

# RIGHTS, RESOURCES, AFFECT, AND MUSIC: COMPARING THE PROGRAMS OF INTANGIBLE CULTURAL HERITAGE IN CROATIA, SOUTHEASTERN EUROPE, CHINA, AND ELSEWHERE

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**Abstract.** *The article aims to elucidate how and why the program of intangible cultural heritage is so exuberant in Croatia and elsewhere, and to describe the characteristics of its implementation on the ground. In political terms, the most interesting aspect relates to the interplay between cultural diversity and social (ethnic, class, gender, and regional) border-making. Selected case studies relate to ethnic and gender differentiations and rights in the field of music. In the economic domain, the foremost significance of the program is to brand chosen elements of traditional culture as tourism resources, both in literal terms and in terms of aspirations to gain a distinguished place in the international cultural supermarket. Particularly important is also the relationship between heritage and intellectual property rights. Although currently neglected in the relevant literature, one should bear in mind that affective attachments represent an equally important motive of involvement. Croatian manners are contextualized by comparison with a few other states that are parties to the 2003 Convention, ranging from the region of Southeastern Europe to China.*

**Keywords:** intangible cultural heritage, music, rights, ownership, intellectual property, resources, affect, Croatia, Southeastern Europe, China

I am sitting on an improvised bench in a yard overgrown with grass. It is early spring of 2008, in eastern Croatia. The process of post-war “peaceful reintegration,” as it was officially called, has just started, the house by the yard is half-demolished, and its owner was for the previous six years expelled from her home. She warns me to be careful where I walk because the property is not yet cleared of landmines. But despite such a rough reality, she smiles while talking about the beauties of the village and its heritage then, in the memorized past, before the war, as well as now. Using the metaphor of a twig in the name of their local music and dance group, which becomes rooted and grows into a strong tree and intertwines with other twigs into a circle of communality, she talks enthusiastically about the revival of the village and explains in detail the peculiarities of their music, dance,

and costumes in comparison to even the closest neighboring villages. She also explains how during the years of exile their music and dance group acted as their virtual birthplace, testifying to the vitality of their community and tradition, their native repertoire and the lyrics of the songs.<sup>1</sup>

The other side of the same story involves the staged performances of the music and dance group in question, arranged in concordance with Croatian standards for how to present folklore in public. Multiple lines of outside intervention can be detected in them. Yet they nevertheless embody memory, the past that makes these people today. That is, they are heritage, the intangible heritage of this community, and although one might be suspicious regarding their fidelity to standardized presentation, there is no doubt that the performances provide an affective support, safety, and comfort, and that they serve as a resource to cope with the disruption of the local world, that they facilitate the identification of community, a sense of identity and continuity.<sup>2</sup> Thus this example brings us to UNESCO's definition of intangible cultural heritage as "the practices, representations, expressions, knowledge, skills [...] that communities, groups and, in some cases, individuals recognize as part of their cultural heritage".<sup>3</sup> Communities constantly recreate their heritage, and it "provides them with a sense of identity and continuity".<sup>4</sup> Although the literature on intangible heritage, including this paper, focuses on the politics, the economy, and/or the poetics of actors involved in heritage production, one should bear in mind that affective attachments, such as the one sketched above, appear as an equally important motive of involvement. Due to the primacy of representational issues, constructivist explanations, and the accompanying research methodologies, affectivity currently appears to be a large *terra incognita* despite the so-called 'affective turn' in the humanities and social sciences. Likewise, in this paper affectivity is only lightly touched upon in the above ethnographic snapshot, although marked at the same time as important.

In the continuation, I try to elucidate other – political and economic – reasons to explain how and why the program of intangible cultural heritage (ICH) is so exuberant in Croatia and elsewhere, and to describe the characteristics of its implementation on the ground. In political terms, the most interesting aspect relates

1 This article was originally written in January 2015 and minimally updated for publication in October 2019.

2 For more on postwar articulations of traditional music in Croatia, including this example, see Naila Ceribašić, "Revivalist Articulations of Traditional Music in War and Postwar Croatia", in *The Oxford Handbook of Music Revival*, eds. Caroline Bithell and Juniper Hill (Oxford, New York: Oxford University Press, 2014), 339.

3 UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*. Paris: UNESCO, 2003, art. 2/1; <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>, accessed 15 January 2015.

4 Ibid.

to the interplay between cultural diversity and social (ethnic, class, gender, and regional) border-making. Selected case studies relate to ethnic and gender differentiations and rights in the field of music. In the economic domain, the foremost significance of the program is to brand chosen elements of traditional culture as tourism resources, both in literal terms and in terms of aspirations to gain a distinguished place in the international cultural supermarket. Particularly important is also the relationship between heritage and intellectual property rights. Croatian manners are contextualized by comparison with a few other states that are parties to the 2003 Convention, ranging from the region of Southeast Europe to China.

### CROATIA AND CHINA AS INTERNATIONALLY COMMENDED GUARDIANS OF INTANGIBLE HERITAGE: COMPARING THE MAIN COMPONENTS FROM A BIRD'S-EYE VIEWPOINT

In order to strengthen the “measures aimed at ensuring the viability of the intangible cultural heritage,”<sup>5</sup> UNESCO established the Representative List of the Intangible Cultural Heritage of Humanity, the List of Intangible Heritage in Need of Urgent Safeguarding, and the Register of Best Safeguarding Practices,<sup>6</sup> which are up to now the most visible outcomes of the Convention. In terms of the number of inscriptions, China and Croatia are among the most successful state parties. Up to January 2015, China had 38 elements included in the lists and the register (30 on the representative, 7 on the urgent list, and 1 in the register), and Croatia 14 (13 on the representative and 1 on the urgent list), thus occupying respectively the first and fourth positions in the world (the second was Japan with 22 elements, and the third was the Republic of Korea with 17, while Croatia shared fourth position together with Spain). Therefore it makes sense to compare Croatia and China, for they are both among the most commended guardians of intangible heritage around the world.<sup>7</sup> My insights are very unbalanced, profound regarding Croatia<sup>8</sup> and very superficial regarding China, limited in the latter case to UN-

5 Ibid., art. 2/3.

6 Since 2016, the Register is called the Register of Good Safeguarding Practices.

7 This part of the article is based on a previous one published in Chinese: Naila Ceribašić, “非物质文化遗产项目在中国和克罗地亚的发展状况” [The Situation of Intangible Cultural Heritage Projects in China and Croatia], in *Musicology in China* 1/24–26 (2013): 75.

8 Various aspects of the Croatian program on safeguarding ICH are discussed in Naila Ceribašić, “New Wave of Promoting National Heritage: UNESCO’s ‘Convention for the Safeguarding of the Intangible Cultural Heritage’ and its Implementation”, in *6th International Symposium “Music in Society”*, ed. Jasmina Talam (Sarajevo: Muzička akademija u Sarajevu, Muzikološko društvo Federacije Bosne i Hercegovine, 2009), 124–137. There I also refer to some general literature on the topic in English, and to some case studies.

ESCO's publications,<sup>9</sup> Internet research, scanty literature dealing with the topic, and informal conversations with colleagues during a brief stay in Shanghai in the summer of 2012 and 2013. I propose to examine and compare how both countries accommodate the main components of safeguarding heritage under UNESCO, namely by commenting on the safeguarding framework, the work of the state institutions responsible for the implementation of the program, and the consequences of enlisting a broader society, in particular regarding the expediency of heritage in tourism, the types of heritage elements and communities involved, and the agency of communities in defining their heritage.

In both countries UNESCO's program was approved very early: China ratified the Convention in December 2004, and Croatia in July 2005 (as respectively the sixth and seventeenth countries to approve the Convention among, up to May 2014, 161 member states). Also, both of them embraced the program with great enthusiasm. Croatian *enthusiasm* can be explained in the context of a small country (with only 4.3 million people, five times smaller than the municipality of Shanghai), and one established only thirty years ago (through the war that split former Yugoslavia apart), which today aspires to be internationally recognized as "the new tourism star of the European Union," "the Mediterranean as it once was," or "a small country for a great holiday," to use a few Croatian tourist slogans from the last decade or so. On the other side, the reasons for the enthusiastic Croatian acceptance and success with UNESCO's program have been recognized in the similarities between the national safeguarding measures and those prescribed by UNESCO. Namely, many of them – "the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage"<sup>10</sup> – have for a long time been firmly incorporated into the phenomena included in the framework of Croatian traditional culture. Besides academic, research, archive and museum institutions, the implementation of these measures (beginning in the 1930s, late 1940s or 1950s, depending on which specific measure) has included associations of traditional culture bearers (with organized folklore groups as surely the most prominent organizational form), contemporary spaces for the preservation, promotion, and transmission of traditional culture (most significantly, folklore festivals, ethnographic exhibitions and educational program, and, to a lesser extent, media coverage of traditional culture as an expression of belonging and identity), along with the intermediaries who connect

9 Inside UNESCO's web portal, especially helpful is a part dedicated to "Lists of Intangible Cultural Heritage and the Register of Good Safeguarding Practices", accessed 25 October 2019, <https://ich.unesco.org/en/lists>.

10 UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, art. 2/3.

those two domains (experts providing professional assistance, and national and local government institutions providing organizational and financial support). Influenced by the turn towards performative, communication, and contextual aspects in critical ethnology, folklore studies, and ethnomusicology that started in the 1970s, the Croatian public practice of folklore has since the 1980s been partly evolving precisely along the footholds of the 2003 Convention, in particular regarding the agency of heritage bearers and the understanding of traditions as constantly changing, depending on a community's intentions, as well as vice versa. On the third side, Croatian acceptance and success with UNESCO's program can be interpreted on a more personal level. Namely, Božo Biškupić, Croatian minister of culture from 1995–2000 and 2004–2010, is an aficionado of traditional culture, professionally and personally related to some respected ethnologists; and it was precisely he who in 2008 insisted that Croatia should nominate to UNESCO not only one or two elements, as is usual, but many more. Thus, sixteen elements were nominated, out of which seven were approved in the first round in 2009, and four in 2010 and 2011. In the following years the number of submissions for countries with already a substantial number of inscriptions was limited to only one during the two-year period.<sup>11</sup> Besides, it was surely important that in the period 2008–2012 Croatia had a seat in the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (henceforth, IGC), which is charged with deciding about inscriptions, as well as in its Subsidiary Body (2011–2012), which provides advisory services to the IGC.

As for China, explanations of its *enthusiasm* regarding UNESCO's program revolve mostly around its accelerated economic growth: firstly in terms of positioning the heritage and its safeguarding as a counterbalance to tremendous economic growth, which swiftly transforms present ways of life, endangers the environment, turns former rural areas into urban conglomerates, causes migrations, and – last but not least – jeopardizes the survival of traditional arts and practices; and secondly in terms of recognizing the intangible heritage itself as a promising economic resource, in particular in economically backward regions, which are at the same time regions with still a quite vigorous life of traditional arts and practices. As emphasized by Anne McLaren in her study on folk epics, but basing her argument on the statements of high Chinese officials,

the state's goal is not just to 'preserve' ICH [...] but also to 'revitalise' (*zhenxing*) it, because *preservation without revitalisation will not lead to longevity* [...] 'Revitalisation' involves integrating the ICH item into the regional economy, or providing an

11 Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage: "Eighth Session: Decisions", item 10.

economic incentive to practitioners to continue the practice or performance. Valued examples of ICH can become features of the local tourist industry and be celebrated in local schools.<sup>12</sup>

A framework for how to manage heritage tourism efficiently at a local level is provided by ecomuseums, which in China are constantly increasing in number, especially in remote areas inhabited by ethnic minorities, and are becoming ever more popular among the increasingly affluent urban consumer class,<sup>13</sup> and thematic parks, such as the International Intangible Cultural Heritage Park in Chengdu, which since 2007 hosts the International Festival of the Intangible Cultural Heritage. As was stated on its website in 2012, this Park “dynamically integrates the protection and succession of the intangible cultural heritage (ICH) industries with the creation of distinctive cultural industries [...], opening itself to the world as a cultural tourist attraction and leisure consumption resort”.<sup>14</sup> Or, to use a third example, according to Zhou Heping,

[g]uangdong liangcha (literally, “cool tea”) is now being mass produced using the traditional formula and technology, increasing the total output value from 300 million yuan to more than 30 billion yuan. After the technique for producing Fujian’s Wuyiyuan tea was entered in the national catalog [sic!] of intangible cultural heritage, sales volume increased more than 10-fold.<sup>15</sup>

This example led the author to conclude that “the appropriate use of the cultural content of intangible cultural heritage has had great significance for the effort to promote artistic innovations” and to “develop a group of influential brand names in the culture industry”.<sup>16</sup>

12 Anne McLaren, “Revitalisation of the Folk Epics of the Lower Yangzi Delta: An Example of China’s Intangible Cultural Heritage”, in *International Journal of Intangible Heritage* 5 (2010): 33. Emphasis in original.

13 On China’s concept of ecomuseums see Pan Shouyong: “Museum and the Protection of Cultural Intangible Heritage”, in *Museum International* 60/1–2 (2008): 12–19; on Lihu ecomuseum in Guangxi see Peter Davis, “New Museologies and the Ecomuseum”, in *The Ashgate Research Companion to Heritage and Identity*, eds. Brian Graham and Peter Howard (Aldershot and Burlington: Ashgate, 2008), 397–414. As for material on the Internet, there is an interesting description of the “Tang’an Dong Ethnic Eco-Museum”: [http://www.chinatourguide.com/guizhou/Tangan\\_Dong\\_Ethnic\\_Ecomuseum.html](http://www.chinatourguide.com/guizhou/Tangan_Dong_Ethnic_Ecomuseum.html), accessed 25 October 2019.

14 This website is no longer available (as of October 2019).

15 Heping Zhou, “Preservation of China’s Intangible Cultural Heritage”, in *Qishu Journal* 2/3 (2010), English edition; [http://english.qstheory.cn/culture/201109/t20110924\\_112523.htm](http://english.qstheory.cn/culture/201109/t20110924_112523.htm), accessed 25 October 2019.

16 Ibidem.

This is in sharp contrast to how things develop in Croatia. “Protection through production,” or “productivity-based protection,” as this aspect is called in China, exists in Croatia only rhetorically, as a potential for an unknown future,<sup>17</sup> while in reality there is no sign of any systematic, organized, state-supported endeavor to tie protection with production. It is completely left to individual initiatives and local communities to find their own ways to capitalize on their inclusion in UNESCO’s lists, not to mention the far less prestigious national list.

The intangible heritage program in Croatia is seen as a continuation of long-lasting safeguarding measures, which are *viable* thanks to direct financial support from state, county, and local governments. After the inclusion of a number of Croatian elements on UNESCO’s lists, such funds have become a bit more plentiful than in previous times, and have been distributed somewhat differently, but basically the framework of the whole system has remained the same, and the amount of money invested in safeguarding heritage is very small both in relative and in absolute terms. For instance, the amount allocated in 2012 from the state budget to 47 projects to safeguard intangible heritage was 536,000 HRK (which converts to approximately the same amount of RMB), which is utterly negligible compared with Chinese standards (and also, by the way, quite negligible in comparison to the 7,840,000 HRK for 242 projects of standard Western music and performing arts). According to the available data, in the five-year period 2005–2009 a total of 659 million RMB were allocated from China’s central budget, compared with about 1.66 million HRK from Croatia’s central budget in the four-year period 2009–2012.<sup>18</sup> The difference is obviously huge, despite the range of incomparable differences between Croatia and China. The system is possible in Croatia because it is very much based on amateur volunteer work by numerous bearers and inheritors of intangible heritage.

17 One example is a statement by minister Božo Biškupić who, in reference to the “lobbying exhibition” of Croatian lace-making in UNESCO’s palace in Paris in 2007, claimed that it was “tek priprema terena za svjetsku afirmaciju hrvatske prebogate baštine koja će u turizmu budućnosti imati presudnu ulogu” (just preparing the ground for world affirmation of the extremely rich Croatian heritage that will play a decisive role in the tourism of the future). See Denis Derk, “Svjetska baština: Biškupić bi picigin upisao kao kulturno blago UNESCO-a”, in *Večernji list*, 2 August 2007.

18 Sources for Croatia: Ministarstvo kulture – Kulturna baština – Financiranje programa – Odobreni programi u 2009–2012 (<http://www.min-kulture.hr/default.aspx?id=26>, accessed 25 October 2019); and Ministarstvo kulture – Kulturne djelatnosti – Glazba i glazbeno-scenske umjetnosti – Financiranje programa – Arhiva – Glazbene i glazbeno-scenske umjetnosti 2009–2012 (<http://www.min-kulture.hr/default.aspx?id=2557>, accessed 25 October 2019). As for China, see Anon., “Protection and Promotion of China’s Intangible Cultural Heritage”, posted 2 June 2, 2010, [http://www.china.org.cn/china/2010-06/02/content\\_20171387\\_2.htm](http://www.china.org.cn/china/2010-06/02/content_20171387_2.htm), accessed 25 October 2019.

Concerning the *management issues*, China adheres closely to the idea of “right principles for a scientific, comprehensive and systematic way to rescue and protect existing intangible cultural heritage”.<sup>19</sup> As emphasized by China’s Ministry of Culture, the central principle is “[g]overnment leadership, social participation, clarification of duty and responsibilities, combination of forces as well as long-term planning. Implementation by steps, integrating priorities with emphasis on effectiveness and efficiency”.<sup>20</sup> China’s systematic approach can be recognized in various aspects of managing intangible heritage: from how the national inventory has been created, how it is organized on the national, provincial, autonomous regional, municipal and county levels, and how certain elements have been coordinated with the parallel program of identifying representative bearers of intangible heritage (also called transmitters or inheritors); to various legislative and regulative acts setting up cultural ecological protection pilot zones, to the establishment of the National Intangible Heritage Protection Centre that connects scholarship with governmental administration, and to the establishment of an International Training Centre for the Protection of ICH in the Asia-Pacific Region; to the introduction of intangible heritage studies into university curricula, extensive publishing, and numerous expert and scholarly meetings; and to the foundation of Cultural Heritage Day, intangible heritage museums and heritage transmission centers, and ambitious travelling exhibitions and festival program, etc.<sup>21</sup>

19 Ibidem.

20 Cited in Dawson Munjeri, “Following the Length and Breadth of the Roots: Some Dimensions of Intangible Heritage”, in *Intangible Heritage*, eds. Laurajane Smith and Natsuko Akagawa (London and New York: Routledge, 2009), 146.

21 See Zhou, “Preservation of China’s Intangible Cultural Heritage”; “Protection and Promotion of China’s Intangible Cultural Heritage”. At China.org.cn one can also find reports on specific activities; for example, regarding the Cultural Heritage Day see “A Day to Honor China’s Heritage”, posted 8 June 2012, [http://www.china.org.cn/travel/2012-06/08/content\\_25597425.htm](http://www.china.org.cn/travel/2012-06/08/content_25597425.htm), accessed 25 October 2019. See also “Poorly-run Intangible Heritage to Exit”, posted 9 September 2011, [http://www.china.org.cn/china/2011-09/09/content\\_23383598.htm](http://www.china.org.cn/china/2011-09/09/content_23383598.htm), accessed 25 October 2019. The largest amount of information is provided by Chinaculture.org, a part of which is dedicated to intangible cultural heritage: <http://en.chinaculture.org/ich.html>, accessed 25 October 2019. See also Bai Shi’s report “Keeping Cultural Genes Alive: A Two-Day Forum Discusses How to Better Preserve China’s Rich Living Heritage”, published on the website of the Institute for Cultural Industries of Peking University, posted 16 February 2012 (no longer available in October 2019). In addition, a valuable resource is *China Heritage Quarterly* (former *China Heritage Newsletter*) of the China Heritage Project, The Australian National University. See for example: “Intangible Cultural Heritage”, *China Heritage Quarterly* 2 (2005), <http://www.chinaheritagequarterly.org/editorial.php?issue=002>, accessed 25 October 2019; “China’s Intangible Cultural Heritage”, and “A Tale of Two Lists: An Examination of the New Lists of Intangible Cultural Properties”, in *China Heritage Quarterly* 7 (2006), <http://www.chinaheritagequarterly.org/editorial.php?issue=007> and [http://www.chinaheritagequarterly.org/features.php?searchterm=007\\_twolists.inc&issue=007](http://www.chinaheritagequarterly.org/features.php?searchterm=007_twolists.inc&issue=007), accessed 25 October 2019.



Again, this is very different from the Croatian case. Let me mention just two intentional, mutually connected differences, neglecting the various social, historical, cultural, political and habitual and other deep-rooted factors that could, and quite surely do play a role when comparing Croatia and China. One concerns the issue of the *agency of grassroots communities* that inherit and practice intangible heritage, and the other the division of labor among such communities, experts, and state administrators. Some Croatian experts involved in the national Committee for ICH, myself among them, have been reluctant to lead the process of selecting the 'most representative' or the 'most valuable' heritage elements. The most positive aspect of UNESCO's program we have recognized is the agency given to grassroots communities. In our understanding, precisely such grassroots communities are 'communities' that are identified in the 2003 Convention (art. 2/1 cited above) as central actors regarding heritage. The agency, authority, and power lies, as we have argued, with the common people, and not, as was customary since the nineteenth century, with experts and state administrators. Consequently, we have understood the safeguarding approaches as being in principle bottom-up and not customarily top-down approaches. This basic attitude is reflected in various aspects of how intangible heritage is managed today in Croatia. For instance, the initiative for inscription on the national list, including a draft proposal as a mandatory part of the initiative, can in principle – and overwhelmingly also in practice – come only from communities of bearers, in fact usually from the non-governmental organizations that represent them. All such proposals that demonstrate community identification with the element, no matter its scholarly and/or official taxonomies, are in principle endorsed by the Committee. Then, if the proposal has some weak points (lack of clarity, inconsistencies, unaddressed mandatory components, etc.), as is quite often the case, the Committee engages an expert well-versed in the ICH domain in question to help improve it while respecting the understandings and intentions of the community concerned. The final description, which is an integral part of the inscription document, is therefore typically a result of collaboration between a community and its representative(s), from one side, and the national Committee and commissioned experts from the other.

Probably the most obvious difference between China and Croatia relates to the *identity of communities*, as well as the representation of their identities in the nomination files of the heritage elements included in UNESCO's lists. As many as half of China's elements inscribed until the end of 2014 belong to ethnic minorities, which was clearly emphasized in the nomination files and sometimes even included in the titles of elements in question, while for Croatia only one element among those inscribed before 2015 was described as being practiced by

both ethnic minorities and majority (“Two-part singing and playing in the Istrian scale”). In another case minority Serbs were mentioned only parenthetically and only through their religious affiliation to Orthodoxy (“Ojkanje singing”),<sup>22</sup> while in a third case it was stated that “the same or similar custom” exists among other ethnic communities in the broader region (“Spring procession of Ljelje/Kraljice (queens) from Gorjani”).<sup>23</sup>

However, as for regional and local affiliations, Croatian elements are mostly defined as being very local, relating to a single locality, area, or region. Only one element is defined nationally by its title (“Lacemaking in Croatia”) but is explained as actually a compound of the traditions of three towns from different parts of Croatia. In contrast, a link between minority, majority, provincial, and all-Chinese is quite frequent in descriptions of China’s heritage elements.<sup>24</sup> Thus, I would agree with scholars in Chinese heritage studies, such as Anne McLaren, who infers that “the underlying goal of the new focus on heritage is to preserve the distinctiveness of each ethnic group in China, [but] under the aegis of the Chinese state,” confirming China as “a unified multi-ethnic country”.<sup>25</sup> After all, according to Li Changchun, member of the Politburo Standing Committee of the Communist Party of China, “the protection of intangible cultural heritage and

22 Regarding the identification of communities (section 1c in the Nomination file), it is stated that “the majority of the population in the above-mentioned regions are Croats of Roman Catholic faith, even though there are some villages where the population is mixed and where Croats are in the majority, or villages populated exclusively by the Orthodox population. Irrespective of the national or confessional background of the inhabitants, Ojkanje singing is a joint tradition of the people inhabiting these regions”. In the description of the element (section 2), it is said that “belonging to various faiths that were once present, and some of which are still present, in these regions (polytheism, Catholicism, Orthodoxy, Islam) has not prevented the transmission of Ojkanje singing, because the music is not determined by ethnicity or religious identity, but is a unique characteristic, in this case, of the Dinaric area”. The file is accessible at UNESCO, “Lists of Intangible Cultural Heritage”.

23 “The same or a similar custom is also known in other villages of northeast Croatia and among Croat emigrants (in Serbia and Hungary); it is also preserved by Serbs in Croatia and Serbia and other Slavic and non-Slavic peoples in Europe” (section 2 – description of the element – in the Nomination file). Regarding the contribution to ensuring visibility and awareness and to encouraging dialogue (section 3), it is stated: “Since the tradition of kraljice processions is familiar to Croats and Serbs in Croatia and abroad, in Serbia and Hungary, and other Slavic [*sic*] and non-Slavic European nations also have similar customs, it can be expected that the inscription of kraljice from Gorjani on the List of Intangible Cultural Heritage would have a positive effect on the awareness of other inheritors of related traditions”. The file is accessible at UNESCO, “Lists of Intangible Cultural Heritage”.

24 For instance, as stated in the summary of the Nomination file, “Chinese paper-cut” is “a key part of Chinese social life in all ethnic groups”. The file is accessible at UNESCO, “Lists of Intangible Cultural Heritage”.

25 McLaren, “Revitalisation of the Folk Epics of the Lower Yangzi Delta”, 33.

maintaining continuity of the national culture constitute an essential cultural base for enhancing cohesion of the nation, boosting national unity, invigorating the national spirit and safeguarding national unification”.<sup>26</sup> The safeguarding of national unification is surely a goal of the Croatian state too, but the mechanism for achieving or confirming it is completely different: minorities are up to now out of scope, and local determinations markedly predominate over national ones. Besides, local communities are given some level of agency in defining their heritage, the notion of heritage is merged with local specificities, and their outsiders are mostly seen as, at best, respectful aficionados, perhaps even participants in some kinds of happenings from time to time, but not as tourist consumers.

So, obviously, at least on a discursive level and regarding the main state-supported actions, there are *more differences than similarities* in how China and Croatia process the idea of intangible heritage and its safeguarding. The notion of community and its agency, as well as the viability of heritage and its management, are understood and put into practice very differently. Croatian enthusiasm is guided by the continuity of safeguarding combined with international prestige, while China is first of all engaged with the continuity of recreating and the expediency of heritage. Yet despite substantial differences, both countries are internationally recognized as having a rich heritage and acknowledged safeguarding. I do not see how to explain this disparity except in a positive way, as an argument in favor of UNESCO’s ability to accommodate diverse notions of heritage, thus promoting cultural diversity, the agency of communities and/or societies, the processual nature of heritage, and intercultural dialogue, i.e., the main ideas of the program on the whole.

### DISPUTES OVER OWNERSHIP: THE COMPARTMENTALIZATION OF MULTILOCAL AND MULTI-ETHNIC HERITAGE

Informed by UNESCO’s program, heritage is a concept that in the past few years has submerged the notions of folk or traditional culture, folklore and tradition, supplementing them with *added value* (as regards participants in heritage production and the mechanisms of acquiring value), *stability* (in terms of tradition’s objectification and connoting the materiality of tangible heritage), *protectability* (e.g., in terms of intellectual property), and *usability* (especially in tourism or other domains where local communities have been accommodated for global exchanges). There is an ongoing puzzle of how to solve the issue of the continuity of changes

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26 Cited in “China’s Intangible Cultural Heritage”, in *China Heritage Quarterly* 7 (2006), <http://www.chinaheritagequarterly.org/editorial.php?issue=007>, accessed 25 October 2019.

in traditions, the relationship between preservation, protection, enhancement and revitalization, between common good and intellectual property, and, above all, the issue of who owns a tradition, who is included and excluded, and who has the right to define the features of a tradition and set its borders. Disputes over ownership proliferate both on Croatian national and on international level.

Within state borders, there is often tension between the *local* communities which *are* and which are *not* recognized as bearers of a certain heritage element, usually expressed in terms of an argument about ‘authentic’ versus ‘non-authentic’ preservation of the element in question – on the basis of outside, expert evaluation, or on the ground of the understandings of just one or more powerful parts of the community in question, or just some powerful individuals within the community (such as the mayor of the town, a head of tourist organization, or a leader of cultural association). This occurs because the idea of community – and its agency – is at the very center of the whole program and Convention, while being at the same time open to myriad interpretations which are very vague regarding who makes a community and who is eligible to define the features of a certain heritage element and set its borders. There is a growing number of studies that document such disputes, in particular in the discipline of folklore studies, for instance Marcus Tauschek’s study on the “Carnival of Binche” (Belgium) and Dorothy Noyes’ study on the celebration of Corpus Christi (“Patum”) in Berga (Catalonia, Spain).<sup>27</sup>

Within and among neighboring countries in Southeastern Europe, the most common disputes revolve around ethnicity in terms of the suppression or exclusion of certain groups, especially minorities. The causes have been recognized mostly in, so to say, the strong yet intangible heritage of local nationalisms rather than in the Convention’s profile. For instance, Ardian Ahmedaja welcomed the 2005 proclamation of “Albanian folk iso-polyphony” as a Masterpiece of the Oral and Intangible Heritage of Humanity, but argued that it would better correspond with reality to attribute this tradition not only to Albanians in Albania but also to Greeks and Aromanians in Albania and Greece, and Albanians in Greece and Macedonia, who share a similar tradition.<sup>28</sup> Similarly, in her examination of the 2002 Macedonian application of *teškoto* dance for the UNESCO’s Masterpieces program, Carol Silverman

27 Marcus Tauschek, “‘Plus oultre’: Welterbe und kein Ende? Zum Beispiel Binche”, in *Prädikat “heritage”: Wertschöpfungen aus kulturellen Ressourcen*, eds. Dorothee Hemme, Marcus Tauschek and Regina Bendix (Berlin et al.: LIT Verlag, 2007), 197–223; Dorothy Noyes, “The Judgment of Solomon: Global Protections for Tradition and the Problem of Community Ownership”, in *Cultural Analysis* 5 (2006): 27–56.

28 Ardian Ahmedaja, “Nation versus Region: Albanians in Ethnomusicology, Ethnomusicologies in Albania”, paper presented at the *International Symposium in European Ethnomusicology – National Ethnomusicologies: The European Perspective*, Cardiff, UK, 27–29 April 2007.

explored “how Roma were erased from a ritual in which they were the central musicians,” recognizing the reasons in “Balkan nation-building projects,” “ethnic identity projects,” and deployment of “ethnonationalist symbols for strategic aims”.<sup>29</sup>

I have found such explanations incomplete. First, as for *teškoto*, though it was indeed represented in the application as an “eternal monument” of Macedonian culture that Macedonians on a whole identify with, in terms of its practitioners it was limited to the professional ensemble Tanec. It is therefore more precise to say that practicing community and human agency in general were actually “erased” from the application, and not only the Roma. And second, instead of dissecting only the nationalisms of local governments, one should rather look at the whole picture, from the local to the national and international levels. Namely, the recognition of an element on an international scale, and a consecutive rise of respect towards it, seems inevitably to feed further development in the direction of its separate and pure uniqueness. As an explanation for such a global distribution of the phenomena, I would cite Regina Bendix’s thesis that “the paradox inheres in using the governmental funding apparatus devised by hegemonic majority culture programs to promote minority voices” (and, of course, this is exactly what the program of safeguarding intangible heritage is basically about). The paradox is due to the understanding that the “funding apparatus will always generate mechanisms of judgment (worthy or not worthy of funding) that discriminate on the basis of taste and ideology, thus again reinstating judgmental criteria over folk materials”.<sup>30</sup> For instance, as Nino Tsitsishvili argues, the recognition of “Georgian polyphonic singing” as a masterpiece of humanity gave wings to the protectors of its authentic features, but also marginalized several other important traditions of ethnic exchanges in Georgia, such as *duduk*, the *zurna*, and the *mugham*. Within this discussion, the point is to notice that the IGC and UNESCO are not outside of these processes; quite the contrary, they are at the very center of them. In the example of Georgia, UNESCO has been used “to assist the government in its assimilation politics regarding ethnic minorities”; and by itself it “seems to be promoting dialogue between cultures and cultural diversity between different states but not between different communities

29 Carol Silverman, “Romani Music, Balkan States, and the Dilemmas of Heritage”, paper presented at the joint annual meeting of the American Folklore Society and Association Canadienne d’ethnologie et de folklore / Folklore Studies Association of Canada, Quebec, Canada, 17–20 October 2007. See abstract at [https://cdn.ymaws.com/www.afsnet.org/resource/resmgr/Docs/AFS\\_2007\\_AM\\_Program\\_Book\\_1.4.pdf](https://cdn.ymaws.com/www.afsnet.org/resource/resmgr/Docs/AFS_2007_AM_Program_Book_1.4.pdf), 214, accessed 25 October 2019. The paper was later published as a journal article: Carol Silverman, “Macedonia, UNESCO, and Intangible Cultural Heritage: The Challenging Fate of Teškoto”, in *Journal of Folklore Research* 52/2–3 (2015): 233–251.

30 Regina Bendix, *In Search of Authenticity: The Formation of Folklore Studies* (Madison: The University of Wisconsin Press, 1997), 259.

within one state”.<sup>31</sup> A number of other inscriptions narrate comparable stories of the effects of international recognition, which can all be summarized as disciplining or essentializing traditions in one way or another.

But one should not blame the IGC and UNESCO for essentializing. The act of recognition presupposes a definition (of a recognizable element), and definitions can hardly escape (at least some) essentializing, even more so when the general subject is such a complex phenomenon as tradition or heritage. UNESCO is clear in claiming that communities should play a decisive role in defining their own heritage. However, as much as traditions are relative and relational, the same is the case with communities, for better or worse. Like traditions, they are not objective realities out there. And it is not only communities who create their traditions; they are also created through the employment of these traditions, i.e. through performances which are vague representations of vague traditions. They are symbolic, temporary, contextual, fluid; they are imagined, like traditions. Thus, for instance, when Ahmedaja speaks of the ‘reality’ of the multipart singing tradition that is shared by Albanians, Greeks, and Aromanians in Albania, Greece, and Macedonia, whose reality is he actually talking about? Do all these people recognize themselves as one community (with and because of a shared tradition), or do we – the scholars who know the ‘reality’ – imagine them as a community because of the ‘reality’ of their shared tradition? It seems that agency is, after all, again in the hands of scholars, regardless of our fine analyses and good intentions, namely the intention to follow and respect the concepts of the people we work with. So, since things are so complex with communities and traditions, it seems quite understandable that the IGC and UNESCO should respect the already established, conventional boundaries between communities that have been set up (or at least recognized) by both national governments and ethnographic disciplines.

As for China, to refer again to this distant and in a way incomparable case in order to uncover the very basic components of the program, I emphasized above its promotion of minority heritage (even if only for the purpose of confirming China as “a unified multi-ethnic country”) and the development of minority ecomuseums and similar projects, congruently with the importance given to the economic expediency of heritage in general. Yet this Chinese agenda, as in the above examples, has provoked negative reactions from neighboring nations. For example, Mongolians opposed the recognition of *khoomei*, the art of Mongolian overtone singing, as a Chinese element inscribed on the Representative List in 2009, and

31 Adriana Helbig, with contributions from Nino Tsitsishvili and Erica Haskell, “Managing Musical Diversity within Frameworks of Western Development Aid: Views from Ukraine, Georgia, and Bosnia and Herzegovina”, in *Yearbook for Traditional Music* 40 (2008): 52.

there was a similar reaction to the nomination of the “Farmers’ dance of China’s Korean ethnic group” in the Republic of Korea. One could imagine that Tibetans, if they were not a nation without a state, would protest against the inscription of “Tibetan opera” under the Chinese umbrella, etc. The way the IGC and UNESCO nowadays solve such disputes is very simple: the top agency is given to each state party, and at the same time, state parties are requested not to comment on situations beyond their state borders. This means that Mongolia may not interfere in how things are done in China, but it may nominate *its* khoomei singing, as it actually did – and thus the Mongolian “Mongolian traditional art of Khöömei” was added to the Representative List in 2010, one year after the inscription of the Chinese “Mongolian art of singing, Khoomei”.<sup>32</sup> But regardless of such conciliatory solutions, the fact remains that the program, despite its good intentions, has provoked a number of disputes. Also, despite a general intention to help create ‘united nations,’ for instance through the encouragement of multinational applications,<sup>33</sup> the existing framework works in favor of clear-cut national categories, or at least it is much better equipped to work with compartmentalized categories and distinct uniqueness. The tools to accommodate a complex heritage of exchanges and mutuality, disjunctures and intersections, have yet to be invented.

### DISPUTES AROUND RIGHTS: HERITAGE PATHWAYS TOWARDS GENDER EQUALITY

The gender aspect of the ICH program has up to now not incited much scholarly attention, excluding a couple of expert meetings organized by UNESCO itself. As summarized in the final report of one of these meetings, one often encoun-

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32 Since then, the IGC, which is the main executive organ of the Convention, repeatedly in its decisions reminds States Parties to “avoid characterizing the practices and actions within other States” for this “might inadvertently diminish mutual respect among communities or impede intercultural dialogue” (IGC: “Eighth Session: Decisions”, item 6.a/17; see also IGC, “Seventh Session: Decisions”, item 11/12; IGC, “Eighth Session: Decisions”, item 8/11). This actually means a rule of non-interference in matters relating to other states. At the subsequent, Ninth Session, the IGC requested States Parties “to avoid unnecessary reference in the titles of elements to specific countries or adjectives of nationality that may inadvertently provoke sentiments contrary to the Convention’s principle of international cooperation”, meaning the sentiments in other states (IGC: “Ninth Session: Decisions”, item 10/12). That is, each state party is completely sovereign yet encouraged to promote harmonious international cooperation.

33 They are considered by the IGC on a priority basis in relation to national files, however excluding the files from States that have no elements inscribed, which are at the top of the priorities; see UNESCO, “Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage”, in *Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris: UNESCO, 2012 and 2014), item I.10/34.

ters “contradictions between the reality of traditional cultures and the notion of gender equality,” and/or the ambiguity of whether heritage program are basically empowering for women or rather confine them within traditional, usually basically patriarchal social arrangements.<sup>34</sup> UNESCO is fully devoted to human rights, including gender equality, while at the same time it is equally devoted to cultural rights, in particular precisely through the program of ICH. A possible additional argument against the priority of human rights and gender equality over cultural rights would be in the relativity of the notion of ‘equality,’ namely in the understanding that inequality in terms of power to dominate and humiliate is based on European- and American-oriented views and theories, and that it is not proper to apply them to other gender systems, which are by themselves “crucial cultural elements [...] in need of safeguarding”.<sup>35</sup> The argument is that interpretations within the communities of what gender and gender balances are also need to be taken into account, respected, and supported.

I have elsewhere analyzed the gender structure of the Croatian national list of ICH and the international Representative List.<sup>36</sup> The majority of elements are in both cases described in a gender-silent way, i.e., without indicating whether an element is shared by men and women (and then whether on an equal or a different footing) or is gender-specific. This is strange in itself, for if the community is so central in the program, then one would expect to find at least a bit of reference to gender as an important factor in defining and reflecting community, and one of the key dimensions of social identity. Besides reading this gender-silence as additional evidence of the more declaratory than actual importance of community, some scholars have asked whether this attitude indicates a preference for men’s heritage. For instance, Valentine Moghadam and Manilee Bagheritari noticed that the photographs included in UNESCO’s brochures “largely depict men,” while it is not clear if “the photographs mirror the reality of such practices” or if “these were the choices of the photographers”.<sup>37</sup> My analysis also did not provide definite answers.

34 See UNESCO, *Final Report: Expert Meeting “Gender and Intangible Heritage”* (Paris: UNESCO, 2003), 1.

35 *Ibid.*, 11.

36 Naila Ceribašić, “UNESCO’s Program of Intangible Cultural Heritage, Women, and the Issue of Gender Equality”, in *A Feminist Critique of Knowledge Production*, eds. Silvana Carotenuto, Renata Jambrešić Kirin and Sandra Prlenda (Napoli: L’Università degli Studi di Napoli “L’Orientale”, 2014), 53–69. This paper also includes a detailed analysis of “Bistritsa Babi” within and beyond an essentialising template of their representation in the Representative List.

37 Valentine Moghadam and Manilee Bagheritari, “Cultures, Conventions, and the Human Rights of Women: Examining the Convention for Safeguarding Intangible Cultural Heritage, and the Declaration on Cultural Diversity”, in *Museum International* 59/4 (2007): 15.



Among the elements that do contain any references to gender – around a quarter of all the elements included on the Representative List up to 2009, and around one-half in the period from 2010 to 2012 – the largest group is of those that are, as explicitly stated, shared by men and women (c. 43 elements), followed by explicitly male elements (c. 25) and explicitly female (17). Regarding the last group, both in the Representative List and the Croatian national list women appear predominantly as bearers of handicrafts and clothing, singing and dancing, and some specific rites and festivities, that is, as bearers in relation to the tradition of the ‘three Ks’: traditions connected with feeding, dressing, and raising children, and implanting traditional family values and religious beliefs. Women from the Estonian islands Kihnu and Manija provide a good example of such a female position.<sup>38</sup>

Thus, what is supported is basically a very patriarchal social arrangement, with only some traces which indicate, or which could be seen as indicating, women’s power and/or resistance to the expected roles. Such an example is provided by “Palestinian Hikaye,” “a narrative expression practised by women” which is “usually narrated at home during winter evenings, at spontaneous and convivial events attended by small groups of women and children”. It deals “with current concerns of Middle Eastern Arab society and family issues,” “offers a critique of society from the women’s perspective and draws a portrait of the social structure that directly pertains to the lives of women”. Many *hikaye* “describe women torn between duty and desire”.<sup>39</sup> As for the Croatian list, a reference to women’s power is, among just a few other elements, embedded in the above-mentioned spring procession of *kraljice* (queens). Members of the community understand their *kraljice* as a reminiscence of the times of the Ottoman invasion, when men were defeated or absent from the village, and therefore women took up sabres to defend their homes. It is, however, interesting that the notion of brave female defenders is not included in the nomination file. Besides being historically ungrounded, this happened probably in order not to jeopardize the inscription by mentioning “expressions that might inadvertently diminish mutual respect among communities or

38 They are “the principal custodians of the cultural traditions embodied in numerous songs, games, dances, wedding ceremonies and handicrafts. Singing is an integral part of collective handicraft activities and of religious celebrations. Particularly noteworthy among the musical repertory of the islanders is an oral tradition of pre-Christian origin, known as runic or Kalevala-meter songs. The most visible emblem of Kihnu culture remains the woolen handicrafts worn by the women of the community. Working in their homes using traditional looms and local wool, the women weave and knit mittens, stockings, skirts and blouses, which often feature bright colors, vivid stripes and intricate embroidery. Many of the symbolic forms and colors adorning these striking garments are rooted in ancient legends”. The file is accessible at UNESCO: “Lists of Intangible Cultural Heritage”. The name of the element is “Kihnu cultural space”.

39 The file is accessible at UNESCO, “Lists of Intangible Cultural Heritage”.

impede intercultural dialogue”<sup>40</sup> – that is, in this case, by mentioning the Ottoman invasion.

The IGC has obviously recognized a tension between values emanating from its inscriptions and the principles of gender equality. Even more, the problem was recognized by the UNESCO’s Internal Oversight Service, which in 2013 completed its evaluation of the Convention and proposed a number of recommendations to the IGC.<sup>41</sup> As a result, at its Eighth Session the IGC (re)emphasised “the importance of gender and generational roles and responsibilities in the practice, safeguarding and transmission of intangible cultural heritage;”<sup>42</sup> it commended states parties “for increasingly addressing the gender aspects of intangible cultural heritage;”<sup>43</sup> and requested the Secretariat to “revise all relevant documents and forms [...] to include gender-specific guidance and questions”.<sup>44</sup> During the Session, an appreciation of gender equality was especially accentuated regarding the nomination of “Classical horsemanship and the High School of the Spanish Riding School Vienna”. In their attempt to convince the Committee to inscribe the element on the Representative List regardless of an unfavorable recommendation by the evaluation body, Austrian delegates emphasized that the Spanish Riding School is of utmost importance for the people and a vivid part of their culture, which they corroborated by a recent success, namely the admission of female students to the school.<sup>45</sup> This persuasion, however, did not bear fruit at that session (the revised file was inscribed in 2015).

Among the elements that the IGC decided to inscribe at the same session, women are most prominent in the “Practices and knowledge linked to the Imzad of the Tuareg communities of Algeria, Mali and Niger”. The governments of these three countries anticipated that the inscription would contribute to enhancement of the status of women, including raising their living standards and economic promotion through the development of craftsmanship and tourism.<sup>46</sup> Along the same line,

40 IGC; “Eighth Session: Decisions”, item 6.a/17.

41 UNESCO Internal Oversight Service, “Evaluation of UNESCO’s Standard-Setting Work of the Culture Sector: 2003 Convention for the Safeguarding of the Intangible Cultural Heritage”, part 2.4.

42 IGC, “Eighth Session: Decisions”, item 6.a/11.

43 IGC, “Eighth Session: Decisions”, item 8/7.

44 IGC, “Eighth Session: Decisions”, item 5.c.1/11.a.

45 In the nomination file, it is stated that “in September 2008 the Spanish Riding School put an end to an endless gender discussion and admitted the first two female riders. Since then these two young women have been joined by four more and now make up the majority of the eleven group. With this decision the principle of equality was enforced”. The file is accessible at <http://www.unesco.org/culture/ich/doc/download.php?versionID=20578>, accessed 25 October 2019.

46 See sections 1/v, 2/iii and 3.b/ii in the nomination file. The file is accessible at UNESCO, “Lists of Intangible Cultural Heritage”. The craftsmanship is mentioned because women build the instrument.

the importance of women for the practice and transmission of *imzad* was given a prominent place in the Committee's decision,<sup>47</sup> as well as in the speech of thanks by the representatives of three countries after the proclamation. However, the whole nomination file, as well as the accompanying video and photographs, reveal some additional emphases and possible readings. For instance, it appears that although the musical instrument (*imzad*) is built and played exclusively by women, the songs are composed, recited, or sung mostly by men. It also appears that a revival project initiated in Mali in 2009 leaned on the expertise of a male musician who identified a dozen women to be organized into workshops and trained them. Among other functions and meanings, according to the writers of the nomination file, the instrument "glorifies the qualities of honesty and bravery of men who are seen as heroes," and "the music establishes the traditional status and role of women as earth mothers".<sup>48</sup> Thus it seems as if the new top-down demand to highlight the importance of gender dynamics and women's contributions has resulted in certain exaggerations concerning the actuality of women's practices and the anticipated future benefits for them.

Besides such an (over)emphasized centrality of women, the new gender awareness finds its reflection in the emphasis given to harmonious sharing between men and women in terms of their equal agency over an element and participation in its performance. This appears in the phrases "regardless of gender" or "both women and men" and similar wording, and is present in summarized descriptions of several elements proclaimed in 2013. Such assertions are mostly but not always justified by data provided in the nomination files. So, for instance, the "Performance of the Armenian epic of 'Daredevils of Sassoun' of 'David of Sassoun'" (proclaimed in the previous, 2012 cycle) allegedly "has no gender, age or professional limitations".<sup>49</sup> The same wording appears in the short description and the nomination file, with no additional information, but the accompanying video and available literature do not support such a statement. Rather, as in the case of *imzad*, it appears as if the general politics of gender equality and gender inclusiveness prevailed over the reality on the ground.

Another imaginable variant of sharing between men and women – one that would manifest itself through paying equal attention and respect to the different roles or activities of men and women, without giving preference to either of them – did not appear in the period that I examined (up to the end of 2014). Namely, despite a new trajectory of gender awareness, it is always so that elements are ei-

47 IGC, "Eighth Session: Decisions", item 8.2/R.1–R.2.

48 See section 1/iv, as well as sections 1/i–ii, 3.a and 4.c in the nomination file. The file is accessible at UNESCO, "Lists of Intangible Cultural Heritage".

49 The file is accessible at UNESCO, "Lists of Intangible Cultural Heritage".

ther completely undiscriminating, inclusive of both men and women on an equal ground, or that one gender runs the show, while the other is non-existent, invisible, on the very margin, or at best plays an auxiliary role. In other words, there are no elements where one gender would do things which are generally considered as valuable, while the other gender would simultaneously do other things which – informed by a new gender awareness – would be understood and interpreted as equally valuable, depending on the perspective.<sup>50</sup> This is not to mention differences within gender groups that would spread beyond a customary age and marital differentiations, which are also non-existent.<sup>51</sup> An awareness of various perspectives and complex identity positions stands as a challenge for the future. But there is no doubt that already at present, equipped with the navigation kit delivered from the cruise ship of UNESCO at large, the program of ICH on a global scale has started to sail away from the land of exclusively cultural belonging and patriarchal dominance towards a promised land of human rights, gender equality, and economic benefits, hopefully for the well-being of the people involved.

#### A SOUGHT-AFTER EFFECT: HERITAGE AS INTELLECTUAL PROPERTY, AND ITS REVERSE

The beginning of the ICH program has been generally recognized in the 1973 Bolivian initiative regarding the legal protection of folklore on an international scale. Instigated by the enormous commercial success of Simon and Garfunkel's version of "El Condor Pasa," an indigenous folksong from the Andes, the Bolivian minister of culture complained to UNESCO that all existing instruments

are aimed at the protection of tangible objects, and not forms of expression such as music and dance, which are at present undergoing the most intensive clandestine commercialization and export, in a process of commercially oriented transculturation destructive of the traditional cultures.<sup>52</sup>

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- 50 Outside of the ICH program, there are, of course, numerous such examples. For instance, in the realm of Croatian traditional culture, the participation of women in the carnival on the island of Lastovo has been documented and promoted by Iva Niemčić in her book and several articles. See, e.g., Iva Niemčić, "Tragom nevidljive plesačice", in *Narodna umjetnost* 39/2 (2002): 77–92. Women are obligatory participants in the custom, including their performance of a ritual chain dance, yet they have been invisible in scholarly and other sources due to a preference for the 'more traditional' male procession.
- 51 It is perhaps needless to say that the heterosexual matrix is also not challenged at all, neither in the programmatic documents nor in the nomination files.
- 52 Cited in Valdimar Tr. Hafstein, *The Making of Intangible Cultural Heritage: Tradition and Authenticity, Community and Humanity* (PhD diss., University of California, 2004), 9–10.

According to Valdimar Hafstein, Bolivia suggested to UNESCO to develop legislation that would declare all rights in cultural expressions of collective or anonymous origin to be the property of the respective states, to establish a committee which would adjudicate possible disputes between states concerning such property, and to create a convention which would regulate the aspects of folklore preservation, promotion and diffusion, as well as to establish an international register of folkloristic cultural property.<sup>53</sup> Three decades later the two latter suggestions came into being through the 2003 Convention and its lists, while the two former are still under negotiation within the World Intellectual Property Organization (WIPO) – more specifically, from 2001 within its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.<sup>54</sup>

However, a kind of protection has been achieved to a degree through the recognition and promotion of traditional knowledge and expression in ethical terms. The 2003 Convention is at the forefront of such endeavors. Since in the ideal of equity the ethical and legal aspects should not be separated, the possibility of their conjunction in some undefined future could be among the reasons why some of the most developed countries did not join the Convention. There is, as some stories in the lobbies go, perhaps a caution that ethical safeguarding can lead towards legal protection and jeopardize their industry. On the other side, among those who joined the Convention, the discourse on safeguarding in ethical terms sometimes alludes to legal protection.

This is very much the case in Croatia, in particular on the grassroots level. When speaking with people who, thanks to national and international inscriptions, are today officially recognized – or, as is actually more often the case, once more confirmed – as bearers of heritage in Croatia, the conversation typically turns to the effects of inscription. Some mention the introduction of new, governmentally supported activities related to the transmission of knowledge (e.g., in the form of workshops), promotion (e.g., a newly established festival dedicated to the element concerned), research and documentation (including, although less often, some bottom-up projects), and perhaps also some other types of activities. Also, some elaborate on how the cultural capital gained through inscription can be integrated into sustainable development programs and into economic growth in general (and tourism in particular), which is often accompanied by a critique of governmental bodies incapable of taking a lead. Yet, most of all, inscriptions are seen in the light

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53 Ibid., 11.

54 See, e.g., Wend Wendland, “Intangible Heritage and Intellectual Property: Challenges and Future Prospects”, in *Museum International* 56/1–2 (2004): 97–107.

of intellectual property rights. ‘Now everybody knows this is our tradition’ represents a typical standpoint, frequently with the addition of ‘from now on, nobody else will (or should) be allowed to perform it.’ Of course, the reality does not and cannot confirm this standpoint, but the fact remains that the sought-after effects of inscriptions pertain primarily to intellectual property rights.

The best-known such example pertains to a long-lasting attempt by the natives of the city of Korčula to keep the exclusive rights to perform their combat sword dance called *moreška*. In particular, they tried to forbid Lado, a Croatian professional folklore ensemble, from including *moreška* in their repertoire. They defended their exclusive rights with arguments of authenticity and vitality of the tradition, as well as its importance for the cultural identity of the community. Lado, as they emphasized in 1996, cannot perform *moreška* properly, since one cannot “oteti dušu [Korčulanima], a bez duše se Moreška ne može batit” (‘take away the soul [of Korčula’s people], and without a soul one cannot stomp *moreška*’).<sup>55</sup> They adduced genes and mother’s milk to support their arguments, and after Lado, despite their vocal disapproval, had nevertheless included *moreška* in its program in 2002, they claimed it had profaned their sanctity, and accused the group of plagiarism and culture-cide.<sup>56</sup> A new wave of public outcry came together with the inscription of “Korčula’s *moreška*, combat sword dance” in the Croatian register of intangible heritage in 2007. Confirmed by this act as bearers of *moreška*, the only bearers who are mentioned in the document, it was not surprising that Korčula’s performers perceived the inscription as the ultimate, effective means to put into force their rights and defend *moreška* from Lado’s intrusion. The Croatian minister of culture added to this perception by claiming that “[t]ko god drugi pleše morešku, to ne može biti autentična moreška koju plešu Korčulani” (‘whoever else is dancing *moreška*, it cannot be the authentic *moreška* which Korčula’s people dance’), and that the registration file “ne brani nikome da pleše morešku, ali rješenje govori da je jedina originalna moreška ona s Korčula” (‘does not prevent anyone from dancing *moreška*, but states that the only original *moreška* is the one from Korčula’).<sup>57</sup>

This logic, however, failed again to materialize because, according to the copyright law, *moreška* belongs to “folk creations in authentic form” and is therefore accessible to all. But it is indicative that the program of intangible heritage additionally inspired Korčula’s performers, as well as many other grassroots bearers of tradition, to argue for shifting the barrier of ownership from exclusively individual rights to the level of the collective rights of the group or community concerned.

55 Anon. [Korčulani i moreškanti], “Istina o ‘slučaju Moreška’ ili zašto ne želimo dati Morešku”, in *Novi list*, 9 July 1996, 25. Author’s translation.

56 Željko Petković, “Od moreške nam učinili krnovala”, in *Slobodna Dalmacija*, 23 November 2002.

57 Božo Biškupić in Derk, “Svjetska baština”. Author’s translation.

This is happening in the context of a more and more rigorous implementation of the copyright law. Its most disputable point in relation to traditional music refers to the provision that every public performance of whatever work (either authorial or traditional, i.e., either copyrighted or non-copyrightable) requires the payment of remuneration to the agency that is responsible for the implementation of the law.<sup>58</sup> In Croatia this is the Collecting Society of the Croatian Composers' Society, i.e. ZAMP, according to its acronym in Croatian. In line with this provision, each bearer of tradition, say, each traditional musician, has to pay remuneration to ZAMP for each performance he/she gives in public. And public, according to the copyright law, means all that happens outside a narrow circle of persons closely tied by family or other personal relations.<sup>59</sup> One consequence of such a definition and implementation of 'public' is that 'authentic folklore', i.e. folklore which according to the law belongs to public domain, is actually non-existent; it cannot exist in performance, among actual people and situations. The manner of copying, borrowing, appropriating, mixing, and such, which is typical for folkloric processes, is in legislative discourse and practice simply erased. All sorts of borrowings are permissible only in the domain of composition and the corresponding copyright regime, but not in the course of performance and the corresponding non-authorial attitudes.

In such a context, where individual authorship is unquestionable and the flow is no longer free, the attitude of Korčula's and other grassroots communities is even more understandable. Bearers of local traditions more and more complain about the injustice, as they say – the injustice of being obliged to pay for practicing their own tradition. Even more so because they perform without any remuneration – their activities are exclusively amateur, undertaken in their free time. Simultaneously, they are more and more vocal in questioning how ethical and equitable is the related field of authorial elaborations of folklore. According to the letter of the law, elaborations that are *original* intellectual creations are protected as independent authorial works.<sup>60</sup> However, there is no mechanism to evaluate the level of originality and novelty of an arrangement (i.e., a musical 'elaboration'), or the degree of its divergence from authentic folklore. An individual can approach ZAMP with the simplest harmonization, or even a plain transcription of a folk-song, and protect it as his/her own work. Generally speaking, bearers of traditions previously did not care about such things because there existed a free flow of folkloric variation, with borrowings between authorial and non-authorial do-

58 Hrvatski sabor, "Zakon o autorskom pravu i srodnim pravima", in *Narodne novine* 167 (22 October 2003), art. 8.

59 Hrvatski sabor, "Zakon o autorskom pravu", art. 3/3.

60 *Ibid.*, art. 6.

mains. But this is no longer the case. Tvrtko Zebec has described one such disputable example.<sup>61</sup> It relates to an authorial song that relies heavily on the music and poetry of one area, and one village in particular, although the author did not use any specific traditional song or lyrics. Accordingly, he protected it as his original authorial work. However, a folklore group from the area in question included the song in its repertoire, and the question was raised whether the group should pay royalties to the author for its performance. Should they, since the song is indeed his authorial work? Or shouldn't they, since the song is strongly based on musical and textual features taken from that particular area. The song is actually floating somewhere in between the communal and the individual, but according to the law it is exclusively individual.

Apparently, there is a need to recognize an intermediate group or collective sphere of intellectual property rights in between individual rights, on the one hand, and the national or international public domain on the other.<sup>62</sup> However, almost everything is disputable here: what needs to be protected, how can one not stifle the dynamics of traditions and their free flow, and how can one not be selective; equally disputable is who *actually* makes a community, who can/should represent it, and who will guard the guardians. The existing proposals mostly refer to indigenous traditions and communities. Presumably, they are isolated, homogenous, bounded, defined. Presumably, also, states could protect them, speak on their behalf, and represent them. Ethnographic literature has, however, quite clearly demonstrated that one hardly ever encounters such traditions and communities, and probably even less can one come across such states. In other words, any attempt towards the protection of folklore – and ICH in the vocabulary of the 2003 Convention – seems inevitably to result in the previously discussed compartmentalized, selective cluster of 'authentic' products of national heritage produced jointly by scholarly analysis and governmental management.

Indeed, when put into practice, it appears that product-oriented conceptions, after all, dominate over the practices of actual communities, which are, in principle, the subject of safeguarding. The event that marked Croatian accession to the EU on 30 June 2013 can serve as an illustration. It included a number of Croatian ICH elements; actually it was based on them, demonstrating, as was emphasized in the booklet, "the wealth of Croatia's cultural heritage and many years of dedicated

61 Tvrtko Zebec, "Izazovi primijenjene folkloristike i etnologije", in *Narodna umjetnost* 39/2 (2002): 93–110.

62 Other proposals suggest the broadening of the public domain, open sources, recognition of the culture of borrowing, the cumulative and collaborative character of any creative work, and similar. See, e.g., Valdimar Hafstein, "The Politics of Origins: Collective Creation Revisited", in *Journal of American Folklore* 117/465 (2004): 300–315. But such proposals seem to be hardly feasible.



work of the Ministry of Culture of the Republic of Croatia, its departments and experts from the fields of ethnology and cultural anthropology”. The program of the celebration, as the booklet continues, “present[ed] the cultural heritage that Croatia shares with humanity and [took] us on a journey from ancient customs to modern expression which coexist in time and which Croatia will bring to the European Union”.<sup>63</sup> This is a narrative that one could expect and may accept, but the problem is that, with a few exceptions, only Lado was on the stage, not the internationally recognized ‘bearers’ of these celebrated heritage elements. One can understand that the producers of such an important event did not want to take a risk with amateurs, people who are not accustomed to demanding productions, as I was told by some of the organizers, and thus they relied on professionals. Also, allegedly, the organization was faced with financial restrictions, and so it was cheaper to select a Zagreb-based ensemble than to invite participants from elsewhere. Nevertheless, it was an undeniable act of top-down appropriation. Otherwise, if amateurs were indeed not capable of meeting expectations, how then could they – instead of a professional ensemble – be included in the international, representative list of humanity? In other words, if they can be replaced by the state folklore ensemble, which operates “sa zadaćom i ciljem istraživanja, prikupljanja, umjetničke obrade i scenskog prikazivanja najljepših primjera bogate hrvatske glazbene i plesne tradicije” (‘for the purpose and goal of researching, gathering, artistically arranging, and presenting the most beautiful examples of Croatian rich music and dance tradition’),<sup>64</sup> then apparently the communities concerned are not this or that local community but the entire national community.

63 Vlada Republike Hrvatske / Government of the Republic of Croatia, *Središnja proslava hrvatskog pristupanja Europskoj uniji / Main Celebration of Croatia’s Accession to the European Union* (Zagreb, 2013). Program booklet, ed. Dina Puhovski. See also an extensive report at: <https://vlada.gov.hr/proslava-pristupanja-hrvatske-u-europsku-uniju/1155>, accessed 25 October 2019.

64 Lado – Ansambl narodnih plesova i pjesama Hrvatske, “O nama”. <http://www.lado.hr/o-nama/>, accessed October 25, 2019. Author’s translation.