

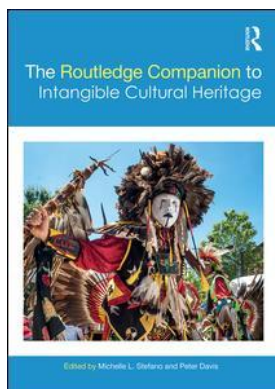
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THE EXAMINATION OF NOMINATION FILES UNDER THE UNESCO CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

*Rieks Smeets and Harriet Deacon*¹

Introduction

The 2003 Convention, which currently has 170 States Parties, was drafted in the early 2000s, just over 30 years after the 1972 World Heritage Convention, which currently has 192 States Parties (see UNESCO, 1972; 2003).² The 2003 Convention borrowed some of the text and features of the 1972 Convention, including an international listing system (UNESCO, 2003, Articles 16–17; 2014a, OD 1–2). The similarities and differences between the approach and implementation of these Conventions have been the object of some analysis (see Smith and Akagawa, 2009; Skounti, 2011; Deacon and Smeets, 2013a, 2013b). To date, however, more attention has been paid to the origins, rationale and possible consequences of listing ICH at the international level (e.g. Hafstein, 2009) than to the processes by which the nominations are examined. This chapter builds on earlier papers on this topic (Deacon and Smeets, 2013b; Smeets 2013a, 2013b) to assess the current challenges faced by the 2003 Convention in developing an efficient and credible system of examination for nominations to its two international lists, the Representative List and the Urgent Safeguarding List, reflecting on the experiences of the World Heritage (WH) listing system.

Evaluations of the implementation of both Conventions within UNESCO (UNESCO, 2011a; 2013b) suggest that the credibility of the inscription process is linked to its transparency, consistency and adherence to agreed criteria for inscription, because these factors affect their capacity to promote the conservation or safeguarding, as well as the visibility of the heritage inscribed on the lists of the two Conventions. As Rao (2010) has remarked, it is important to

ensure that the desire of States Parties to inscribe WH properties (or ICH elements) on the lists of these Conventions does not override serious and independent consideration of their compliance with the criteria for inscription.

Since States Parties themselves put forward the nominations to the lists, the use of advisory bodies to assess compliance with the criteria for inscription is an important aspect of a credible examination process. This is because under both Conventions, this process ends in a decision by the small group of States Parties who have been elected as Intergovernmental Committee members. In 2012, responding to growing criticism of the way in which inscription on the WH List had become increasingly politicized and divorced from consideration of the criteria, UNESCO's Director-General, Irina Bokova, appealed to WH Committee members, 'as accountants of the World Heritage label', to ensure that the credibility of the inscription process was 'absolute at all stages of the proceedings – from the work of the advisory bodies to the final decision by the States Parties, who hold the primary responsibility in this regard' (Bokova, 2012, pp. 2–3).

Unfortunately, the pattern has not changed; the WH Committee has continued to press for more inscriptions on the WH List regardless of the quality of the nominations. Tension between the Committee and its advisory bodies, especially the International Council on Monuments and Sites (ICOMOS), continues to rise as the Committee members frequently override the recommendations of the advisory bodies (Meskell, 2013a). To address these problems, Rao (2010, p. 161) has proposed an accelerated system of redressing regional imbalances in the WH List, and enhanced international cooperation 'to marshal and provide the best technical knowledge' for the process of inscribing properties on it.

The challenges faced in retaining credibility of inscriptions under the 1972 Convention raises a number of questions about the examination process for nominations under the 2003 Convention. Given the conceptual and operational differences between the two Conventions, to what extent does the examination process for the 2003 Convention lists face similar challenges, and what might be the solutions? How can implementation of the 2003 Convention find an appropriate balance between the roles and interests of communities concerned, States Parties and NGOs or heritage professionals in promoting ICH safeguarding through the international listing system? How can the credibility and effectiveness of the listing system be enhanced under the 2003 Convention? Can the processes of decision-making about inscriptions in the ICH Committee be designed in such a way as to counter the tendency towards politicization that has been seen in the WH Committee?

In addressing these questions, this chapter outlines some of the similarities and differences between the two Conventions and their examination of nominations, before exploring in some detail the past and present examination procedures for nomination files to the two lists of the 2003 Convention, and the resources deployed for its implementation. Particular attention will be paid to the involvement of communities, groups and individuals concerned, and to the use of the expertise of heritage professionals and NGOs in evaluating files. Finally, some solutions will be proposed.

The two conventions

It is clear that, despite certain similarities, the 2003 Convention represents a significantly different approach to the definition and management of heritage than the one enshrined in the 1972 Convention. Whereas the 1972 Convention seeks to 'conserve' iconic natural and cultural properties that thanks to their 'outstanding universal value' are inscribed on the WH List, the 2003 Convention seeks to promote the 'safeguarding', or continued practice and

transmission, of any ICH ‘element’ (broadly defined in Article 2.1, UNESCO, 2003) that is considered valuable by any community. The 2003 Convention requires States Parties to set up inventories of the ICH in their territory and to take the ‘necessary measures’ to ensure the safeguarding of – in principle – all of this ICH by and with the communities concerned (UNESCO, 2003, Articles 11 and 15). States Parties may nominate ICH elements included on their inventories to one of the international lists. This will usually – depending on the scope of the inventories – relate to a small proportion of the inventoried ICH. By contrast, under the 1972 Convention, States Parties only have responsibilities for the conservation of properties of ‘outstanding universal value’, whether on a national Tentative List or the WH List (UNESCO, 1972, Article 6).

The WH Committee has a mandate to conduct most of the business of the 1972 Convention, reporting directly to the General Conference of UNESCO (UNESCO, 1972, Article 29), whereas the Intergovernmental Committee of the 2003 Convention (the ICH Committee) reports to, and acts largely under the direction of, the General Assembly of all the States Parties (UNESCO, 2003, Articles 4–5). The twenty-one members of the WH Committee are elected by the States Parties to the 1972 Convention meeting in general assembly at the time of the biennial ordinary sessions of the General Conference of UNESCO (UNESCO, 1972, Article 8); whereas, the twenty-four members of the ICH Committee are elected by that Convention’s General Assembly of States Parties that comes together for substantial sessions every second year (UNESCO, 2003, Article 5). In spite of their different spheres of authority, the Intergovernmental Committees of both Conventions are responsible for making decisions for inscription of WH properties or ICH elements onto their respective international lists.

Under the 1972 Convention there is only one list, the WH List (1,007 properties as of June 2014; UNESCO, 2015a), with a subsidiary List of World Heritage in Danger on which the Committee places those properties facing severe threats to their outstanding universal value (forty-six properties as of June 2014; UNESCO 2015b). The 2003 Convention (UNESCO, 2003, Articles 16–17) makes provision for two independent lists to which nominations can be made: the Representative List (336 elements as of late 2015; UNESCO, 2015c) and the Urgent Safeguarding List (forty-three elements as of late 2015; UNESCO, 2015c). The ICH Committee, interpreting and implementing Article 18 of the Convention, also created a Register of Best Safeguarding Practices (UNESCO, 2014a, OD 42–46), which has no equivalent under the 1972 Convention. The Register, which is sometimes presented as the third and – in principle – most important list, has had difficulties in gaining momentum. The States Parties have not yet proposed many safeguarding practices to the Register, and the Committee has decided not to select a number of these proposed practices. Between 2009 and 2015, only twelve best safeguarding practices were included on the Register (UNESCO, 2015c).

Due to concerns about creating hierarchies between elements, and ‘freezing’ ICH forms, the establishment of a listing system was one of the most controversial issues in the drafting of the ICH Convention. However, there was significant pressure from UNESCO Member States wishing to create an international ICH listing system to parallel that of the 1972 Convention (Hafstein, 2009). This was partly because Member States wished to find a home for the ICH elements recognized as ‘Masterpieces of the Oral and Intangible Heritage of Humanity’ under a previous UNESCO programme (hereafter Masterpieces Programme), which was actually the first exercise in listing ICH internationally (UNESCO, 2003, Article 31).

The *Operational Directives* of the 2003 Convention (UNESCO, 2014a), and *Operational Guidelines* of the 1972 Convention (UNESCO, 2013a), encourage, to varying degrees, the involvement of communities, heritage professionals, research institutions and NGOs in

heritage identification, documentation and management at the national and international levels. Due to the fact that safeguarding is dependent on the continued practice of ICH by communities and practitioners, and because in the UN system greater attention has been paid to Indigenous and local communities over the last twenty years, the 2003 Convention offers a much stronger encouragement for community involvement and consent in all activities concerning their ICH than found with the 1972 Convention (Blake, 2009; Deacon and Smeets, 2013a).

Provision is made for the Committees of both Conventions to be advised by heritage experts and NGOs (Rao, 2010; Skounti, 2011). For the evaluation of nominations to the WH List, three organizations – the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Union for the Conservation of Nature (IUCN) and ICOMOS – provide advisory services to the WH Committee. The latter two bodies assist in the assessment of all nominations to the WH List (UNESCO, 1972, Article 8; 2015d), and are paid for their services. The process by which ICOMOS evaluates WH nomination dossiers for cultural properties is described in the *Operational Guidelines* (UNESCO, 2013a, Annex 6).

After several experiments with the advisory procedure in the examination of nomination files under the 2003 Convention, an Evaluation Body consisting of six individual experts and six NGO representatives was created in December 2014 to guide the ICH Committee in making inscriptions on both lists and the Register, as well as on requests for financial assistance (UNESCO, 2014a; 2014b). The evolution of the evaluation system can be followed by comparing the relevant *Operational Directives* of the Convention from 2008 to 2016 (UNESCO, 2008, ODs 5–8 and 23–26; 2010a, ODs 25–32; 2012a, ODs 25–31; 2014a, ODs 26–31, 54; 2016b, ODs 26–31, 54–56).

Once nomination files for the lists of the 2003 Convention are submitted to UNESCO by States Parties, they undergo a technical examination by the Secretariat. Only those files the Secretariat considers as complete will be sent to the Evaluation Body, which evaluates the files and formulates a recommendation for each of them. The Secretariat transmits the report of the Body's findings and deliberations to the Committee, which makes decisions at its annual meeting on inscription or rejection of the nominated elements to the lists, or for the referral of nomination files back to States Parties for further information. The Secretariat thus processes files, the Body evaluates them and the Committee examines them. Major steps of this procedure can be followed on the website of the 2003 Convention, where the nomination files under process are posted by the Secretariat (UNESCO, 2016a, 2016b, OD 54).

The two Conventions thus have a similar legal basis, and both have international lists, but they begin from different premises about the nature of heritage (places and monuments versus practices) and the justifications for its protection – or safeguarding (outstanding universal value to humanity versus value to the communities, groups and individuals concerned). The two Conventions also have different mandates for their governing Organs (such as the Intergovernmental Committees and General Assemblies) and the process for the examination of nominations to their lists is rather different.

Increasing community participation

With the two Conventions, it is States Parties that submit nominations to the lists and are represented on the Intergovernmental Committees thereof. Although community involvement is encouraged in the identification, nomination and management of their heritage, community representatives have no permanent, formal role in the work of the

Organs of either Convention (Meskell, 2013b; Deacon and Smeets, 2013a). The ICH Committee may invite knowledgeable ‘public or private bodies, as well as private persons’ to its meetings ‘in order to consult them on specific matters’, but has yet to do so (UNESCO, 2003, Article 8.4; 2014a, OD 84, 96d). Given the role of communities in creating, enacting and transmitting ICH, and given the emphasis that the 2003 Convention and its *Operational Directives* place on community participation in safeguarding ICH, how can communities concerned be more involved in the drafting and evaluation of nomination files and the Organs of the 2003 Convention?

The WH Committee has gradually placed greater emphasis on community involvement in the drafting of nomination files and in the management of WH sites, but this has not yet been translated into formal mechanisms and requirements in the *Operational Guidelines* (see UNESCO, 2013a). The 2003 Convention, and in particular its *Operational Directives*, introduced very specific requirements for evidence of community participation and consent in identification, inventorying and management of their ICH, and in nominations to the lists (Deacon and Smeets, 2013a). However, outside experts still play a large role in drafting nominations to the lists of both Conventions.

Considerable technical information is required in the nomination dossiers for WH properties, which tend to be rather long, stretching to several hundred pages. The nomination forms for the 2003 Convention, in comparison, were designed to be simple and short as a means of reducing the necessity for involving outside experts in their preparation, and to allow for meaningful community participation and control over the process. Completed ICH forms are usually between twenty and twenty-five pages, with the addition of ten photos, a short video and evidence proving community consent. However, since 2009, there has been a tendency for the instructions in the nomination forms to become more precise and detailed (Smeets, 2013a), and it is not easy to complete these forms without substantive training, or expert intervention.

To assist in completing the nomination forms for the two ICH lists, the Secretariat has provided a summary of the considerations of the advisory bodies and the rulings and recommendations of the Committee (see for example UNESCO, 2015e; this so-called aide-memoire is regularly updated). At the request of the ICH Committee, the Secretariat is also carrying out an ambitious capacity-building program (UNESCO, 2014c), developing expertise, for example, in inventorying ICH and preparing nomination files, both with community participation. Nonetheless, although some capacity building workshops and materials are provided in other languages, most of the information prepared by the Secretariat is available in only English and French. This means that many local experts, NGOs and community representatives around the world do not have ready access to information about nomination forms and how to complete them. The demand for international professional and NGO-based expertise for completing ICH nominations is thus likely to continue.

A recently implemented system for online publication of pending ICH nomination files may enable some community oversight over their content (see for example UNESCO, 2015f, 2016a). Any objections submitted to the Secretariat will be passed to States Parties and may be published online (UNESCO, 2012b, Decision 7.Com 15). However, the impact of this facility on community involvement depends on the extent to which communities concerned are aware of the existence of the nomination file, are able to gain access to it and are aware of the mechanism for submitting objections.

There are few existing mechanisms for community involvement in the examination of nominations to the lists of either Convention, or in the monitoring of inscribed ICH elements or WH properties. This is a particular problem for the 2003 Convention as community

involvement is a central requirement for effective safeguarding. In the case of this Convention, communities, groups and individuals concerned may be invited by the Intergovernmental Committee to contribute expertise on specific issues (UNESCO, 2003, Article 8.4; 2014a, OD 89), but since the Convention came into force in 2006, this has yet to happen. At best, communities are represented through States Parties or NGOs at Committee meetings of both Conventions; although, when the text of the 2003 Convention was being negotiated, delegations from Latin American and European states, as well as Algeria, did propose creating an advisory council under the Committee composed of community representatives, or providing other ways for their involvement in evaluation procedures (Aikawa-Faure, 2009).

A 'World Heritage Indigenous Peoples Council of Experts' (WHIPCOE) was proposed in Australia in 2000 to represent Indigenous communities under the 1972 Convention, but the Committee rejected the idea a year later (Meskell, 2013b). A similar proposal for the 'establishment and involvement of an indigenous advisory body in the evaluation of all nominated properties situated in the territories of indigenous peoples and in monitoring the conservation and management of such World Heritage properties' was made in 2012, but again rejected by the Committee members (Meskell, 2013b). While the residual tendency towards Eurocentrism in the WH paradigm and continued tensions between governments and various minority groups in places such as France or the US might explain opposition to Indigenous advisory bodies from some Western countries, Meskell (2013b) points out that many developing countries (including India and Kenya) have also opposed the establishment of such bodies. This opposition reflects tensions at the national level between the interests of States Parties and local communities.

The appointment of any advisory bodies with Indigenous or local community representation thus depends on the agreement of States Members of the Committee in the case of the 1972 Convention; this has not been forthcoming. In the case of the 2003 Convention, similar opposition may be faced in the Committee. The Rules of Procedure (UNESCO 2013c, Nos 20 and 21) do allow the Committee to create temporary ad hoc Consultative and Subsidiary Bodies, but as in the recent change in the system of the advisory bodies, the Committee may feel obliged to refer more long-term decisions to the General Assembly. Referral of the discussion on community representation to the General Assembly in the case of the 2003 Convention may open up the debate to a broader range of States Parties and opinions than in the case of the 1972 Convention.

The role of NGOs and heritage professionals

At the national level, institutions, NGOs and heritage professionals may be involved in developing ICH inventories or management plans for WH properties. They may be part of the preparation of nominations to the international lists and other files. Their expertise has not yet been widely exploited in the evaluation of nomination files under the 2003 Convention, however. Whereas ICOMOS and IUCN advise the WH Committee on nominations to the WH List, when the 2003 Convention was drafted, some States representatives criticized the power and Eurocentrism of the small number of advisory bodies to the 1972 Convention (Skounti, 2011, p. 35). The 2003 Convention aimed to provide a greater regional spread of expertise to serve the evaluation process, given the widely varying nature of ICH across the world, enabling numerous NGOs to be accredited 'to provide advisory services' to the Committee (UNESCO, 2014a, OD 96). A large number of NGOs (currently 164) are now formally accredited under the 2003 Convention, according to specific criteria (UNESCO, 2016b, OD 91ff), cutting across many disciplines, domains of ICH and countries. Although,

half of them are based in States Parties in UNESCO's Regional Group 1 (Western Europe and North America), and are not yet evenly spread on a regional basis.³

States Parties meeting in General Assembly accredit NGOs while States Parties sitting on the Committee select members of the Evaluation Body, and undertake the final examination. Could greater involvement of heritage professionals and NGOs in evaluating ICH nominations counterbalance the dominant voice of States Parties in the examination process? Given that representatives of States Parties and concerned communities cannot evaluate their own nominations, and may not have specific expertise on the nominations of other states or communities, could NGOs and heritage professionals also play a valuable role in providing independent substantive review of nomination files, as they already do in the case of ICOMOS and IUCN (Seeger, 2009; Rao, 2010; Meskell, 2013a)? Could heritage professionals and NGOs also enable the voices of community representatives to be better heard in the work of the Committee?

Critical analysis of the assumptions behind professional heritage practice is needed, as much in regard to ICH as tangible heritage (e.g. Smith, 2006). Input from institutions, NGOs and heritage professionals cannot replace independent community representation and engagement in the nomination process. Heritage professionals and NGOs have their own professional or organizational interests (Smith, 2000), and are not entirely independent or disinterested parties in the nomination process. They are often not perceived as independent by communities concerned, and may hold different values. Any conflict between heritage professionals, NGOs and communities may be exacerbated by the fact that legal frameworks at the national level often privilege the opinions and approaches of professional 'experts' over those of the communities concerned (Jopela, 2011).

Recent work around the role of various professional groups as intermediaries (Jacobs, Neyrink and Van der Zeijden, 2014) suggests that they may nevertheless have an important role to play as cultural brokers in ICH safeguarding and policy-making, as well as serving in an advisory capacity to the Committee. Capacity building around strategies for community engagement (in line with UNESCO, 2016a, OD 82–83), can help ensure that external experts develop skills appropriate to evaluation tasks for nomination files, and encourage greater involvement and consultation of community representatives.

The development of appropriate codes of ethics and assessment guidelines may also help to guide external expert involvement in the evaluation of ICH nominations. Members of ICOMOS who conduct evaluations sign ethical guidelines (ICOMOS, 2002) and a *Policy for the implementation of the ICOMOS World Heritage mandate* (ICOMOS, 2010) to help maintain professional standards and credibility. There have been similar calls to develop a model code of ethics for ICH safeguarding under the 2003 Convention. In 2012, the Intergovernmental Committee, recalling Paragraph 103 of the *Operational Directives* (UNESCO, 2014a), called on the Secretariat to 'initiate work on a model code of ethics' (UNESCO, 2012b, Decision 7.COM 6/11). The Secretariat thus held a meeting in early 2015 to start the process of developing a model code of ethics for safeguarding ICH (UNESCO, 2015g). In 2015, the Committee adopted twelve ethical principles for safeguarding ICH (UNESCO, 2015h, Decision 10.COM 15.a). These principles could be used when making decisions about the appropriateness of safeguarding strategies proposed in the nomination files.

Nevertheless, where experts are asked to represent States Parties at WH Committee meetings, national interests and strategies of groups of states often override any professional considerations regarding the inscription of properties on the WH List (Meskell, 2013a). Decisions by members of the WH Committee about inscriptions on the WH List have increasingly deviated in recent years from the recommendations made by the evaluation

bodies, reaching 70 percent of decisions in 2012 (Rao, 2010; Meskell, 2013a). Similar tendencies are now being observed in the ICH Committee. It is therefore important to have a robust system of checks and balances in place to retain the credibility of the examination of nominations under the 2003 Convention, as much as for the 1972 Convention.

The appointment of evaluating bodies to assist the ICH Committee

Under UNESCO's Masterpieces Programme, which came to an end when the 2003 Convention entered into force, evaluations were conducted by large international NGOs, such as the International Council for Traditional Music (ICTM), the International Council of Museums (ICOM), the International Council for Philosophy and Humanistic Studies (ICPHS), the International Social Science Council (ISSC) and the International Theatre Institute (ITI) (Seeger, 2009). At its first meeting, the ICH Committee discussed, but did not accept, a proposal to create an umbrella organization of NGOs that might have assisted the Committee, among other tasks, with the examination of nominations to the lists (UNESCO, 2006).

In 2008, in accordance with Article 31 of the 2003 Convention, ninety ICH elements and cultural spaces that had been proclaimed by the Masterpieces Programme in 2001, 2003 and 2005, were included on the Representative List with no further evaluation. In 2009, in evaluating the first fully-fledged round of nominations, two individual experts were asked to evaluate each of the Urgent Safeguarding List files, and to justify their recommendations during the session of the Committee. This approach was abandoned, perhaps partly because, in this new field of assessment, the opinions of the experts differed markedly in some cases, and maintaining independence from state influence was a challenge. For the following five years, the Committee was guided in the examination of nomination files for the Urgent Safeguarding List by the reports and recommendations of a Consultative Body. Six representatives of NGOs, accredited under the 2003 Convention, and six individual experts were appointed to the Consultative Body to evaluate nominations to this list (as well as financial assistance requests and proposals for the Register). States Parties on the Committee selected the twelve members of the Consultative Body based on several recommendations from the Secretariat for each of the six regions. From 2009, the Subsidiary Body assessed nominations for the Representative List before their final examination in the Committee; that body consisted of six representatives from Member States of the Committee.

Control over evaluation, examination and inscription on the ICH lists was thus concentrated in the hands of States on the ICH Committee (Deacon and Smeets, 2013b). At the Committee meeting in 2012, the delegation of Belgium put it very succinctly: 'the fact that six of [the Committee's] members made up the Subsidiary Body posed a problem of credibility and independence, as one could not be both judge and jury' (UNESCO, 2013d, Paragraph 832). The credibility of the lists had already come under some discussion in Nairobi in 2010, as part of a debate on how to process the large number of nomination files examined each year. A representative from Albania (at the time a Committee member) noted that a 'major concern should be maintaining the quality and credibility of inscriptions ... the quality of the work [in examining files] and therefore the credibility of the Convention' (UNESCO, 2011b, Paragraph 786). The delegation of Mexico (an observer) remarked that the 'credibility of the Convention [...] after two cycles – had reached a critical stage' (UNESCO, 2011b, Paragraph 806).

By the next ICH Committee meeting in Bali, there was no in-depth discussion on the credibility of the process, perhaps due to the fact that the application of the inscription

criteria for nominations had become stricter. Although, in November 2011, the Committee agreed by the smallest possible majority to request the General Assembly to transfer the evaluation of Representative List nominations to the Consultative Body; in June 2012, the General Assembly decided, after a lengthy debate, not to endorse a recommendation to that effect (see UNESCO, 2012c, Resolution 4.GA 5; 2014d). In 2013, an internal evaluation of the system by UNESCO's Internal Oversight Section reported that:

[M]any stakeholders (including representatives of SPs [States Parties], experts and NGOs) ... believe that nominations to both lists should be examined by one body only in order to ensure that the same standards are applied in the evaluation of nomination files. The fact that Subsidiary Body members are SP representatives also raises considerable discontent and concerns about possible conflicts of interest.
(UNESCO, 2013b, Paragraph 217)

At their 2014 meeting, the General Assembly therefore finally approved a single Evaluation Body with no direct representatives of States Members of the Committee. The Terms of Reference for this Body state that:

The Evaluation Body shall be composed of twelve members appointed by the Committee: six experts qualified in the various fields of the intangible cultural heritage [who are] representatives of States Parties non-Members of the Committee and six accredited non-governmental organizations, taking into consideration equitable geographical representation and various domains of intangible cultural heritage.
(UNESCO, 2014b)

The members of the Evaluation Body were chosen at the Committee meeting in November 2014 by the Committee members for each region, based on nominations sent by the States Parties to the Secretariat. The 'Chairperson of each Electoral Group sent up to three candidatures to the Secretariat' for each of the two places available for each of the six regions (UNESCO, 2014b, Paragraph 4; 2014a, ODs 28 and 28). Most of the accredited NGOs do not qualify for service on the Body as they do not demonstrate expertise across a range of different ICH domains or countries and regions, and have representatives that are fluent in English or French. It is significant that individual experts are described as 'representatives of States Parties non-Members of the Committee' (UNESCO, 2014b, Paragraph 2). While this may be intended to indicate their independence from the examination process within the Committee, it gives the unfortunate impression that the experts represent their own States Parties in their deliberations rather than acting as independent experts.

Under the WH system, the identity of ICOMOS and IUCN evaluators is anonymous to protect them to some extent from influence by States Parties or other stakeholders; reports are presented by ICOMOS representatives on their behalf. By contrast, the members of the Evaluation Body are well known to the States Members of the ICH Committee. As the Subsidiary and Consultative Bodies did in the past, the Evaluation Body has to present and oftentimes defend their reports publicly to the Committee.

The new evaluation system under the 2003 Convention has reduced direct control of the evaluation process by States Parties and indeed allows for greater uniformity in the evaluation of nominations to the two international lists. However, in contrast to the 1972 Convention, States Parties, who appoint the members of the Evaluation Body, retain considerable influence over the evaluation process through the appointment of Evaluation Body members.

Harnessing specific expertise for evaluation of files

Although the appointment of an Evaluation Body has improved the evaluation system to some extent, the credibility of the system continues to be affected by the presumption of veracity in evaluating the content of the files. Within the WH system, evaluations of nominations of cultural properties are conducted by ICOMOS members, usually by those with some regional knowledge, or related expertise. Heritage professionals involved in the evaluation of WH nominations check information provided in nomination dossiers through desk reviews and visits to sites, and are involved in post-inscription monitoring of ‘state of conservation reports’ (these are part of the periodic reporting process under the WH Convention). ICOMOS has been criticized within the WH Committee, especially by developing states, for its Eurocentrism and its focus on ‘architectural’ evaluation of significance (Meskell, 2013a). While some of these criticisms may be well founded, the tension between ICOMOS and Committee members can also be ascribed to the fact that the WH evaluation system does provide a way of independently assessing the claims made by States Parties in their nomination files (Rao, 2010), and thus challenges the ability of States Parties to ensure inscription of their nomination files on the WH List (Meskell, 2013a).

In comparison, independent substantive review is not a feature of the examination system under the 2003 Convention; there is a presumption of veracity in the assessment of all nomination files (Deacon and Smeets, 2013b). Commenting on the role of NGOs in evaluating nominations under the Masterpieces Programme between 2001 and 2005, in which he was involved as an ICTM representative, Seeger (2009, p. 126) states:

If the Masterpieces had not been evaluated by qualified members of the ICTM some UNESCO Proclamations could have promoted nationalism and cultural hegemony without the knowledge of those who made the proclamation. The jury would not have known when the most knowledgeable specialists within nominating countries were being ignored in favour of politically expedient or powerful groups that knew little of the tradition and thus had few effective ideas of how to safeguard it. Traditions celebrating ethnic and/or religious discrimination and ‘cultural cleansing’ could have been proclaimed Masterpieces. Many weaknesses in the action plans would have gone unnoticed and important recommendations for improving action plans would not have been made by those familiar with the heritage tradition and its practitioners.

The 2003 Convention has not implemented such a system. Apart from the brief individual assessments of files in 2009, individual experts and organizations have not yet been called on (under UNESCO, 2014a, OD 84) to provide expertise to evaluating bodies or the examining Committee to supplement, or assess, the facts provided in specific nominations. Given the composition and small size of the Evaluation Body (twelve members), files are usually assessed by people who are not experts in the specific domains, communities or regions represented by the nominated elements. The members of an advisory body, whether they happen to be experts in a field related to a file or not, are all expected to evaluate a file based only on the information presented therein.

Returning to the presumption of veracity, what is written in the file and submitted to the Secretariat by States Parties is taken at face value. The identification of the community concerned and the assessment of their participation and consent, for example, are determined from information transmitted by the related State Party. In this light, no desk

reviews or site investigations are conducted by independent parties. Decisions on inscribing elements refer only to the ‘adequacy of the information presented in the nomination file’ (UNESCO 2014e, Decision 9.COM 10 at Paragraph 8). As the aide-memoire to compiling nominations explains:

The Committee and its evaluation bodies have repeatedly insisted on the fact that the inscription of an element on either of the Convention’s Lists results from a process of evaluation and examination of the nominations as they are submitted by States Parties and not from any consideration of the element itself.

(UNESCO 2015e, Paragraph 6)

Currently, there also lacks independent review of information presented in the Periodic Reports, where States Parties explain what measures have been taken to further the safeguarding of the ICH in their territory.

The presumption of veracity in nominations to the Lists of the 2003 Convention makes it difficult to ensure that nomination files are accurate, or to monitor the effects of inscription on elements. This is particularly regrettable since the scope of the 2003 Convention goes far beyond States Parties nominating and the Committee adding elements to the lists; it also includes inventorying, managing and safeguarding of (in principle) all ICH in the territory of States Parties with the participation of the communities concerned.

The examination of nomination files by the ICH Committee

Whatever the process by which the relevant advisory body reaches a decision on recommendations to the Committee, under both Conventions it is the Committee that makes the final decision regarding inscription. The frequency with which the Committee, for geopolitical or other considerations, diverges from the recommendations of its advisory body affects the credibility of the inscription process. Under the Masterpieces Programme, a jury composed mainly of experts recommended proclamation of ICH elements as ‘Masterpieces of the Oral and Intangible Heritage of Humanity’, and it was the Director-General of UNESCO who then proclaimed them; under that system, too, possible biases in the decision-making process have been identified (Smeets, 2013b).

Like Rao (2010), Meskell (2013a, p. 486) observes a ‘reduced technical basis for decision making’ on inscriptions to the WH List in recent years, commenting that ‘national agendas have come to eclipse substantive discussions of the merits of site nominations and the attendant issues of community benefits, the participation of Indigenous stakeholders, or threats from mining and exploitation’ in WH Committee meetings. There is an increasing divergence between WH Committee decisions and the ICOMOS and IUCN recommendations, mainly for geopolitical reasons. Statistical analysis of verbal interventions in WH Committee meetings between 2003 and 2013 by Bertacchini, Liuzza and Meskell (2015, p. 10) suggests that the ‘most vocal countries challenging Advisory Body recommendations have been emerging non-Western states’. States such as Egypt, India, China, Russia, South Africa, Thailand and Japan have extended their formal and informal influence in the WH decision-making process ‘mainly with the objective of using it to enable the inscription of more properties on the List and to gain international legitimization’ (Bertacchini, Liuzza and Meskell, 2015, p. 11). In the WH Committee, States Parties consider any non-inscription decision to be a highly negative outcome, which is why they work together to lobby against them (Meskell, 2015; Meskell *et al.*, 2015).

While more detailed analysis of the work of the ICH Committee is needed to parallel that which has been undertaken with respect to the WH Committee, it is clear that in examining nomination files, the ICH Committee has demonstrated a tendency towards affirming all positive recommendations from the advisory bodies for inscription, reversing some recommendations for refusals or referrals after a discussion in the Committee, and lobbying in or outside the meeting room (see for example UNESCO, 2013d, Paragraphs 456 and 845). In 2012, at its seventh session, the ICH Committee received forty-two recommendations from its evaluation bodies. These recommendations were not followed in eleven cases. All deviations resulted in more positive decisions than recommended; five out of these eleven cases concerned files submitted by States Members of the Committee (Smeets, 2013b). Therefore, towards the end of the session, a representative from Norway (as observer) suggested that an analysis should be made of the cases in which the Committee had deviated from the recommendations of its evaluating bodies:

Having listened to the deliberations, the delegation wished to congratulate the Committee for its impressively thorough and hard work. However, it expressed increasing concerns on the recurrent tendency for the Committee to seek more positive conclusions than those of the advisory bodies. Though it had the right to do so with justified reason, the delegation believed that it was not always possible to understand why the Committee contradicted the findings of the advisory bodies, particularly as the Committee faced challenges regarding the consistency of some of its decisions. The delegation believed that an analysis of the cases in which the Committee had disagreed with decisions by the independent experts or the Subsidiary Body should be undertaken, adding that this was a necessary exercise of learning that should be carried out without delay.

(UNESCO 2013d, Paragraph 870)

The positive bias in inscription decisions of the ICH Committee is all the more problematic since – in spite of Article 6.7 of the Convention – States Members of the Committee do not always include experts in their delegations. Some ICH nominations are withdrawn by the submitting states before being considered in the Committee, after a negative evaluation from the evaluating body, but in 2012 the delegation of Belgium pointed out that this mechanism was ‘scarcely used’ (UNESCO, 2013d, Paragraph 459). An assessment of the likely success of lobbying to garner support within the Committee probably affects decisions on whether or not to withdraw nominations with a negative recommendation.

Under the 1972 Convention, ICOMOS and IUCN may recommend that nominations be deferred or referred by the Committee back to the State Party for additional work (UNESCO, 2011c, p. 101). While concerns were raised in the General Assembly in 2012 (UNESCO, 2014d, Paragraph 706) about importing this model directly into the work of the 2003 Convention, the ICH Committee has also made extensive use of its own referral system, allowing it to delay or preclude negative inscription decisions and thus more easily ignore a negative recommendation by the advisory bodies (as can be seen from the discussions on referral at the Committee meeting of 2012; UNESCO, 2013b). Following a request by the General Assembly in 2012 to reflect on the use of the referral mechanism (UNESCO, 2012c, Resolution 4.GA 5), in 2014 the Committee decided that the instrument of referral should be used in more limited circumstances (UNESCO, 2014e, Decision 9.COM 13.c). Analysis of the use of the referral mechanism by the Committee requires further research, but as a ‘deferred yes’ as much as a ‘polite no’ (UNESCO, 2013b, Paragraph 842 and 844), it has

clearly contributed to a general tendency within the Committee towards positive decisions about inscription.

Budgets and workloads

Finally, we now turn to budgets and workloads. The number of files examined annually by the ICH Committee meetings has been higher – and initially much higher – than in WH Committee meetings. In 2009, only thirteen properties were inscribed on the WH List, while in the same year (the first one to admit regular nominations after the automatic inscription in 2008 of the ninety Masterpieces), nearly 100 inscriptions were made onto the ICH lists (see UNESCO, 2009, Decision 4.COM 13 and 14). Due to the difficulty of managing this workload for the Secretariat, the Committee and its bodies, the Committee then imposed restrictions on the number of files that could be put forward for consideration each year, reducing inscription on the lists by more than half. Inscriptions have thus diminished considerably, but they still remain higher than in the WH system, where the number of inscriptions generally ranges between twenty and thirty annually. In 2014, there were twenty-six new inscriptions on the WH List, while thirty-seven elements were inscribed on the lists of the 2003 Convention.

UNESCO's recent economic crisis (Meskell, 2013b, p. 484) led to a reduction in budgets for implementing the Conventions. Initially, the 2003 Convention was badly affected (in the 2012–13 budget), but allocations improved in its most recent budget. Nevertheless, Table 2.1 shows that the UNESCO budget for implementing the 2003 Convention has always been less than, and is currently roughly half that of, the 1972 Convention.

The inequality in funding is exacerbated by the unequal workload borne by UNESCO Secretariats for the two Conventions. As a relatively new unit within UNESCO, the ICH Secretariat is smaller than that for the 1972 Convention, despite the fact that it has to arrange evaluation of more nominations per cycle and provide support to the meetings not only of the ICH Committee (which meets annually), but also the biennial meetings of the General Assembly of the States Parties. Compared to the World Heritage Centre, the ICH Secretariat also performs more tasks regarding the evaluation of nominations before they come before the Committee. For instance, it has to conduct a technical evaluation of all incoming nominations, and to organize the evaluation of all the nominations for each cycle by the evaluating body, a task largely outsourced to ICOMOS and IUCN under the WH system. For this reason, it was noted during the ICH Committee meeting in 2014 that the ICH Secretariat will provide less substantial assistance to the Evaluation Body than it was providing to the two Bodies that were involved in the evaluation of files before 2014.

Table 2.1 Total UNESCO budget allocations relating to the two Conventions including extra-budgetary resources, 2010–15 (UNESCO 2010b, 2012d, 2014f)

<i>Period</i>	<i>WH Convention (\$)</i>	<i>ICH Convention (\$)</i>
2010–11	50,350,200	19,480,400
2012–13	44,745,300	14,155,900
2014–15	40,725,700	22,463,900

Note: This is based on total UNESCO budgets for tangible and intangible heritage (mainly used for implementing the two Conventions). It provides a general indication of the inequality in spending.

Conclusion

Our first conclusion concerning procedures for nominations to the ICH lists is that mechanisms for increased community representation may be needed to inform evaluation and monitoring processes, as well as the decision-making of the Organs of the 2003 Convention. Second, the establishment of a system of independent substantive review for nomination files is a necessity in maintaining the credibility of the inscription process and thus ultimately contributing to safeguarding ICH. However, the 2003 Convention cannot simply copy the model offered by the 1972 Convention for evaluation. It requires a simpler evaluation system that is also less centralized and more diverse than the ICOMOS-IUCN model.

In spite of the emphasis on community participation in all aspects of ICH safeguarding under its Convention, no formal processes have been set up to involve communities concerned in the examination system, and increasingly complicated forms make it difficult for communities, groups or – as the case may be – individuals to manage the drafting of nomination files without external assistance. Various ways of enabling community representatives to contribute to the work of the Organs of the 2003 Convention will need to be considered, perhaps by investigating the strategies adopted by other international bodies, such as the World Intellectual Property Organisation (WIPO) or the Secretariat of the 1992 Convention on Biological Diversity, which operates under the United Nations Environment Programme. Simplification of forms and procedures might also be helpful in enabling greater community participation in the drafting of nominations. Proposals to improve community representation may be met by opposition from the Committee, as has been the case in the WH Committee, but this may be counterbalanced by broader support for dialogue about this issue in the General Assembly of the 2003 Convention than has been possible within the WH Committee.

The 2003 Convention permits its Intergovernmental Committee to involve a wide range of NGOs and experts in its work, including the evaluation of nomination files. In practice, however, and up until 2015, the process of evaluation of nomination files has been highly centralized in small advisory bodies, which were appointed by States Members of the Committee, and in the case of the Subsidiary Body, they appointed themselves. In the examination of nomination files in Committee meetings, there has been a marked bias towards positive decisions. This bias is particularly problematic because detailed discussion of compliance with the criteria is not linked to a substantive review of the content of the file, as well as because representatives of States Parties in the Committee are often not experts. One important improvement in the examination system for the ICH lists has been the appointment, in 2014, of a single body to evaluate all nomination files. As before, the Committee members determine the membership of that body through the appointment process; substantive review of nomination files has not yet been proposed.

A more robust examination system is needed for nominations to the ICH lists, for which additional funding may be required. In developing a system of independent substantive review, there is no need to establish a single advisory organization to provide evaluation expertise, as was done in the case of ICOMOS for cultural heritage properties on the WH List. An NGO Forum and an ICH Researchers Forum have been established to serve organizations and individual experts working in the framework of the 2003 Convention. The NGO Forum has established a presence at the Committee meetings and holds regular meetings and conferences (NGO Forum, 2015). The Researchers Forum has not met formally since 2013, but dialogue and information-sharing among researchers has been

expanded and sustained through a broad interdisciplinary ICH Researchers Network under the Association of Critical Heritage Studies (ACHS, 2015). Interface organization(s) such as these, and organizations representing various types of communities and groups of bearers of ICH, could provide sources of anonymized expert reviews in the evaluation process.

Efforts to improve the examination system under the 2003 Convention may be hampered by the relatively large number of nomination files and fewer resources to evaluate them, as compared to the WH Convention. Even if additional funding cannot be obtained, outsourcing of vital aspects of the evaluation process may be feasible and will certainly diminish the heavy workload of the ICH Secretariat.

Notes

- 1 The views expressed in this paper are personal and not attributable to any organization.
- 2 See the websites for the two conventions: <http://whc.unesco.org/en/statesparties/> and www.unesco.org/culture/ich/en/states-parties-00024
- 3 The Organs of the 2003 Convention follow the principle of six electoral groups that is widely used within UNESCO organs for the distribution of seats. These groups are: Western Europe/North America (Group 1); Eastern Europe (Group 2); Latin America and the Caribbean (Group 3); Asia and the Pacific (Group 4); Sub-Saharan Africa (Group 5a); Arab States (Group 5b). In the Intergovernmental Committee, each of the six groups must at least have three seats out of the total number of twenty-four; subsidiary bodies of the Committee usually have six or twelve members, with equal distribution over the six groups.

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