*

In 10.COM/15.a,10, the Intergovernmental Committee *invites accredited non-governmental organizations to participate in enriching, sharing information, following-up, and contributing to update the online platform with tools of ethics for safeguarding intangible cultural heritage*.

5. A transdisciplinary, interlinking, interlocking, interactive platform

Next to the set of 12 principles, the establishment of an online, interactive platform has been introduced in order to present and update several tools (like codes) for addressing ethical issues and challenges. The time has come to 'jump'.

Decisions 10.COM/15 a 9 and 10 open up avenues to mobilise the instruments, forms and models developed by WIPO and other organisations about copyright, the use of traditional knowledge and intellectual property rights, without having to 'wait for Godot', in the form of an encompassing WIPO convention or a pointed recommendation.[23] The fact that WIPO clings to the old language of tradition and folklore, is telling. On the WIPO website the available instruments have been presented together.[24] These could easily be inserted and appropriated into the new platform UNESCO is now required to build.

For the online platform and toolbox, several organisations of the United Nations have instruments to offer, starting with UNESCO itself. A few examples and suggestions must suffice here, drawn from the enormous goldmine of the UNESCO website and archives. On the UNESCO website, the ethics section is strongly developed in the Social and Human Sciences Department.[25] UNESCO has been helping Member States to develop policies on ethical issues in science and technology, in particular when interventions and manipulations on living species are involved, ranging from human bodies to stem cell research, cloning and genetic testing. UNESCO claims the following functions: a laboratory of ideas and reflection chamber, a standard-setter, a clearing house, stimulator of capacity building, and a catalyst for international cooperation.

On 16 October 2003, the day before it accepted the *Convention on the Safeguarding of ICH*, the General Assembly of UNESCO unanimously adopted the *International Declaration on Human Genetic Data*. It is an interesting and sophisticated reflection that urges on-going consideration of ethical procedures:

Article 6–Procedures

(a) It is ethically imperative that human genetic data and human proteomic data be collected, processed, used and stored on the basis of transparent and ethically acceptable procedures. States should endeavour to involve society at large in the decision-making process concerning broad policies for the collection, processing, use and storage of human genetic data and human proteomic data and the evaluation of their management, in particular in the case of population-based genetic studies. This decision-making process, which may benefit from international experience, should ensure the free expression of various viewpoints.

(b) In accordance with the provisions of Article 16 of the Universal Declaration on the Human Genome and Human Rights. Where appropriate, ethics committees at national level should be consulted with regard to the establishment of standards, regulations and guidelines for the collection, processing, use and storage of human genetic data, human proteomic data and biological samples. They should also be consulted concerning matters where there is no domestic law.

(d) It is ethically imperative that clear, balanced, adequate and appropriate information shall be provided to the person whose prior, free, informed and express consent is sought. This information should indicate, if necessary, risks and consequences. This information

should also indicate that the person concerned can withdraw his or her consent, without coercion, and this should entail neither a disadvantage nor a penalty for the person concerned. [26]

Article 24 about ethics education, training and information is also inspiring, stating that the States should always endeavour to promote ethical behaviour.

Another interesting structure that functions in the UNESCO universe is the combined role of an International Bioethics Committee[27] and an Intergovernmental Bioethics Committee. Their principles, procedures and structures were reinforced by a *Universal Declaration on Bioethics and Human Rights*, adopted by UNESCO on 19 October 2005. UNESCO also has a Global Ethics Observatory (GEObs).[28] It provides an open platform and tools in a system of databases about 'applied ethics' in science and technology, like bioethics, environmental ethics, science and technology ethics. For the safeguarding ICH paradigm, it provides an interesting example for complementary and mutually reinforcing databases: 1) a Who's Who in Ethics (determined via a peer review process, on CV and experience) 2) Ethics Institutions (validating institutions, centres, commissions, associations, and other relevant entities) 3) Ethics Teaching Programmes 4) Ethics Related Legislation and Guidelines 5) Codes of Conduct and 6) Resources in Ethics, aimed at capacity-building, including a repository for study materials of the UNESCO Bioethics Core Curriculum for university students.

In 2015 the Intergovernmental Committee at Windhoek did not go so far as to install these kinds of commissions and arbiters. But still, the decision to introduce an interactive platform allows it to start working and generating inputs from other sources (and at a faster pace) than the normal feedback mechanisms through which the 2003 UNESCO *Convention* evolves, like the periodic country reports of the Member States. It also provides legitimate access to the tools and experiences of Non-States Members, like New Zealand, Australia, the United States, the United Kingdom and Canada. It is remarkable that several of the most advanced sets of regulations for safeguarding intangible cultural heritage and codes of ethics are to be found in Non-States Parties to the 2003 *Convention*.[29] In the United Kingdom, the Economic and Social Research Council (ESRC) introduced the *Framework for Research Ethics* (FRE) - *a living document which we are committed to developing over time*.[30] Much importance is attached to procedures of *appropriate ethics review*, e.g. by installing and taking seriously ethics review committees. In Australia, the experience with the participation of Aboriginals and other stakeholders in heritage policy has yielded interesting procedures and codes of ethics.[31]

In developing tools for activating the ideas expressed in Principles 4 and 7, there are also important practical lessons to be drawn from the experiences of combining prior and informed consent and access and benefit sharing in the implementation of the 1992 *Convention on Biodiversity* and subsequent recommendations and texts. Here the platform, and the paradigm of safeguarding intangible cultural heritage in general, should not miss the opportunity to learn and appropriate from the experience and results achieved by cultivating the paradigm of sustainable development connected to the *Convention on Biological Diversity* adopted at the 1992 Earth Summit in Rio de Janeiro (Brazil). This launched the concept of 'benefit sharing' in international law and global fairness debates.[32] It is part of an interlocking set of forms and issues, of which access and benefit sharing (ABS) is the most important, and prior and informed consent is another. The 'PIC-ABS' duo have been put on the agenda explicitly in relation to sustainable development and cultural and natural diversity. It is particularly relevant in the field of research on plants and knowledge about nature that might be commercialised by multinational corporations in the pharmaceutical, food or beauty products industries, and here the aforementioned bridge to WIPO will offer additional tools. ABS combines prior informed consent (PIC), granted by a provider to a user on the one hand and on the other hand, negotiations between the provider and the user to develop mutually agreed terms (MAT), that ensure that the benefits from the use of genetic resources are shared equitably.

The crucial insight is that one should not merely think about filling in and signing a 'consent form'.

Contrary to what is often imagined, bioprospecting partnerships rarely involve a single, framework agreement, and more often utilize an inter-locking web of agreements between the various involved parties. ABS agreements seldom involve a single, framework agreement but instead are characterized

*by an **interlocking web of agreements** between multiple parties which may or may not be divided into research and commercialization phases.*[33]

It would be helpful if the platform on the UNESCO website could offer examples of interlocking chains of consent, release, transfer and other forms, as best practices.

A web application can cater for many hyperlinks within a discipline, as for instance, the tool recently developed by the AAA. It can easily combine several disciplines. A good example is the webpage with the *Ethical Code of the Public Historian/(NCPH Code of Ethics and Professional Conduct)*, that starts with the statement *Recognizing that public historians practise in a variety of specialized professional fields, this code incorporates reference to other codes and guidelines as appropriate.*[34] It is clear that the ethical codes and instruments of a wide variety of heritage professionals, ranging from librarians, archivists, cyber-archivists, and museum professionals can be useful. An excellent example of an, if not interlocking then mutually reinforcing, set of guidelines, codes, best practices and standards, is provided by the Standard's Portal of the Society of American Archivists. Next to the instrument itself, the proposal of forms and procedures for selecting items can offer inspiration for the safeguarding ICH paradigm.[35]

In the draft document presented in December 2015 to the Intergovernmental Committee, the tenth Principle included the word 'museification' among the threats to intangible cultural heritage, next to decontextualisation, commodification and misrepresentation. It is clear that urgent work has to be done to re-position museums in the paradigm of safeguarding intangible heritage. Unfortunately, at the Windhoek meeting in December 2015, due to a lack of due diligence or interest when (not) responding to the assessment of accredited NGOs, a number of major international NGOs in the heritage field like SIEF, ICOMOS and even ICOM lost their accreditation (Decision 10.COM 16). It is clear that, ICOM has to get its act together and again assume a serious role on the ethics platform of the 2003 *Convention*. There are many other sites and toolkits available in the world of museums, but it would make sense to try and coordinate them on a global scale.[36]

If the new chapter, with a whole series of operational directives concerning sustainable development (and the 2030 Agenda), fine-tuned at the 10.COM-Windhoek meeting were accepted by the General Assembly in Paris in June 2016, then several domains would have to be covered and addressed. As *pars pro toto* we can mention the relation between safeguarding intangible heritage and tourism, for which innovative and reflective further work is needed from the sustainable development perspective.[37] New roles will have to be cultivated. One of the innovations in the draft chapter crafted at Windhoek is the recognition given to the role of development specialists, intermediaries and cultural brokers. This links up once again to the episode in Washington D. C. in 1999 and the movement in American folklore studies in the late 1990s, focusing on cultural brokerage.[38] Richard Kurin used this concept to reflect on his activities as Director of the Smithsonian's Center for Folklife and Cultural Heritage. In 1997, he proposed a set of ethical guidelines for folklorists involved in processes of public representation.[39] Kurin was a key figure for the evaluation of the 1989 *Recommendation* and in the first years of the 21st century was an active commentator on the 2003 *Convention*. Is it a surprise that cultural brokerage has once again been identified as a critical success factor for safeguarding intangible cultural heritage? These skills of brokering, translating and (hyper) linking may prove to be very important prospects for the future..

6. Conclusion

In 2015, when the Millennium Goals had only partially been met, a new United Nations 2030 Agenda for sustainable development was launched. The Organs of the 2003 UNESCO *Convention* were among the first actors to respond, by drafting a new chapter of *Operational Directives* on sustainable development and peace, during the tenth meeting of the Intergovernmental Committee at Windhoek in December 2015. This was a very fruitful episode, where several tools for 'updating' and 'evaluating' were introduced and important results were also achieved in the field of ethics for safeguarding intangible cultural heritage. Twelve principles have been published. In the Windhoek meeting, the doors to creating a UNESCO platform have been opened, awaiting the NGO Trojan horses of participation, consensus building and democracy to come galloping in.

In this article we have identified a series of building blocks, tools, theories and instruments that could be appropriated, fine-tuned, combined and presented on that

new platform and in the forthcoming toolkit on the UNESCO website. So, in the new fifteen year period 2015-2030, ethical principles and instruments, sustainable development and updating are finally on the agenda, in the centre of the new paradigm of safeguarding intangible cultural heritage, compatible with the post-Millennium Goals.

7. Quis custodiet ipsos custodes?

But as the Roman poet Juvenal remarked almost two millennia ago: *Quis custodiet ipsos custodes*? 'Who will guard the guards themselves?' The proof of the pudding while discussing UNESCO's heritage conventions (1972, 2003,...) will be what the Organs (the Secretariat, the Intergovernmental Committee and the General Assembly) themselves will do. There was a very controversial and worrying statement voiced in Windhoek, by a Member Delegation of the Intergovernmental Committee, while discussing the question of the objective application of the criteria for inscription of an item on the *Representative List*. The speaker claimed that while the explicit and implicit rules and criteria (in the *Operational Directives* or the nomination form) had to be followed by the Evaluation Body or the Secretariat, that the Intergovernmental Committee had the power to choose whether or not to apply those criteria and rules. This surely has serious implications for the credibility within the arena of the Intergovernmental Committee's work, particularly with respect to its consistency in applying ethical principles and procedures. Would it not be a good idea therefore to develop a specific code of ethics/deontological code for the members of the delegations participating in the meeting of an Intergovernmental Committee? This is particularly relevant as long as the *Representative List* (article 16) can be misused as a pseudo-world-heritage-light list and is not yet turned into a Wikipedia-solution.

It suffices to examine some of the recent discussions (that can be consulted in videos available on the UNESCO website) about cases where the evaluation of the subsidiary or evaluation bodies have been overruled without reference to passages in the nomination files themselves, to understand that there is, just as in the discussions about nominations for the World Heritage List of the 1972 *Convention*, a challenge. Should national delegations as members or observers of the Intergovernmental Committee be required to uphold ethical principles or can they make their own national determinations within such an international context?

A door has been opened with the announcement of an interactive platform on ethics which, together with the transparency of being able to see what is being said and what happens during the meetings, might yet have the positive effect of ensuring even greater credibility and fairness, and of reducing the impact of political pressure and other forms of power play. This is of course only the tip of the iceberg. Presenting a set of instruments in an online toolbox is only one step; they have to be used, discussed and creatively updated and completed.

ENDNOTES

1. McCann et al., 2001: pp. 57-61, p. 57.
2. Jacobs, 2013: pp. 129-137 that concluded with the appeal *'Why not to start work on a missing Chapter IV of the Operational Directives (after moving directives about awareness-raising to a new chapter V), expanding on Decision 7.COM 7, 6 in combination with several suggestions in 7.COM.6 and many other sources? ... Ten years after the launch of the successful 2003 UNESCO convention, it is high time to reconsider a series of issues, e.g. about stakeholder involvement, sustainable tourism and economics, that were presented in Washington D. C. in 1999 in the form of a critical Ten Years After evaluation of the failed 1989 Recommendation.'* (p. 137)
3. Simon, 2001: pp. 111-142.
4. Simon, op cit: p. 114.
5. ibid.
6. http://ethics.aaanet.org/ethics-statement-1-do-no-harm/ (consulted 15 JUNE 2014).
7. Fluehr-Lobban: pp. 5-6 and passim.
8. Meskell and Pels, 2005: pp. 1-28.
9. http://www.afsnet.org/?page=Ethics: AFS Statement on Ethics: Principles of Professional Responsibility, in: *AFS News*, New Series, Vol. 17, No. 1, February 1988.
10. 'A Code of Ethics for Folklore Studies. An invitation to participate in an interdisciplinary debate' in *FFN* 14, December 1997: pp. 11-12 , http://www.folklorefellows.fi/?page_id=738 (consulted 2 November 2015)
11. Honko, 2001: pp. 2-7 http://www.folklorefellows.fi/?page_id=941 (consulted 2 November 2015)
12. Honko, op cit.
13. Anthropologists : http://www.aaanet.org/profdev/ethics/ (consulted 3 April 2016)
14. American Folklore Society Comments on Proposed Changes to the Common Rule (76 FR 44512) Submitted electronically to the US Department of Health and Human Services on 25 October 2011; http://www.afsnet.org/?page=HumanSubjects&hhSearchTerms=%22ethic%22 (consulted 2 November 2015) In the light of the European Volkskunde traditions and atlasses and in particular in the Low Countries in the 20th century, the following statement in order to escape systematic review procedures speaks volumes: *There is almost no folklore research that can be conducted using a pre-formulated set of questions. As folklorists learn more about the traditions that are the focus of their research, the kinds of questions they ask will necessarily change ... In many respects, folklore research is a type of investigative journalism; but it is deeper, longer lasting, and more responsible*. Also not convincing is the attempt to escape prior and informed consent procedures: *Folklorists cannot go as guests into people's home communities, build trust and friendships, and then present a legal document for signature. Nor can they ask for signatures to be witnessed*.
15. See Marstine, 2011: pp. 3-25 and the other articles in the *Companion*.
16. See Besterman, 2011: pp. 431-441, p. 435.
17. Besterman, op cit: p. 435.
18. www.hhs.gov/ohrp/references/nurcode.html (consulted 2 September 2015)
19. See also the analysis in Britta and Raymond, 2013: pp. 153-164.
20. http://www.unesco.org/culture/ich/en/events/expert-meeting-on-a-model-code-of-ethics-for-intangible-cultural-heritage-00463 , ITH/15/EXP/2, 20 February 2015, Towards codes of ethics for intangible cultural heritage?
21. http://www.unesco.org/culture/ich/doc/src/ITH-15-10.COM-15.a_EN.docx
22. Jacobs, Marc, 2015. 'Updating: Time for Stakeholders' in *ICH Courier* (at press)
23. Kono, 2009.
24. http://www.wipo.int/tk/en/folklore/culturalheritage/predatabase.html and http://www.wipo.int/tk/en/databases/creative_heritage/codes/
25. http://www.unesco.org/new/en/social-and-human-sciences/themes/bioethics/ (consulted 10 November 2015)
26. http://portal.unesco.org/en/ev.php-URL_ID=17720&URL_DO=DO_TOPIC&URL_SECTION=201.html/ (consulted 10 November 2015)

27. A body of 36 independent experts that is convened by the Director-General at least once a year: http://www.unesco.org/new/en/social-and-human-sciences/themes/bioethics/international-bioethics-committee/ (consulted 10 November 2015)
28. http://www.unesco.org/new/en/social-and-human-sciences/themes/global-ethics-observatory/
29. See for instance for the potential in the USA: Jacobs, 2014b: pp. 265-291 and Baron, 2016.
30. http://www.esrc.ac.uk/about-esrc/information/research-ethics.aspx and the 2012 version in http://www.esrc.ac.uk/_images/framework-for-research-ethics-09-12_tcm8-4586.pdf (consulted 10 November 2015)
31. http://www.aiatsis.gov.au/research/ethics/; For Australia in general: http://www.nhmrc.gov.au/guidelines/publications/e72 http://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/e72_national_statement_march_2014_140331.pdf)
32. Schroeder, 2009a: pp. 11-26.
33. Schroeder, 2009b: pp. 27-51, p. 27. See also: *In spirit, however, there is no difference between the terms 'free, prior informed consent' and 'prior informed consent'. Evidently neither allows coercion to influence the outcome. The former is mostly used in human rights law, the latter in biodiversity legislation. Gifts, hospitality, bribery and coercion are not unfamiliar, in practice, in the exercise of obtaining consent from indigenous communities* (p. 47).
34. http://ncph.org/about/governance-committees. (consulted 10 November 2015)
35. See http://www2.archivists.org/standards and in particular http://www2.archivists.org/standards/code-of-ethics-for-archivists (consulted 10 November 2015)
36. http://museumethics.org/links-to-resources/ ; https://www.dur.ac.uk/cech/ ; https://www.stanford.edu/dept/archaeology/cgi-bin/drupal/stanford-heritage-ethics ; http://www.emeraldinsight.com/journals.htm?issn=2044-1266&show=latest; http://www.culturalpolicies.net/web/files/47/en/FairCulture.pdf; http://museumethics.org/2009/09/museum-ethics-q-and-a-2/ (consulted 2 November 2015)
37. See for the moment http://ethics.unwto.org/en/content/tourism-and-intangible-cultural-heritage and http://www.e-unwto.org/content/l62353/ (consulted 2 November 2015)
38. See Jacobs, 2014a: pp. 265-291.
39. Kurin, 1997: pp. 24-25.

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