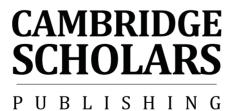# On Intangible Heritage
Safeguarding Governance

On Intangible Heritage Safeguarding Governance: An Asia-Pacific Context

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PREFACE

In recent decades, interest in the intangible cultural heritage (ICH) field has been growing at a remarkable rate. However, while there have been gains in ICH's popularity, there has also been a dearth of information available, which has left holes in understanding the scope of ICH as well as the roles of individuals, communities, and governments in safeguarding activities. This is especially true in areas such as the Asia-Pacific region where there is an array of disparate people and communities in possession of unique ICH.

The aim of this book is to bridge the information gap in the ICH field. Starting with a fresh look at the international instruments involved with ICH safeguarding, this book delves into the concept of good governance as it relates to institutional safeguarding measures. To examine good governance, valuable case studies have been included to demonstrate how effective measures have been successfully implemented in the Asia-Pacific region. In the end, readers will come away with some useful material such as a historical overview of international instruments, an analysis of good governance, and valuable case studies on ICH safeguarding.

This book will be especially valuable to students and professionals in the ICH field who need a compact yet thorough resource on ICH. The annotations found throughout the text will assist in finding additional resources as needed.

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Furthermore, I would like to thank the following individuals and organisations for allowing me to use their photographs in this work: Boyoung Cha (fig. 3-1), Johanni Curtet (figs. 4-4 and 4-5), Saymin Lee (fig. 3-8), Gaura Macacaritadipura (figs. 3-7 and 6-1), Weonmo Park (figs. 1-1, 3-2, 3-3, 3-6, 3-9, 3-10, 4-1, 4-2, 4-3, and 4-6), Nomindari Shagdarsuren (fig. 3-4), the Gijisi Juldarigi Museum, Korea (fig. 6-4), the Hue Monuments Conservation Center, Viet Nam (fig. 3-5), the National Library and Archive, Bhutan (fig. 6-3), the PNG National Cultural

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Creating this work has truly been a joyful journey. It gave me an opportunity to compile my observations and to write about the matters and issues involved with our common and noble mission of safeguarding ICH.

This book is dedicated to all my family.

INTRODUCTION

The aim of this book is to investigate developments in international cultural heritage governance under the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003 Convention) and to critically examine the complex interactions between international heritage governance and local protective systems. The focus here is threefold: First is the development of notion and scope of cultural heritage and intangible cultural heritage through the evolution of international legal standards in the heritage field; second is the impact international governance has had on the ways in which national governments and local societies safeguard, maintain and promote intangible cultural heritage; third is an exploration into the current issues in, and the potential future enhancements of, governance in the intangible cultural heritage field.

This introduction will present several key points related to intangible cultural heritage and international heritage governance, and then subsequent chapters will examine these points more closely. However, before delving into the core subject matter, it is important to establish and define the key terms used throughout this book.

Intangible Cultural Heritage

Intangible cultural heritage (ICH) represents common nonmaterial cultural elements of humanity based on traditional culture and social values. Referring to ICH rather than intangible cultural asset or property creates a more comprehensive concept. However, there has been a disparity among regions in conceptualising ICH in correlation to the priority placed on traditional heritage. In the historic development of international instruments, mainly adopted by UNESCO, the concept of ICH has been developed collectively.

According to the 2003 Convention, ICH—or living heritage—is the mainspring of cultural diversity, and maintaining it is a guarantee of

continuing creativity.[1] The Convention states that ICH is manifested in the following domains among others:

- · oral traditions and expressions including language as a vehicle of the ICH,
- · performing arts (such as traditional music, dance and theatre),
- · social practices, rituals and festive events,
- · knowledge and practices concerning nature and the universe, and
- · traditional craftsmanship.[2]

The 2003 Convention defines ICH as the practices, representations and expressions, as well as the knowledge and skills, that communities, groups and, in some cases, individuals recognise as part of their cultural heritage.

Intangible Heritage Governance

The concept of governance has been popularised in the management and leadership of public and private administration as well as in national and international policies. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) defines governance as "the process of decision making and the process by which decisions are implemented (or not implemented)".[3] Since UNESCAP clarifies that governance covers both the process of decision-making and the process of implementation, an analysis of governance focuses on all the actors involved in the formal and informal decision-making processes, the decision implementation, and the formal and informal structures established to handle such decision-making and implementation.

Governance within the intangible heritage field is described as a comprehensive system that relates to safeguarding and promoting ICH at both the national and international level. It includes various legal, political, and administrative structures that the World Humanity Action Trust describes as "the framework of social and economic systems and legal and

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[1] UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, Preamble. Paris, 17 October 2003.
http://www.unesco.org/culture/ich/index.php?lg=en&pg=00022.
[2] UNESCO, 2003 Convention, Article 2, Paragraph 2.
[3] UNESCAP, 2009 "What Is Good Governance".
http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp
(Accessed 13 June 2012).

political structures through which humanity manages itself".[4] Within the context of this book, the focus of intangible heritage governance will be observed in relationship to the 2003 Convention.

Local Protective System

A local protective system is an interactive concept of international governance directly involved in the ICH issues of UNESCO Member States in relation to the 2003 Convention. Local protective systems will be more clearly illustrated in chapter four through case studies concerning ICH governance in Korea, Mongolia, Viet Nam, Indonesia, and some countries in the Pacific region.

Background of the Book

In the context of globalisation,[5] as the concept of the global village expands and cities around the world try to replicate each other, humanity's cultural diversity has come under threat. Ironically, at the same time, cultural diversity has become fashionable to the extent that its safeguarding has become the primary goal of several international instruments, including the UNESCO Universal Declaration on Cultural Diversity (2001), the UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage (2003), and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). Cultural diversity's current position of prominence can be explained as either a response to the threat of globalization or as a feature of globalisation. These contradictions and the international policies developed in response to them create a frame for this book.

For the last several decades, safeguarding cultural heritage, including ICH, has been a main concern for international bodies such as UNESCO and other heritage-relevant international non-governmental organisations. With the accelerated pace of globalisation, this concern has become high priority. The reason for this is that ICH safeguarding is closely linked to the socio-cultural identity of people. The people's ICH is considered the

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[4] World Humanity Action Trust, Governance for a Sustainable Future. IV Working with Water (London: WHAT, 2000), 162.
[5] "Excess globalisation can lead to cultural uniformity as well as to the appearance of winners and losers. Both of these are at the origin of highly unstable situations from social and geographical points of view." (F. di Castri, 1995).

most important entity representing the entire complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group. In this context, UNESCO has taken a leading role in promoting intangible heritage governance at an international level through disseminating several international standards and by implementing international programmes for safeguarding ICH.

Beginning with the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and progressing to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), the definition and concept of cultural heritage have been broadened through several decades of academic and institutional debate. This has given birth to the development of international instruments that reflect the need to preserve and transmit diverse cultural heritage throughout the world.

In 2003, UNESCO adopted the Convention for the Safeguarding of the Intangible Cultural Heritage to facilitate the effective protection of intangible heritage throughout the world. The 2003 Convention encourages each State Party to the Convention to strengthen its system for safeguarding ICH within its territory and to cooperate in sub-regional, regional, and international efforts to safeguard ICH.[6] Because the 2003 Convention plays a critical role in the ICH field, it is essential to study the Convention's influence on the relationships between international and local systems as well as its effects on practices related to building more effective intangible heritage governance.

Therefore, the areas of investigation covered here include an analysis of relevant conventions; the conceptual changes of cultural heritage, focusing on ICH according to the developments of relevant international instruments; the major actors involved in promoting heritage governance; and any related problems, future prospects, or both. The presented research also explores the potential for future enhancement of heritage governance at national and international levels.

The included case studies on the development of protective and promotional environments for ICH in Korea, Mongolia, Viet Nam, Indonesia and some countries in the Pacific region, such as Tonga and Vanuatu, provide good examples of the close involvement between local

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[6] UNESCO, 2003 Convention, Article 19.

intangible heritage development and UNESCO's intangible heritage governance. These studies clarify specific effects and issues associated with the interaction between or adaptation of international intangible heritage laws to local protection systems.

This book also investigates correlations between cultural diversity and ICH and between intercultural dialogue and peace building, which are some of the cross-cutting themes of UNESCO that have become operational at the local level. It also takes the theoretical position that intangible heritage governance, which was once predominately localised and independent, has begun to involve interactive partnerships between local and international organisations involved with ICH, particularly since the 2003 Convention. Furthermore, there is an examination into these organisations' need to develop their capacities in terms of legal, political, and cultural expertise to ensure the protection of safeguarding ICH and the viability of its diversity.

The theories and arguments presented throughout this work advocate a multidisciplinary approach to safeguarding and managing intangible heritage, which incorporates the disciplines of international law and politics, heritage studies, and museum studies.

Chapter Outline

The following is a brief synopsis of the remaining chapters.

Chapter 1. The Conceptual Evolution of Cultural Heritage and ICH

The development of the notion and scope of ICH at an international level is based on the concept shift that progressed from the definition of cultural heritage as "cultural property" (Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954) to the definition of cultural diversity as "the manifold ways in which the cultures of groups and societies find expression" (Convention for the Protection and Promotion of Cultural Diversity, 2005). The adoption of international instruments related to ICH safeguarding has also altered the concept of ICH in various ways in that the notion of heritage has expanded from solely including property, such as buildings and monuments, to incorporating symbolic and cultural ideas and values. The conceptual development of cultural heritage is analysed from various perspectives

with particular emphasis on the emergence and evolution of the notion of ICH, and the different categories are specifically researched.

Chapter 2. Governance of Safeguarding in the ICH Field

After chapter one provides a good foundation for understanding the background to safeguarding ICH at an international level, chapter two moves on to discuss the concept of good governance as it relates to the ICH governance. After examining several definitions of good governance by different international agencies in different fields, it is discovered that there are eight characteristics that serve as major components in assessing governance in a theoretical context. These characteristics are: participation, rule of law, transparency, responsiveness, consensus orientation, equity and inclusiveness, effectiveness and efficiency, and accountability. An analysis of governance in the ICH field by applying the eight characteristics to case studies follows in subsequent chapters.

Chapter 3. Interactions between Global and Local Governance of ICH Safeguarding

This chapter investigates the development of global concept of governance in the ICH field and the manner by which UNESCO's heritage governance ICH function at both international and national levels. The research provides an analysis of the international efforts devoted to institutional safeguarding and the interaction between international heritage regimes and local protection systems. Regarding this connection, experiences from the countries that were selected for case studies in chapter four are briefly presented as practical examples of interactions between the global and local levels of heritage governance, and the methods by which international regimes could be adapted to suit local protective systems in effective ways are studied.

Chapter 4. Case Studies: Institutional ICH Safeguarding in Selected Asia-Pacific Countries

The case studies examine ICH governance with a focus on the situation in Korea, Mongolia, Viet Nam, Indonesia and some countries of the Pacific in relation to the relevant developmental processes of institutional ICH safeguarding in those countries. In particular, the research in this chapter deals with the experiences and challenges of safeguarding ICH in Korea. Furthermore, there is a focus on the institutional safeguarding of

ICH in Mongolia, Viet Nam, Indonesia, Vanuatu, and Tonga based on field research, information from experts, and relevant reports and documents.

Chapter 5. Current Issues and Barriers to Good Governance for ICH Safeguarding

This chapter explores the current issues involved with intangible heritage governance by UNESCO as well as an analysis of current issues and the existing barriers to implementing good governance of ICH. These issues are examined based on the characteristics of good governance that were introduced in chapter two, with special consideration on some of the specific issues that have surfaced since the 2003 Convention came into operation.

Chapter 6. Toward Enhancing Intangible Heritage Governance

The final chapter proposes a range of international and local reforms for the current regimes of ICH governance. This chapter also offers suggestions for new, multidisciplinary approaches towards policy development and towards legal and administrative practices that could be implemented to strengthen the governance of ICH safeguarding. In addition, the establishment of a specialised regional institute for ICH that works towards enhancing the governance in the ICH field is reviewed.

Appendix

As an appendix to this book, there is a chart outlining a chronology of the major events and instruments related to ICH governance in UNESCO and in Korea, Mongolia, Viet Nam, and Indonesia.

CHAPTER ONE

THE CONCEPTUAL EVOLUTION OF CULTURAL HERITAGE AND ICH

The concept of ICH safeguarding developed through many years of academic and intergovernmental debate that culminated with the adoption of the 2003 Convention. The concept continues to develop through the workings of the 2003 Convention and other international instruments in the field of culture.

International legal instruments, mainly those adopted by UNESCO, show how the concepts and definitions of cultural heritage have developed over time. However, it is nearly impossible to show this evolution in a logical and consistent manner because the concepts and definitions of cultural heritage for each legal instrument were created to address the individual concerns and issues that arose while the individual instruments were being developed, and these sets of concerns and issues were mainly inconsistent with each other. Lyndel V. Prott and Patrick O'Keefe noted in 1984 that "for various reasons each Convention and Recommendation has a definition drafted for the purposes of that instrument alone; it may not, at this stage be possible to achieve a general definition suitable for use in a variety of contexts."[1] In this regard, Janet Blake also pointed out that "international cultural heritage law has developed with an uncertainty at its centre over the exact nature of its subject matter and based on a set of principles which are not always coherent."[2]

However, as we take an in-depth look at the development of the concept of cultural heritage in the arena of international cultural heritage law leading up to the historic recognition of the ICH domain, we inadvertently encourage active discourse on these issues among individuals

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[1] Lyndel V. Prott and Patrick J. O'Keefe, *Law and the Cultural Heritage* (Abingdon: Professional Books) 8.
[2] Janet Blake, "On Defining the Cultural Heritage", *International and Comparative Law Quarterly*, Vol. 49, No. 1 (2000): 85.

and organisations relevant to the ICH field and perhaps even to the general public.

Expansion on the Concept of Cultural Heritage

In the development of setting international standards for the cultural heritage field, the term *cultural property* was first introduced by the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954). While the Hague Conventions of 1899 and 1907 had called for the protection of culture, neither included the term *cultural property*.[3] The 1954 Hague Convention usage of this term set a historic international standard because it recognised both movable and immovable cultural property within its definition, which covers the relevant importance and the different categories to be protected during times of war.[4]

In the early 1960s, the relationship between culture and nature was identified in international cultural heritage law. The UNESCO 1962 Recommendation concerning the Safeguarding of Beauty and Character of Landscapes and Sites states that landscapes represent the moral and spiritual regenerating influence that belongs to a non-material arena and contributes to cultural life.[5] There were extensions to cultural property in

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[3] Lyndel V. Prott and Patrick J. O'Keefe, "'Cultural Heritage' or 'Cultural Property'?", *International Journal of Cultural Property*, Vol. 1, No. 2 (1992): 312.
[4] UNESCO, Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954 http://portal.unesco.org/en/ev.php-URL_ID =13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.

According to Article 1, Chapter I, of the Convention, Cultural Property covers 1) movable or immovable property of great importance to the cultural heritage of every people such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; 2) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property, such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); and 3) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centers containing monuments".
[5] UNESCO Recommendation concerning the Safeguarding of Beauty and Character of Landscapes and Sites. Paris, 11 December 1962. http://portal.unesco.org/en/ev.php-URL_

the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works by including the "unscheduled or unclassified vestiges of the past as well as artistically or historically important recent sites and structures in the category of the cultural property."[6]

Cultural property or cultural objects were further defined in the UNESCO Convention for the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995). Both conventions share the same definition (relevant categories).[7] It is interesting to note that the 1970 UNESCO

ID=13067&URL_DO=DO_TOPIC&URL_SECTION=201.html. "Considering that, on account of their beauty and their character, the safeguarding of landscapes and sites, as defined in this recommendation, is necessary to the life of men for whom they represent a powerful physical, moral and spiritual regenerating influence, while at the same time contributing to the artistic and cultural life of peoples, as innumerable and universally known examples bear witness…"

[6] UNESCO. Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works. Paris, 19 November 1968.
http://portal.unesco.org/en/ev.php-URL
_ID=13085&URL_DO=DO_TOPIC&URL_SECTION=201.html. 1) Definition
2) The term "cultural property" includes not only the established and scheduled architectural, archaeological and historic sites and structure, but also the unscheduled or unclassified vestiges of the past as well as artistically or historically important recent sites and structures.

[7] UNESCO. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 14 November 1970. portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_ TOPIC&URL_SECTION=201.html .
UNIDROIT. Convention on Stolen or Illegally Exported Cultural Objects. Rome, 24 June 1995.
http://www.unidroit.org/english/conventions/1995culturalproperty/main.htm.
For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:
    (a) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest
    (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance

Convention specifies that cultural property "is specifically designated by each state" while the 1995 UNIDROIT Convention does not.

Imbalance between Tangible and Intangible Cultural Heritage in the 1972 Convention

The UNESCO Recommendation concerning the Protection, at a National Level, of the Cultural and Natural Heritage (1972) and the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972) categorised cultural property into three groups: monuments, groups of buildings, and sites.[8] The 1972 Recommendation

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(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries

(d) elements of artistic or historical monuments or archaeological sites which have been dismembered

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals

(f) objects of ethnological interest

(g) property of artistic interest, such as:

(i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand

(ii) original works of statuary art and sculpture in any material

(iii) original engravings, prints and lithographs

(iv) original artistic assemblages and montages in any material

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections

(i) postage, revenue and similar stamps, singly or in collections

(j) archives, including sound, photographic and cinematographic archives

(k) articles of furniture more than one hundred years old and old musical instruments.

8 a) UNESCO. Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage. Paris, 16 November 1972. http://portal.unesco.org/en/ev.php-URL_ID=13087&URL_DO=DO_TOPIC&URL_SECTION=201.html. For the purposes of this Recommendation, the following shall be considered as "cultural heritage": monuments: architectural works, works of monumental sculpture and painting, including cave dwellings and inscriptions, and elements, groups of elements or structures of special value from the point of view of archaeology, history, art or science groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of special value from the point of view of history, art or science sites: topographical areas, the combined works of man and of nature, which are of special value by reason of their beauty or their interest from the

ascribes "special value" to cultural property from the viewpoints of archaeology for monuments; history, art or science for groups of buildings; and archaeology, history, ethnology or anthropology for sites. The special value of cultural heritage mentioned in the 1972 Recommendation was changed to "outstanding universal value" in the 1972 Convention. The 1972 Convention also succeeded tremendously in promoting the protection and awareness of cultural heritage among the public, thanks to the operation of the widely recognised World Heritage List. However, there has been strong criticism that the target cultural properties within the Convention are limited to tangible forms.

Fig. 1-1. Tongan traditional group dance for girls

archaeological, historical, ethnological or anthropological points of view. b) UNESCO. Convention concerning the Protection of the World Cultural and Natural Heritage. Paris, 16 November 1972. http://whc.unesco.org/en/conventiontext. For the purposes of this Convention, the following shall be considered as "cultural heritage": monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

The concepts of special value or outstanding universal value have also been criticised because of their subjective nature; that is, the qualitative value depends on the viewpoint of the person making the evaluation. An element of cultural heritage that may seem very ordinary or even insignificant to some international experts may be very special to the bearers or community of that cultural heritage. For example, *lakalaka*, Dances and Sung Speeches, in Tonga not only developed over time within the context of Tongan culture but also became an integral part of the culture itself. This synergetic relationship between the element and culture cannot be properly perceived by an observer from another culture who approaches foreign cultures through the eyes of his or her own standards. This lack of perspective into the value of *lakalaka*, or any other intangible cultural element for that matter, introduces a potential harm in that appropriate safeguarding measures will not be applied to those elements that do not have significance to an outsider. It is for this reason that the concept of outstanding universal value was not carried forward and included in the 2003 Convention; it was instead replaced by the concept of community involvement. Janet Blake has explained that the reason why elements of ICH should be of value or importance to *all* people is because these elements play a role in preserving cultural diversity.[9]

Cultural Property versus Cultural Heritage

While the term *heritage* has appeared in international instruments and agreements under the initiatives of the Council of Europe—namely, the European Convention on the Protection of the Archaeological Heritage (1969) and the Convention for the Protection of the Architectural Heritage of Europe (1985)—it seems as though the theoretical approaches and discourse over the term were neither fully accepted nor implemented in a timely manner at an international level. The term *cultural heritage* is found in Article 4 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). It also appears in four places in the 1972 Convention: in Paragraph 2 of the Preamble and in Articles 1, 11 and 24. The term is used again in a series of UNESCO instruments—the Convention for the Protection of Underwater Cultural Heritage (2001), the Convention for the Safeguarding of the Intangible Cultural Heritage

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[9] Janet Blake, Commentary on the UNESCO 2003 Convention on the Safeguarding of the Intangible Cultural Heritage (Builth Wells: Institute of Art and Law, 2006) 80.

(2003), and Declaration concerning the Intentional Destruction of Cultural Heritage (2003).

This increasing prevalence of *heritage*, and *cultural heritage* in particular, shows that these terms have receiving stronger support internationally than *cultural property* has. Prott and O'Keefe clearly argued in their 1992 article cited above that it is time for the law and lawyers to recognise that *cultural heritage* is rightfully superseding *cultural property*. They have argued that "the existing concept of property does not, and should not try to, cover all evidence of human life that we are trying to preserve…. They can be encompassed by the term cultural heritage."[10] Some analytical answers may be given as to why cultural heritage has been more appropriate and preferred in the context of the recent development of international cultural heritage studies. As is widely acknowledged by scholars in the field, the concept of cultural property began with a focus on material cultural heritage (whether movable or immovable), such as cultural artefacts or architectural monuments,[11] and the rather Western-oriented approaches taken by international cultural heritage law in its early stages.

Public Inheritance for the Next Generation

It is understood that the protection of cultural property began with the idea of ensuring the individual's and the State's right to gain possession over precious artwork and monuments. In this regard, Prott and O'Keefe point out that "property connotes ownership and this… has been defined in the Common Law as meaning the right to exploit, to alienate, to exclude".[12] They go on to say, "It looks for an owner and assesses everything from that standpoint, rather than looking to the preservation of the cultural heritage itself".[13] They also point out that the fundamental policy behind property law is the protection of the rights of the possessors while the protection of the heritage for the enjoyment of the present and later generations is behind cultural heritage law.[14]

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[10] Prott and O'Keefe, "'Cultural Heritage' or 'Cultural Property'?", 307.
[11] Blake, "On Defining the Cultural Heritage".
[12] Prott and O'Keefe, "'Cultural Heritage' or 'Cultural Property'?", 310.
[13] Ibid., 314.
[14] Ibid., 309.

The Chinese term for *property* (財) means commodities or goods under private ownership with an economic connotation while the Chinese term for *heritage* (遺産) means an inheritance or legacy in a broader sense. This limited perception of cultural heritage has been perpetuated in many Asian countries, including Korea, Japan, and China, by the use of the term *cultural property* in each country's policies.

However, since cultural heritage is regarded as something to be safeguarded and handed down to subsequent generations, public ownership of and responsibility for cultural heritage has become more emphasised with developments in international cultural heritage law. This point has been noted by Prott and O'Keefe.[15]

Universality of Cultural Heritage

It seems that at least until the 2003 Convention was adopted, the international instruments of the cultural heritage field have focused mostly on tangible cultural property, such as artworks, monuments and buildings, which are easily found in Western societies. Climate and history in many parts of the world, particularly in the Asia-Pacific, Latin American and African regions, have not been kind to either tangible or intangible cultural heritage, and so in many places, not much remains of the glorious cultural heritage of the past. Then again, "in societies where intellectual and spiritual life has found forms not represented by great monumental complexes or the creation of a vast number of material objects, the preservation of cultural identity depends far more on the appreciation of tradition and the preservation of folklore, rituals and traditional skills. This has created a complex of protective needs which is not well comprehended by the word 'property'".[16] Many countries in regions worldwide have developed their cultural heritage based on folk and oral traditions, which are typically non-material cultural heritage. In fact, there has been a strong need to broaden the concept of cultural heritage in order to embrace the different characteristics of cultural assets found in various regions of the world. This need has been particularly evident, for example, in the implementation process of the 1972 Convention. In other words, the diversity of the cultural heritage field has been emphasised in international cultural heritage law.

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[15] Ibid., 311.
[16] Ibid., 312.

Beyond Cultural and Natural Heritage: Encompassing Non-material Cultural Heritage

There have been strong arguments among scholars that the definition of cultural property based on property law does not include or account for the varying traditional cultural expressions and folklore. "What has changed over the years is the great broadening of the concept of what is to be regarded as comprising this inheritance, moving from a narrow definition of selected physical elements of "high culture" to often mundane cultural artefacts which express society more generally, and even to non-material elements of culture".[17] In international cultural heritage law, the idea of cultural property was based on material and tangible cultural heritage before the Recommendation on the Safeguarding of Traditional Culture and Folklore (1989) and the 2003 Convention. In addition, the interrelation and sharing of common characteristics between cultural and natural heritage have been recognised in international cultural heritage law in instruments such as in the 1962 Recommendation and 1972 Convention. "There is an aspect of 'natural heritage' which forms a part of the cultural heritage given the importance of certain landscapes and natural features to particular groups and cultures."[18]

Engagement between the Concept of Cultural Heritage and Cultural Diversity

Although it was applied even more explicitly in the 2005 Convention, the concept of cultural diversity[19] was initially brought to the forefront with the UNESCO Universal Declaration on Cultural Diversity (2001), which is related to the 2003 Convention. In fact one of the goals of the 2001 Declaration's Action Plan is to formulate "policies and strategies for the preservation and enhancement of the natural and cultural heritage, and notably the oral and intangible heritage…"[20] The Preamble to the 2003 Convention declares ICH to be the "mainspring of cultural diversity".

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[17] Blake, "On Defining the Cultural Heritage", 72.

[18] Ibid., 67.

[19] "Cultural diversity is a source of creativity and of innovation. It is as fundamental a principle in human life as biodiversity is in the biological sphere." (UNESCO, 2000, p. 102).

[20] UNESCO, Universal Declaration of Cultural Diversity, Item 13 of the Action Plan, Article 12. Paris, 2 November 2001. http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO =DO_TOPIC&URL_SECTION=201.html.

These documents and concepts will be discussed in more detail later.

The definition of *cultural heritage* has developed with the evolution of international cultural heritage laws, despite the individual setting of standards within the cultural heritage field and the focus on intrinsic objectives across nations. As observed, the concept of cultural heritage in the development of international cultural heritage law has broadened when compared with the concept of cultural property as defined in the earlier stages of international cultural heritage safeguarding. Cultural heritage has become a more inclusive concept based on a universal perspective by encompassing non-material cultural heritage in its various categories. International society recognises cultural heritage as a common point for all humankind, and the international community also acknowledges the need to promote cultural heritage transmission to the next generation while emphasising preservation and improved public accessibility beyond the limited concept of private ownership. Indeed, the World Intellectual Property Organisation (WIPO) has been debating the issue of intellectual property rights over traditional knowledge and cultural expressions since roughly 2000,[21] and they have not yet been able to reach a consensus. International experts have also debated the question of who actually owns cultural heritage. Among them was Shuba Chaudhari of India at the New Delhi Conference on Intangible Cultural Heritage and Intellectual Property in March 2007.[22] Those responsible for drafting the 2003 Convention wanted to avoid any possible overlaps with issues of intellectual property, which is expressed in Article 3, paragraph (b) of the 2003 Convention. As the 2003 Convention does not discuss intellectual property issues, they are not of immediate concern.

Cultural heritage has also integrated a holistic approach that covers diverse human assets and the environment. By introducing landscape to the category of cultural heritage in the 1972 Convention, the natural environment became an important element in the definition of cultural heritage. "The connection made between culture and nature (the environment) as expressed by the 1972 UNESCO Convention, whereby cultural heritage is viewed as a non-renewable resource in the same way as a wilderness area or rainforest… also adds a further dimension to the idea of cultural heritage".[23]

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[21] Blake, Commentary on the UNESCO 2003 Convention, pp.11 and 42.
[22] Toshiyuki Kono, ed., *Intangible Cultural Heritage and Intellectual Property*, (Antwerp: Intersentia Publishing, 2009) 189–98.
[23] Blake, "On Defining the Cultural Heritage", 72.

Indeed, for the last several decades, the safeguarding of cultural heritage has been facilitated through various international standards-setting bodies brought about by international initiatives—namely, UNESCO conventions. In many cases, international society has implemented various programmes to protect endangered cultural heritage throughout the world, most often in developing countries, and sustained international cooperation and assistance for them. Within this context, the concept of cultural heritage has come to incorporate the idea of preciousness and the common heritage of humankind.

> The 1972 UNESCO Convention, which stresses the non-renewable character of cultural heritage, also respects State territorial sovereignty although characterising it as common heritage of mankind at the same time. Thus cultural heritage remains under the legislation and sovereignty of the territorial State while also representing a universal value towards whose protection the whole international community should cooperate.[24]

In addition, the evolution of the cultural heritage concept has been achieved in international cultural heritage laws by accommodating, within the legal standpoint, additional perspectives from fields such as anthropology, archaeology, history, and others. Bringing in experts from different fields was obviously necessary, as experts in international law may not have enough expertise in other fields that are close to the essence of cultural heritage. However, successfully promoting this broader cultural heritage concept that has evolved from international cultural heritage law within the context of cultural heritage policy at both the national and regional level poses a great challenge.

Development of the ICH Concept

The development of the ICH concept and the nature of its definitions are briefly outlined below. Later, the debates surrounding the conceptual development of ICH to date will be evaluated. In defining ICH, it may be useful to begin with an examination of the international legal instruments and programmes brought by UNESCO, particularly the following developmental steps.

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[24] Ibid., 71.