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UNESCO's Ethical Principles for Safeguarding Intangible Cultural Heritage: Interpretative Reading and Commentary Review

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Abstract. December 4th, 2015 is a remarkable day when the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage of UNESCO at its tenth session in Windhoek, Namibia, endorsed Ethical Principles for Safeguarding Intangible Cultural Heritage. This is another internationally effective document that has been formed by UNESCO to safeguard Intangible Culture Heritage (ICH), and it equips the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage in the ethical dimension, will present guidance for processes of safeguarding ICH in local, national and international levels. It is also a starting point from where international actors in the field of ICH will explore to develop and widen the ways of ICH safeguarding in a better ethical framework. The article is devoted to interpretative reading of the document and Commentary Review.

Keywords: Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage of UNESCO, Ethical Principles for Safeguarding Intangible Cultural Heritage, Safeguarding of the Intangible Cultural Heritage

Introduction

December 4th, 2015 is a remarkable day when the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage of UNESCO (will be referred to as the Committee hereafter) at its tenth session in Windhoek, Namibia, endorsed Ethical Principles for Safeguarding Intangible Cultural Heritage (will be referred to as the Principles hereafter). This is another internationally effective document that has been formed by UNESCO to safeguard Intangible Culture Heritage, and it equips the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (will be

referred to as the 2003 Convention hereafter) in the ethical dimension, will present guidance for processes of safeguarding ICH in local, national and international levels. It is also a starting point from where international actors in the field of ICH will explore to develop and widen the ways of ICH safeguarding in a better ethical framework. The author would like to mention that Chinese Folklore Society participated in this session in Namibia, and witnessed the delivery of the document, and this is exactly why we can obtain firsthand knowledge about the Principles, and grasp the core values in the discussion of the committee.

I. From El Condor Pasa to Valencia Expert Meeting: an Ethical Concern

1970, American songwriter Paul Simon's "El Condor Pasa (If I could)" became popular, but soon people found that this song actually contains the melody of a Bolivian folksong, or, as many would claim, it is actually a melody shared by all the Latin American peoples¹.

Oct. 1, 1973, Ministry of Foreign Affairs and Religion of the Government of Bolivia submitted the Proposal for International Instrument for the Protection of Folklore to the twelfth session of Intergovernmental Copyright Committee of the UNESCO. This proposal sounded the first call for the 2003 Convention. Soon after the proposal was received, UNESCO and World Intellectual Property Organization joined force in launching the worldwide project of Protection of Folklore. The two organizations together proposed the prototype for future work. This project, although received critiques and witnessed hard time in its implementation, finally resulted to the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore. It is proper to suggest that, the government of Bolivia's claim is deeply embedded in an ethical issue of whether or not any person could appropriate or exploit any form of folk art for the purpose of its commercialization and monetary benefit.

This Recommendation also established a solid basis for the lately endorsed twelve Principles in terms of practicality. To specify this "basis," the Recommendation mentioned about the roles and functions of traditional communities i.e. the local communities in protecting their folklore. It stated that folklore is an important element in communicating shared culture and common values. Especially, it clearly claimed that concerning the transmission of folklore, it is necessary to "encourage the international scientific community to adopt a code of ethics ensuring a proper approach to and respect for traditional cultures" (241). As an important international document, the Recommendation intends to urge governments of all countries to assume the responsibility of safeguarding folklore, while it simultaneously calls on the "Scientific Community"² to offer necessary

ethic and moral support in order to enhance this action of safeguarding traditional culture. From the disapproved Bolivian proposal to the endorsed Principles, we could sense that the appropriation and exploitation of folk art and the commercialization of ICH have gradually grown from an issue in one country to a global concern. Especially since the adoption of the 2003 Convention, the viability of international ICH has been better ensured, but ICH has also become more visible on the global stage, and therefore encounters more challenges and is involved in more ethical dilemmas.

The Convention for the Safeguarding of the Intangible Cultural Heritage officially became effective in 2006. The Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (the Directives hereafter) were promulgated in 2008 and have been amended several times ever since. Although either the Convention or the Directives did not present any concrete ethical policy or code of conduct, ethic concern has already been expressed in them. For instance, Item 93 of the Directives states, "Accredited non-governmental organizations should abide by applicable domestic and international legal and ethical standards." And Item 103 states, "States Parties are encouraged to develop and adopt codes of ethics based on the provisions of the Convention and these Operational Directives, in order to ensure appropriate ways of raising awareness about the intangible cultural heritage present in their respective territories." In the year of 2012, Intergovernmental Committee for the Safeguarding of ICH "invites the Secretariat to initiate work on a model code of ethics and to report on it to a next session of the Committee" (Item 11, Decision 7. COM6). This invitation is generated after a debate, about the growing concern of threats facing ICH, including commercialization, decontextualization; and also about States Parties' urgent needs of ethic tools and practical guidelines in performing their duties.

According to the Principles, in order to respond to the Intergovernmental Committee's request, the Secretariat organized an expert meeting in Valencia, Spain from March 30 to April 1st, 2015. Eleven experts, five among them are female, from the six regional electoral groups of UNESCO participated in the committee. Among them there was Dr. Frank Proschan, Chief of Programme and Evaluation Unit, UNESCO Intangible Cultural Heritage, who has a background in both anthropology

¹ 1912, Peruvian composer Daniel Alomia Robles wrote the song based on a folksong circulating in the Andes Mountains. Peruvian government has claimed this song as a national cultural heritage.

² The concept of "Scientific Community" is not new, another term may work better here: "Academic Community." Folkloristic is the academic basis for this community in safeguarding ICH.

and folklore. "The meeting was divided into four separate sessions, on (1) core values of the Convention that should be integrated into codes of ethics for intangible cultural heritage, (2) the general scope of codes of ethics for intangible cultural heritage, (3) specific ethical principles that should be included in codes of ethics, and (4) possible processes to elaborate a model code for intangible cultural heritage and to proceed from a model code to specific codes. During each of the sessions, experts were invited to discuss the need and relevance of a code of ethics, as well as share and discuss ideas on the content, type, addressees and specificity of a potential model code of ethics." The eleven experts are from various backgrounds, including anthropology, media, cultural heritage, and so forth, and they offer a gendered perspective too. They also speak for a wide range of actors or stakeholders, "from State agencies and public institutions to private entities and civil society organizations" (Principles, Item 7), and they "provide diverse insights and new perspectives on core values to be included in a potential model code of ethics and its scope" (ibid, Item 3). This was the context of the delivery of the Principles. By far, the Secretariat has already provided an online toolkit on the website of the 2003 Convention. The toolkit can be located in a column named "Ethics and ICH," it provides two tools, "Background of the ethical principles" and "Examples of codes of ethics and professional codes of conduct," in order to promote and propagate the awareness of ethics in safeguarding ICH.

II. Core Values: Ideas of Safeguarding and Dimension of Ethics

Like in other documents issued by UNESCO, the language of the 2003 Convention is precise and simple, but the messages it conveys are profound and dense. This Convention states clearly in Article 1 that "The purposes of this Convention are: (a) to safeguard the intangible cultural heritage; (b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned; (c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof; (d) to provide for international cooperation and assistance."

We can consider these four purposes as the core values of the Convention. It aims at safeguarding ICH, enhancing cultural diversity,

human creativity, mutual understanding and international cooperation. In defining, performing, transmitting and safeguarding ICH, the Convention highlights the primary role of ICH inheritors and practitioners in their communities. Safeguarding, respect, awareness-raising, mutual appreciation, and international cooperation and assistance should all be listed as the keywords in perceiving and performing ICH safeguarding. In the frame of the Convention, all the articles go around and follow the four purposes as well. Therefore, by grasping keywords, one can understand the definition and core values of safeguarding ICH. However, actually, it is quite complex for anyone, even the initiators of the Convention to proceed from recognition of the core values to understanding them properly in practice. The Convention as a document addressing the global society has to be succinct and simple in its statement, but this also suggests possibilities of misperceptions, semantic pitfalls, and dangerous ethic conflicts when States Parties carry out provisions of the Convention.

According to statistical research, the term "community" appears fourteen times in the Principles, in all twelve principles but the 8th one. The term "respect" appears nine times, in six principles. The whole system of core values generated from these keywords can be summarized as five "compatibles." They are: 1. compatible with the stance of securing the primary role of communities, groups and individuals in assessing their own ICH; 2. compatible with the spirit of existing international human rights instruments; 3. compatible with the requirements of mutual respect; 4. compatible with the requirements of sustainable development; 5. compatible with the general interest to humanity. It is exactly under the guidance of these "compatibles," could the Principles be designed. These principles paved the road for ICH safeguarding on local, national and international levels, and bestowed an ethical dimension to the better implementation of the Convention and its Operational Directives. Below, I will offer a brief reading of the design of the Principles, its goals, and core values, by referring to the 2003 Convention, relevant documents of UNESCO, and experts' researches³.

³ The author referred to the working paper UNESCO, ITH/15/EXP/2, Paris, 20 February 2015 beside other materials, however, the author does not necessarily agree with the opinions in this working paper.

Value One: ensuring the primary role of communities in the process of ICH safeguarding

ICH is defined clearly in the Convention as “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (Article 2, Paragraph 1). By this definition, the Convention as an international legal document granted the right of assessing the values of ICH to the holders of ICH, or, the inheritors and practitioners and their communities or groups. In this capacity, the 2003 Convention passes down the spirit of the 1989 Recommendation, while both of the two differ from the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, where the inscription of ICH elements is decided by expert committees. This is a historical turn in the policy of safeguarding ICH. Following Lauri Honko, we can argue that after tens of years of development, the ICH safeguarding scholars have descended from the place of elites to that of common people. In other words, scholars do not look at folk culture from above, but return the right of assessing ICH to its practitioners and their communities or groups. This is a profound change brought by the development of academia, society, and humanities in general.

ICH as a cultural phenomenon does not exist without its practitioners, its viability is linked to its cultural meanings perceived in certain communities and groups, and social functions it enacts. Therefore, only communities, groups and individuals can represent, transmit and pass down ICH, and only communities, groups and individuals can decide what is their ICH. This point also resonates with the preface of the Convention, in “[r]ecognizing that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity.” From this preface, the first one of the twelve principles is decided: “Communities, groups and, where applicable, individuals should have the primary role in safeguarding their own intangible cultural heritage.” The Convention, although only briefly articulates basic values, manages to suggest a direction for practices of ICH safeguarding.

The Convention also defines “safeguarding” precisely. It says, “safeguarding means measures aimed at ensuring the viability of the intangible cultural heritage, including 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.” In Chapter III, Article 11, the Convention urges States Parties to “(a) take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory; (b) among the safeguarding measures referred to in Article 2, paragraph 3, identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations.” We can see that the participation of communities, groups and individuals should be through all the aspects of ICH safeguarding. In terms of “identification and definition,” the Convention also mentioned the participation of NGOs, such as research institutes, community associations and so on. We will return to this topic soon.

In Article 15 of the Convention, the primary role of communities, groups and individuals is further highlighted. “Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.” This means, to ensure the participation of communities, groups and individuals becomes the legal obligation for each State Party, and more restrictions are observed in the work of ICH safeguarding departments in all countries. Therefore, States Parties should create proper environment and mechanism, to ensure the participation of communities, groups and individuals. This should be the true meaning of “safeguarding,” and it is the starting point of the Principles. We should use this idea to guide all actors in the ICH safeguarding process.

Value Two: compatible with existing international human rights documents, compatible with the request of mutual respect, and compatible with the request of sustainable development.

Paragraph 1 of Article 2 states, “For the purposes of this Convention, consideration will be given solely to such intangible cultural

heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.” This paragraph contains three profound meanings of ethics. In other words, the “compatible” here is specifying three conditions in which and only in which ICH is recognized, it therefore defines three levels of ethical concern, and further defines the scope of ICH.

This Paragraph (Paragraph 1 of Article 2) looks like a simple statement, but actually requires thorough reading. Firstly, although the text of the Convention does not exhaust the listing of basic human rights principles recognized by the international society, it makes clear that any cultural phenomenon that may harm human rights should not be safeguarded within its frame. The second one of the Principles also states, “The right of communities, groups and, where applicable, individuals to continue the practices, representations, expressions, knowledge and skills necessary to ensure the viability of the intangible cultural heritage should be recognized and respected.” This principle is in accordance with the Convention’s standpoint, and it is also based on all the existing human rights instruments. At the beginning of the Principles, we also find another statement, “The Ethical Principles for Safeguarding Intangible Cultural Heritage have been elaborated in the spirit of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and existing international normative instruments protecting human rights and the rights of indigenous peoples.” One can easily note strong resonance of the Convention in the Principles.

Then, what are some human rights instruments that should be considered as fostering the spirit of the Convention? Firstly, we can find some of these documents in the preface of the Convention, including the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966. Secondly, we can refer to some documents that although did not exist when the Convention was adopted, can still be considered as its backing power after their issuance, for instance the 2006 Convention on the Rights of Persons with Disabilities and 2007 United Nations Declaration on the Rights of Indigenous Peoples. Because all UN documents mutually support one another. Here I would highlight the Declaration on the Rights of Indigenous Peoples.

This Declaration recognizes equal human rights of indigenous peoples⁴ and their right in performing their own cultures, it also encourages a harmonious and mutually respecting relation between indigenous people and States Parties. Paragraph 1 of Article 31 states, “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.” Paragraph 2 continues, “In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.” Now we recall the definition of ICH in the 2003 Convention and compare it with these two above cited paragraphs. The definition divides ICH into five major domains, “(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;

- (b) performing arts;
- (c) social practices, rituals and festive events;
- (d) knowledge and practices concerning nature and the universe;
- (e) traditional craftsmanship.”

These domains overlap with what the Declaration defines “cultural heritage, traditional knowledge and traditional cultural expressions” of the indigenous peoples. For instance about traditional medication, Item 24 of the Declaration states, “Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and

⁴ Also known as aboriginal peoples. They are peoples who lived in a place for a long time before immigrants move in. For instance Native Americans, the Maori people of New Zealand, and the Inuit people of the Arctic regions. Ethnic minorities in Taiwan are also addressed by aboriginals. There are roughly 370 million aboriginals around the world, they are dispersed in more than 90 countries or regions. According to statistics and research of the UNESCO, most of these people live in poverty. Indigenous people account for 15 percent of the world’s population in poverty.

minerals.” Similarly in the Convention, we see “knowledge and practices concerning nature and the universe” should be safeguarded.

Secondly, ICH should be compatible with the request of mutual respect between communities, groups and individuals. This value is based on the 2001 Universal Declaration on Cultural Diversity, more specifically, it is based on the affirmation of “respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security” (62). This Declaration argues, only when mutual respect and understanding are achieved in both local and national levels, the prospective international peace could be achieved. The first Article of the Convention also reminds us, that the mutual respect is not only between individuals, but also between various actors and ICH elements. With these references in mind, we can better understand the 3rd and 4th ones in the Principles: “3. Mutual respect as well as a respect for and mutual appreciation of intangible cultural heritage, should prevail in interactions between States and between communities, groups and, where applicable, individuals.” and 4. “All interactions with the communities, groups and, where applicable, individuals who create, safeguard, maintain and transmit intangible cultural heritage should be characterized by transparent collaboration, dialogue, negotiation and consultation, and contingent upon their free, prior, sustained and informed consent.” Moreover, these two items furthered mutual respect to interaction. “Transparency” is highlighted in the interactions, and all interactions should be based on free, prior and informed consent. This ethical rhetoric does not only bring rights, it also brings responsibilities. This principle firstly comes from medical ethics, meaning, patients should be informed of the risks of certain treatment before making any decision. It later entered social sciences such as folklore, anthropology and sociology as a moral code. It is also adopted in many international documents. For instance, Article 5 of the 1997 Universal Declaration on the Human Genome and Human Rights states that “Research, treatment or diagnosis affecting an individual’s genome shall be undertaken only after rigorous and prior assessment of the potential risks and benefits pertaining thereto and in accordance with any other requirement of national law.” And “In all cases, the prior, free and informed consent of the person concerned shall be obtained.” Article 6 of

the 2005 Universal Declaration on Bioethics and Human Rights states, “Scientific research should only be carried out with the prior, free, express and informed consent of the person concerned.” Paragraph 5 of Article 15 in the UNESCO Convention on Biological Diversity, “Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.” According to Paragraph 1 of Article 16 of the Nagoya Protocol, “Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that mutually agreed terms have been established.” In the domain of international culture and politics, “free, prior and informed consent” has become a common working principle. Another example could be found in the Declaration on the Rights of Indigenous Peoples, according to Paragraph 2 in Article 32, “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.”

Since the implementation of the 2003 Convention and its Operational Directives, the “free, prior and informed consent” has been well observed in elements nominations and reports on compliance with conventions. For instance, if States Parties submit proposals to nominate an element to the Representative List of the Intangible Cultural Heritage of Humanity, or the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, or they select elements as programmes, projects and activities that best reflect the principles and objectives of the Convention, or even apply for funding at the ICH Fund, they have to provide evidence for free, prior and informed consent of the communities, groups or individuals. The evidence can be paper based or multimedia, or other creative ways that agree with the laws of States Parties and those of local communities. The committee welcomes various ways of expressing consent. The consent should be translated into English or French, and the information about the evidence of the consent and the form of the consent should be attached. Au-

dio or video evidence of consent is acceptable, some states even offer material objects as evidence of consent. Nominations can be refused if the consent is not properly provided or cannot be proved.

Principle 4 further requires “sustained consent,” meaning, the safeguarding practices should create a long term and interactive mechanism, to ensure that relevant communities, groups and individuals can participate in the process all the time and can have the right to safeguard and manage their own ICH.

Note that “mutual respect” also suggests a requirement of balancing the interests of all stakeholders. On the one hand, to obtain and enjoy the rights of cultural heritage is part of human rights, and also the basis for many international human rights instruments, and a standpoint of the 2003 Convention⁵. States Parties should guarantee that the actors in safeguarding ICH can access ICH. On the other hand, however, the process of accessing ICH should be based on the basis of “respecting customary practices governing access to specific aspects of such heritage” (Convention, 14-d-ii). This means that actors from outside of the local communities should respect local customs “in particular secret and sacred aspects” (Operational Directives, 101, c). Therefore, if we look at Principle 5, “Access of communities, groups and individuals to the instruments, objects, artefacts, cultural and natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage should be ensured, including in situations of armed conflict. Customary practices governing access to intangible cultural heritage should be fully respected, even where these may limit broader public access.” We find it compatible with the mutual respect principle, because sometimes public access to local ICH may be restrained, but if it is due to local customary practices, we should fully respect the restriction.

“Mutual respect” can also be perceived as the respect for the diversity of human being. This value resonates with the 2001 Universal Declaration on Cultural Diversity. Cultural diversity is the wellspring of communication, renovation and creativity, it is important to hu-

man beings as biodiversity is to the balance of the Great Nature. Cultural diversity is the shared heritage of human being, and one needs to recognize it as benefiting the current generation and generations to come. Defending cultural diversity is moral, it is part of the respect for individuals’ dignity. Everyone should be able to participate in his or her own cultural activities, but these activities should not violate human rights and freedom. The Convention also recognizes ICH as the source of cultural diversity, and all States Parties should assume equal responsibility to ensuring cultural diversity. This means, all forms of ICH are equal as long as they are within the definition of Paragraph 1 of Article 2 of the Convention, and any endeavor to hierarchize ICH forms is improper. According to number 6 of the Principles, “Each community, group or individual should assess the value of its own intangible cultural heritage and this intangible cultural heritage should not be subject to external judgements of value or worth.” This principle is about equality and respect for diversity. Cultural diversity is also the basis of human rights, especially the right of self-government and determination. This could be better observed in the UNESCO 2000 World Culture Report, of Cultural Diversity, Conflict and Pluralism. UNESCO is always clear about its core values in raising the awareness of cultural diversity. In Chapter 1 of this report, we see this statement, “the world does not consist of a mosaic of cultures but of a constantly changing river of cultures with its different currents forever mingling” (24). This image of rainbow river is borrowed from Nelson Mandela’s metaphor of the ‘Rainbow Nation’ for South Africa. The report argues, although cultural diversity may leads to conflict, but conflict “is not necessarily an obstacle to successful development” (30). The responsibility lies on the shoulders of the governments, who need to channel conflicts as a constructive power rather than “destructive of social order” (ibid). “If cultural diversity is an insuppressible expression of human spiritual creativity, then the creation of diversity is also unshakable. No power can suppress and strangle it. But the definition of “difference” given by government and social customs decides whether difference or diversity leads to creativity in a society, or violence or repulsion (guan shijie). Principle 6 emphasizes the self assessing of ICH, and it believes that any external judgment is against the spirit of the 2003 Convention. One needs to recognize diversity and difference. Only by so

⁵ Farida Shaheed discusses to what extent do obtaining and enjoying cultural heritage form International human rights law. She emphasizes that in order to solve problems in the field of cultural heritage, one has to have the base on human rights. She also created a list of human rights issues related to cultural heritage. See : [Farida Shaheed. 2011].

doing can people mutually appreciate, transmit and share their ICH forms, eliminate misunderstandings and discriminations, thus enhance international peace and security. This basic idea appears in many UNESCO issued documents. March 27, 2014, in his speech at the headquarters of UNESCO in Paris, President Xi Jinping said, "Civilizations have become richer and more colorful with exchanges and mutual learning. Such exchanges and mutual learning form an important drive for human progress and global peace and development"⁶. The mutual learning and exchange between civilizations, is also a Chinese wisdom in enhancing cultural diversity.

Thirdly, ICH should be compatible with the requirements of sustainable development. This value is also part of the definition of ICH offered by the Convention. ICH is a shaping power of cultural diversity and it is also a guarantee of sustainable development. The concept of "sustainable development" is firstly seen in the Brundtland Report of 1987⁷. It is a mode of development that can fulfill the requirements of the current generation and does not exhaust resources needed in future development. Ten years after the Brundtland Report, this principle is reiterated in the 1997 Declaration on the Responsibilities of the Present Generations Towards Future Generations in Article 1: "The present generations have the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded." Therefore, the responsibility of present generation also forms part of the ICH ethical concern. It also guarantees cultural diversity over years and generations.

Around this concern, the Principles also have mutually supporting statements. Let's look at numbers 7, 8, 9 and 10: Number 7: "The communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the

communities or others." Number 8: "The dynamic and living nature of intangible cultural heritage should be continuously respected. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage." Number 9: "Communities, groups, local, national and transnational organizations and individuals should carefully assess the direct and indirect, short-term and long-term, potential and definitive impact of any action that may affect the viability of intangible cultural heritage or the communities who practise it." And Number 10: "Communities, groups and, where applicable, individuals should play a significant role in determining what constitutes threats to their intangible cultural heritage including the decontextualization, commodification and misrepresentation of it and in deciding how to prevent and mitigate such threats."

To juxtapose these four principles is a response to the Operational Directives. According to paragraph 102 in the Operational Directives, "All parties are encouraged to take particular care to ensure that awareness-raising actions will not:

- (a) de-contextualize or denaturalize the intangible cultural heritage manifestations or expressions concerned;
- (b) mark the communities, groups or individuals concerned as not participating in contemporary life, or harm in any way their image;
- (c) contribute to justifying any form of political, social, ethnic, religious, linguistic or gender-based discrimination;
- (d) facilitate the misappropriation or abuse of the knowledge and skills of the communities, groups or individuals concerned;
- (e) lead to over-commercialization or to unsustainable tourism that may put at risk the intangible cultural heritage concerned.

This paragraph is tuned by a negation word, "not," one finds the 5 not-to-dos a powerful claim. However, many actors actually do not fully appreciate the Convention and its Operational Directives, some are even still using invalid guidelines in abolished old conventions⁸. In training sessions offered by the Chinese Ministry of Culture, we always emphasize the five-nots. We hope to use them as a basic instruction to follow in ICH safeguarding. The power of negative imperative sentences lies in that it sounds alarming for all actors, so that they become aware in ICH safeguarding activities.

⁸ See: [Bamoqubumo. 2015].

⁶ President Xi's speech at the headquarters of UNESCO in Paris. http://news.xinhuanet.com/politics/2014-03/28/c_119982831_2.htm[2016- 07-22].

⁷ This report is Report of the World Commission on Environment and Development: Our Common Future, is named after Norway's former prime minister, Gro Harlem Brundtland, who was then chairing the World Commission on Environment and Development.

In paragraph 103 of the Operational Directives, “States Parties are encouraged to develop and adopt codes of ethics based on the provisions of the Convention and these Operational Directives, in order to ensure appropriate ways of raising awareness about the intangible cultural heritage present in their respective territories.” Actually in the first draft of the Operational Directives, we can see very similar suggestions. And the official issuance of the Principles further suggests the necessity of codes of ethics to the States Parties.

The Operational Directives also refer to local legislative tools in ensuring the cultural rights of communities, groups and individuals. We see in paragraph 104 that “States Parties shall endeavour to ensure, in particular through the application of intellectual property rights, privacy rights and any other appropriate form of legal protection, that the rights of the communities, groups and individuals that create, bear and transmit their intangible cultural heritage are duly protected when raising awareness about their heritage or engaging in commercial activities”.

Another major challenge facing the safeguarding of ICH is commodification and commercialization. An aftermath is the appropriation and possession of the cultural rights of relevant communities, and long-term violation of intellectual property. Many activities under the banner of protection and urgent protection are actually re-invention, re-creation of ICH without proper moral consideration, or even exploitation or violation of ICH. Actually, about how to cope with commodification of ICH elements, the Operational Directives have already managed to provide an instruction. According to paragraph 116, “Commercial activities that can emerge from certain forms of intangible cultural heritage and trade in cultural goods and services related to intangible cultural heritage can raise awareness about the importance of such heritage and generate income for its practitioners. They can contribute to improving the living standards of the communities that bear and practise the heritage, enhance the local economy, and contribute to social cohesion. These activities and trade should not, however, threaten the viability of the intangible cultural heritage, and all appropriate measures should be taken to ensure that the communities concerned are their primary beneficiaries. Particular attention should be given to the way such activities might affect the nature and viability of the intangible cultural heritage, in particu-

lar the intangible cultural heritage manifested in the domains of rituals, social practices or knowledge about nature and the universe.” And paragraph 117, “Particular attention should be paid to avoiding commercial misappropriation, to managing tourism in a sustainable way, to finding a proper balance between the interests of the commercial party, the public administration and the cultural practitioners, and to ensuring that the commercial use does not distort the meaning and purpose of the intangible cultural heritage for the community concerned.”

Understandably, nowadays, problems of commercialization may have already surpassed the scope of the 2003 Convention. However, a basic rule does not change, that is, any commercial activity emerges from any ICH element should benefit the community, and should not harm sustainable development.

About legislative endeavors made by UNESCO in safeguarding ICH and coping with the relationship between ICH, intellectual property and commercial and economic concerns, after the 1989 Recommendation was firstly proposed, there had been a ten-year discussion of how to submit relevant problems to World Intellectual Property Organization (WIPO) for discussion and solve the problems on the level of International Law. From 1999, WIPO has made great achievement in lawmaking in terms of intellectual property of folklore or folk art. I would highlight one thing here. During the sixth session of the General Assembly of the States Parties that took place from 30 May to 1 June 2016 at UNESCO Headquarters in Paris, the recommendation of adding a new chapter to the Operational Directives is approved⁹. And the new chapter is currently Chapter 6, “Safeguarding intangible cultural heritage and sustainable development at the national level.” In this new chapter, ethic concerns also appear many times. For instance, 171c, “ensure that such plans, policies and programmes respect ethical considerations and do not negatively affect the viability of the intangible cultural heritage concerned or de-contextualize or denaturalize that heritage;” and 178 b, “adopt appropriate legal, technical, administrative and financial measures, including codes or other tools of ethics, to promote and/or regulate access to farming, fishing, hunting, pastoral and food gathering, food preparation and food preservation knowledge and practices, that are

⁹ http://www.unesco.org/culture/ich/doc/src/ICH-Operational_Directives-6.GA-PDF-EN.pdf. p170. [2016-08-25]

recognized by communities, groups and, in some cases, individuals as part of their intangible cultural heritage, as well as equitable sharing of the benefits they generate, and ensure the transmission of such knowledge and practices;” and 184 “States Parties shall endeavour to take full advantage of intangible cultural heritage as a powerful force for inclusive and equitable economic development, encompassing a diversity of productive activities with both monetary and nonmonetary value, and contributing in particular to strengthening local economies. To that end, States Parties are encouraged to respect the nature of that heritage and the specific circumstances of the communities, groups or individuals concerned, particularly their choice of collective or individual management of their heritage while providing them with the necessary conditions for the practice of their creative expressions and promoting fair trade and ethical economic relations”.

There is a wide range of topics around sustainable development. Knowledge and skills passed down with ICH are treasured developmental resources accumulated by generations of human being. Especially for the communities, groups and individuals whose everyday life practices are based on these passed-down knowledge systems, ICH forms are even more irreplaceable. Many a time in vernacular systems of knowledge or management of intelligence, we find solutions for challenges facing the humanity in the contemporary society. From biodiversity, climate change, management of soil, grasslands and water resources, to natural disasters, poverty, conflicts or even violence, these issues are not always destructive, but often seen as driving forces to elicit new human reactions and reach a new balance between environment and human being. This is the meaning of inscribing the Council of Wise Men of the plain of Murcia and The Water Tribunal of the plain of Valencia in the Representative List of the Intangible Cultural Heritage of Humanity in 2009¹⁰. Similar folk management of resources could be seen in China, such as the Management Committee of Resources for Dongba Papermaking¹¹.

By looking at these cases, it is not hard to conclude that local or community’s empirical knowledge in passing down and renovating their own heritage should be included into

ICH safeguarding processes at national or international levels. Empirical knowledge of one community could also inform future actions of safeguarding similar ICH forms in other communities. By examining the documented cases of previous ICH safeguarding actions, we are able to locate various available and practical tool kits for current and future actions. By tool kits, I am talking about objectified empirical knowledge of local communities, they provide codes of ethics that are recognized by the local people, and are for their own benefits.

In contemporary ICH safeguarding actions in China, disrespect for ICH and the exploitation of it are not uncommonly observed. This fact requires our colleagues to better appreciate the suggestions in the Operational Directives that encourage safeguarding actions compatible with the aforementioned four principles. Although Chapter 6 of the Operational Directives is newly supplemented, the spirit of sustainable development was actually among the original concerns when the Directives were firstly drafted. These principal suggestions and recommendations mutually support one another, and together enable a healthy environment for safeguarding the cultural diversity, creativity and right to self-determination of all nations.

Value Three: Compatible with the general interest to humanity

This value is directly cited from the Preface of the 2003 Convention. It means that firstly, safeguarding ICH is a general willingness and shared concern of all human beings; secondly, the safeguarding of specific forms of ICH is a responsibility of their respective communities, groups and individuals; thirdly, it is a continuing fact that the borrowing and sharing of ICH forms are happening between different communities, groups and individuals.

Principle 11 is based on this core value. I am quoting, “Cultural diversity and the identities of communities, groups and individuals should be fully respected. In the respect of values recognized by communities, groups and individuals and sensitivity to cultural norms, specific attention to gender equality, youth involvement and respect for ethnic identities should be included in the design and implementation of safeguarding measures.” This principle addresses many concerns shared by world nations. For instance gender equality, responsibility of current generation, cultural identification of ethnic minorities, all of them draw predominant attention of intergovernmental organizations who work under the supervision of United Nations. Gen-

¹⁰ <http://www.unesco.org/culture/ich/en/decisions/4.COM/13.70> [2016-08-25]

¹¹ About Dongba Papermaking, see [Zeng and Guo 2009].

der equality in particular, is one of the priorities of UN, it is always of equal importance of regional affairs of Africa. In UN's administrative arrangement, every division has to ensure gender equality, for instance education and gender, media and gender, information technology and gender, and so forth. The ICH Section also has to recognize the issue of gender equality in ICH safeguarding. For this end, it issued a report *Gender Equality: Heritage and Creativity* in 2014¹².

Now let's return to the 1997 Declaration on the Responsibilities of the Present Generations Towards Future Generations. It states in Article 7, "With due respect for human rights and fundamental freedoms, the present generations should take care to preserve the cultural diversity of humankind. The present generations have the responsibility to identify, protect and safeguard the tangible and intangible cultural heritage and to transmit this common heritage to future generations." The purpose of this Declaration is to enhance the inter-generation responsibility of human being. Because actually new generation's participation in ICH is an issue more complex than it appears to be. There are at least three problems: 1. Children's safety; 2. Child labor; 3. Forced participation. To provide one simple instance: Recently, one proposal nominating an ICH element was rejected because in the documents provided, there is a picture of a young child participating in a training event for a traditional craft, per the request of the event, the child is in a high place without any protection. Although the documents did not explain the situation of the child, this picture is alarming enough for us to reconsider the ethical issues in this piece of ICH. The child was learning a craft basing on the traditional way of training, but this tradition may require retrospection: how to protect the young practitioners' physical and mental well being when teaching them traditional skills is also a responsibility of the older generation.

Similarly, in order to protect the rights, dignity and benefits of indigenous peoples, the Declaration on the Rights of Indigenous Peoples established a globally effective framework. Economic, social and cultural rights are key to survival and leading a decent life. To ensure the rights of minorities are also a shared concern of 200 Member States of UNESCO. Especially in recent years, with the development of globalization, migrants and people in

diaspora become a source of cultural conflict in many countries. So the question of how to address these problems is profoundly related to the question of how to enhance global security. These conflicts are quite observable in Europe, and Germany even recognized the failure of multiculturalism as its state policy. However, failure is the preface for success, just as conflicts can generate innovation. ICH is believed to be able to enhance cultural diversity and equal conversation between different cultures. As early as 1966, UNESCO has approved Declaration of Principles of International Cultural Co-operation. In the 3rd Round Table of Ministers of Culture in 2002, Istanbul Declaration was adopted, indicating that ICH is an important constructive element of national attributes around the world. Safeguarding and enhancing ICH is crucial in promoting cultural diversity and solidarity of human beings. It also calls for international cooperation in the framework of the Declaration on World Cultural Diversity. World nations should come up with measures and policies in collecting and categorizing ICH forms. In the Declaration on World Cultural Diversity, "Cultural Diversity and International Solidarity" is an important part. And in the 2003 Convention, the title of Chapter 5 is International cooperation and assistance. We could conclude that UNESCO has always been focusing on enhancing international cultural conversation and exchange, and ICH is one step toward this goal.

The draftsmen of the 2003 Convention abandoned the rhetoric of 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, i.e. "the world heritage of mankind as a whole"(9). However, the 2003 Convention still recognizes that safeguarding ICH is "general interest to humanity" and States Parties should "undertake to cooperate at the bilateral, subregional, regional and international levels" (Article 19-2). But this should not be done at the cost of alienating communities, groups and individuals from their own ICH forms. This value thus is linked to the first value, that communities, groups and individuals should assume primary role in practicing, transmitting and safeguarding their own ICH. This value is also reflected in the Principles, actually the 12th principle, which states, "The safeguarding of intangible cultural heritage is of general interest to humanity and should therefore be undertaken through cooperation among bilateral, subregional, regional and international parties; nevertheless, communi-

¹² For a further discussion in Chinese, see [Kang, Li. 2016].

ties, groups and, where applicable, individuals should never be alienated from their own intangible cultural heritage.” Up to this point, the twelve principles have formed a complete discursive system where the beginning and the end mutually confirm and support each other.

It is fair to conclude that the Principles are meticulously designed to be a successful guidance for the safeguarding of ICH. However, just as stated in the preface of the Principles, “They represent a set of overarching aspirational principles that are widely accepted as constituting good practices for governments, organizations and individuals directly or indirectly affecting intangible cultural heritage in order to ensure its viability, thereby recognizing its contribution to peace and sustainable development. Complementary to the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, the Operational Directives for the Implementation of the Convention and national legislative frameworks, these Ethical Principles are intended to serve as a basis for the development of specific codes of ethics and tools adapted to local and sectoral conditions.” In other words, every piece of principle in this document can be further developed according to different contexts in different ICH safeguarding projects. Therefore, actors of all 175 (as of Dec. 2017) states parties can adapt basic ideas of the principles to design different tools in order to address specific ethical concerns in their own ICH safeguarding practices, as long as the tools do not go against the spirit of the Principles.

III. Ethical Activities of Safeguarding ICH Oriented to the Future

Roughly ten years ago, people in China were not familiar with the term “Safeguarding of the Intangible Cultural Heritage.” But now, ICH as a concept has been introduced into many people’s daily communication and well accepted with the influential safeguarding practices on all levels from the local to the national and international. By the end of 2015, Chinese central government has invested a total 4.2 billion RMB to the special fund for the safeguarding of ICH. The Chinese State Council has approved the announcement of 4 National ICH lists including 1372 elements. The Chinese Ministry of Culture named 4 lists of national ICH inheritors with a total number of 1986 people; while regional governments also approved the announcement of 12294 ICH inheritors on the provincial level. The Chinese government has established 18 experimental

areas for safeguarding the ecology of ICH, and announced 2 lists of 100 representative enterprises and institutions that are set up as bases for productive safeguarding of ICH. Simultaneously, via the international cooperation mechanism that has been provided by the 2003 Convention, 30 elements in China have been successfully inscribed into the Representative List of Intangible Cultural Heritage of Humanity and 7 elements into the List of Intangible Cultural Heritage in Need of Urgent Safeguarding. There is one element that has been selected as one among the “programmes, projects and activities that best reflect the principles and objectives of the Convention.” These numbers indicate that China has been endeavoring to discover and safeguard ICH of all ethnic groups.

The Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage prepares the implementation of the 2003 Convention, and the General Assembly of States Parties supervises its implementation. The secretariat of UNESCO assists states parties in their specific safeguarding projects with the help of Operational Directives and international cooperation mechanism, including the ICH Fund, lists, periodic reporting, etc.. In general, the Convention and its byproducts bring both rights and obligations to the states parties. To join the Convention means that we abide by the provisions of the Convention, fulfill the obligations of states parties, and welcome supervisions. Almost 15 years have passed since the approval of the 2003 Convention, and since its implementation in 2006, actors in safeguarding ICH have accumulated 9 years of practical experience. Beside the Convention, Chinese government is enacting its own ICH safeguarding regulations too. On 25th, February 2011, The 19th Session of the Standing Committee of the Eleventh National People’s Congress adopted Intangible Cultural Heritage Law of the People’s Republic of China, which became effective on June 1st, 2011. How to safeguard ICH within the dual frames of national and international legislations has become a focus of discussion among scholars and governments. What can we say about ethical concerns about ICH safeguarding that involves endeavor of all levels from local to international?

Based on reports of the ICH Intergovernmental Committee since its fourth standing committee, Bamoqubumo who has worked on international cooperation on ICH safeguarding for a long time summarizes the transversal issues of global ICH safeguarding projects as

following: 1. Primary role of communities in the process of ICH safeguarding; 2. Improper terminology (authenticity, real, originality, outstanding, unique); 3. Community oriented vs. economic oriented commercial use of ICH elements; 4. Safeguarding and nomination of ICH elements out of non-cultural purposes; 5. Long-term safeguarding process vs. short-term outcomes; 6. Gender equality; 7. Sustainable development; 8. Participation of experts of sustainable development into ICH safeguarding; 9. Youth and children; 10. capability construction; 11. Aboriginal peoples and ethnic minorities; 12. International resources and trans-boundary sharing (interethnic or interracial relationship, national states, immigrants, diasporas, nomad traditions and multi-national submission of nominations); 13. Intellectual property; 14. Relationship between the 1972 Convention and the 2003 Convention; 15. ICH elements related to space, place, and handicrafts; 16. Confusing the 2003 Convention with the 2005 Convention; 17. Inheritors and practitioners; 18. Participation of multiple actors, not restricted to cultural institutions; 19. Issues of imposing safeguarding strategies, de-and-re-contextualization, museumization and theaterization; 20. Ethical principles of ICH safeguarding (Chinese Folklore Society, 2015 Annual Report of UNESCO ICH Safeguarding Assessment Team).

These issues are universally observed, because they are all more or less linked to ethical concerns. Therefore, the endorsement of the 12 Principles not only provides guidance to establish regulations, but also inspire all states parties to reflect on their own ethical issues and renew their own ICH safeguarding ideas.

Specifically, how to contextualize these ethical principles in our own reality of safeguarding ICH and respond to ethic concerns in sustainable development, has always been a challenge to actors including governments and scholars. Therefore, we suggest introduce an ethic perspective into ICH safeguarding projects in China, and form long-term discussion about it. This will enhance our awareness of ICH safeguarding, construct our ability of implementing the Convention, further develop more possibilities of safeguarding ICH, and help us avoid ethic pitfalls in our practices.

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Этические принципы ЮНЕСКО по охране нематериального культурного наследия: интерпретация и обзор комментариев¹

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Аннотация. 4 декабря 2015 г. Межправительственный Комитет по охране нематериального культурного наследия ЮНЕСКО на своей десятой сессии в Виндхук (Намибия) одобрил «Этические принципы охраны нематериального культурного наследия». Данный документ является еще одним эффективным на международном уровне документом, который был сформирован ЮНЕСКО по вопросу об охране нематериального культурного наследия. Принятые этические принципы охраны нематериального культурного наследия дополняют Конвенцию 2003 года об охране нематериального культурного наследия в этическом измерении. В них приводятся руководящие указания для организации процессов охраны нематериального культурного наследия на местном, национальном и международном уровнях. В статье приведено интерпретативное прочтение документа и дан обзор комментариев.

Ключевые слова: Межправительственный Комитет по охране нематериального культурного наследия ЮНЕСКО, «Этические принципы охраны нематериального культурного наследия», охрана нематериального культурного наследия