Preface

Laura Graham (2006) recently wrote that anthropologists are obligated to promote human rights and social justice. Her call to action, especially among vulnerable communities, is one felt in many disciplines. We take particular pleasure in the range of fields represented in this volume on cultural heritage and human rights: anthropology and archeology (Hugo Benavides, Jan French, Charles Orser, Anne Pyburn, Helaine Silverman, Laurajane Smith, Larry Zimmerman), architectural and landscape history (D. Fairchild Ruggles), landscape architecture and geography (James L. Wescoat, Jr.), cultural heritage conservation and urban geography (William Logan), urban planning (Chris Silver), and history, cultural studies, human rights, and international and public affairs (Elazar Barkan). The richness of perspectives herein reflects both the disciplines and the dialogues among the authors.

The volume is divided into two parts. Part I begins with an introduction, written by the editors, that provides an overview of the themes that emerged in the workshop that gave rise to this volume. It concludes with the text of the United Nations' Universal Declaration of Human Rights. Part II begins with William Logan's paper, which acts as a second introduction. There is a strong link between Logan's discussion of conflict and the specific South Asian case study presented in James L. Wescoat, Jr.'s essay. Like Wescoat, Chris Silver is concerned with conflicting claims to heritage sites in the context of tense local politics, local cultural antagonisms and tourism; his case study is Bali. The papers by Charles Orser, Jan French, Hugo Benavides, and Larry Zimmerman are united by their treatment of historically denigrated and disenfranchised populations. Orser deals with the Irish who, although a majority in their own country, faced centuries-long oppression from British colonialists that collided in the middle of the nineteenth century with the potato famine, thereby generating a mass migration and diaspora. The Africa-descended population of Brazil, discussed by French, is likewise a diaspora and one that faced terrible challenges due to the experience and legacy of slavery. Upon abolition this population still remained at the bottom of the social scale. Just as Irish-Americans have looked to their homeland in the construction of their cultural heritage, so, too, Afro-Brazilians are empowering their own trans-oceanic identity. The other great underprivileged group in Latin America is its own native peoples. Benavides is

interested in the cognitive dissonances between an appropriated pre-Hispanic past in Ecuador and its Indian present as played-out at the country's largest archeological site. Attention to native people leads us to Zimmerman's paper on how Indians have participated in, or been excluded from, writing the narratives of national commemorative sites. Laurajane Smith also deals with native people in her discussion of one Australian Aboriginal group's struggle to manage its own cultural heritage. At the same time, Smith incisively explores the political aspects of heritage practice and heritage assertion. Those political perspectives resonate with Anne Pyburn's forthright goal of getting archeologists to aid grass roots political action by providing useful information to various groups of stakeholders who then can think about the past in ways that lead to actions other than violence and divisive politics. The volume concludes with Elazar Barkan's philosophical consideration of the problematic entanglements of human rights and cultural heritage understood as cultural property (in both tangible and intangible form), and the question of voice.

In recent years there has been a dramatic increase in scholarly attention to the topic of cultural heritage. Heritage is important because it provides symbolic and economic sustenance, meaning, and dignity to human lives. It legitimizes territorial and intellectual ownership, and it is a critical factor in the formation of social identity. Although heritage as a management practice has been the focus of numerous international conferences sponsored by UNESCO, ICOMOS, ICCROM, and other cultural organizations, the specific relationship between the free expression of cultural heritage and human rights has not been sufficiently explored. The relationship between cultural heritage and human rights is complex and cannot be adequately considered in a single volume such as this; however, it opens the door to further discussion. Cultural rights are a critical dimension of human rights and should be at the forefront of heritage studies. We hope the present volume draws attention to the vital intersections that must be engaged by scholars, practitioners, communities, and politicians in this area.

Our thanks go to the authors who have contributed such stimulating papers, and to our editor at Springer, Teresa Krauss, for providing us all with this important publication opportunity. The participants in this volume met in a workshop at the University of Illinois, Urbana-Champaign (UIUC) in 2006. That meeting, organized by the Collaborative for Cultural Heritage and Museum Practices (CHAMP), was made possible by generous support at UIUC from the Vice-Chancellor for Research, the Dean of Fine and Applied Arts, the Department of Landscape Architecture, the Department of Anthropology, Human Dimensions of Environmental Systems, and the Illinois Program for Research in the Humanities.

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Chapter 2
Closing Pandora's Box: Human Rights Conundrums in Cultural Heritage Protection

William S. Logan

Introduction

On 20 January 2006, Romania became the 30th State Party to sign UNESCO's *Convention for the Safeguarding of Intangible Heritage*. This meant that the Convention, which had been approved by UNESCO's General Conference in 2003, entered into force on 20 April 2006 (as it required 30 signatories to become operational). The Convention signaled the expansion of the global system of heritage protection from the *tangible* (that is, heritage places and artifacts) to the *intangible*. Article 2 of the Convention describes intangible cultural heritage as "practices, representations, expressions, knowledge, skills" – in other words, heritage that is embodied in people rather than in inanimate objects. It is an expansion that many heritage professionals, including some in UNESCO itself, see as opening up a Pandora's box of difficulties, confusions, and complexities.

Concern has been voiced that the Convention was prepared too rapidly, with many key issues, such as the criteria for the new *Representative List of Intangible Heritage*, still needing to be clarified. Without such criteria – or the hurdle of "authenticity" used in dealing with heritage places under the 1972 World Heritage Convention – how will the list be drawn up? How will it be possible to limit the size of the list? The conservation of inanimate objects – places and artifacts – is difficult enough; but the protection of heritage embodied in people raises a whole new set of ethical and practical issues.

This chapter canvasses these concerns, focusing on the "newer," intangible form of heritage. The concerns are clearly important and we need to find ways to deal with them – as practitioners, policy-makers, researchers, and educators – and for the public whose cultural heritage we are talking about. In particular, the chapter focuses on the issue of how we might – indeed must – use the notion of human rights as a way of limiting the proposed Intangible List. The chapter will outline the ways in which the protection and preservation of cultural heritage is especially linked to "cultural rights" as a form of human rights. This linkage is too often ignored or inadequately understood by scholars working in the cultural heritage field. Indeed, it could be said that this deficiency is part of the larger problem facing

the field, which the Smithsonian (2005) recently pointed out – that is, the "vastly under-theorized" condition of the very concept of "cultural heritage."

This linkage is also not clearly understood by cultural heritage practitioners in many countries who too frequently view their work merely as technical. And it seems, too, to be poorly understood by human rights workers, despite the abundance of opportunities around the world to witness people struggling to assert their cultural rights in order to protect their cultural heritage and their cultural identity. Perhaps UN Chief of the Permanent Forum on Indigenous Issues Secretariat, Elsa Stamatopoulou, is correct in suggesting that human rights experts and international law specialists tend to avoid discussion of cultural rights "lest the lurking issue of cultural relativism appear, implicitly, or explicitly, to undermine the delicate and fragile universality concept that has been painstakingly woven over the last five decades" (Stamatopoulou 2004).

The chapter deals mostly with global efforts to protect cultural heritage, although much also applies at the national and local levels. It aims to set a broad agenda for the specific, detailed case studies that must follow as well as for educational curricula in heritage studies. The chapter reflects my personal involvement in the cultural heritage field over three decades, including extensive work with UNESCO and other global agencies, notably ICOMOS and ICCROM, although I hasten to add that the opinions expressed are my own and are not intended to represent the official views of any of these organizations.

Cultural Diversity and Heritage

Heritage usually comprises those things in the natural and cultural environment around us that we have inherited from previous generations – or were sometimes created by the current generation – and that we, as communities and societies, think are so important we want to pass them on to the generations to come. As previously noted, these things can be tangible (places, artifacts) and intangible (practices and skills embodied in people). This chapter started with reference to the Intangible Heritage Convention, though, in fact, the cultural heritage field concentrated, historically, first on the tangible and only in the last 15 years has it turned its attention to the intangible. The World Heritage Convention (to give it its full name, *Convention Concerning the Protection of the World Cultural and Natural Heritage*) deals with heritage places and dates from 1972; the Intangible Heritage Convention came three decades later.

Heritage is the result of a selection process. It is not everything from our history – heritage and history are not one and the same. The aim of heritage protection is to pass on this selection of things with their values intact and in authentic condition. Or at least this is how we think about tangible heritage. There are serious doubts about whether these concepts are relevant to intangible cultural heritage and can be used in identifying the significant things that should be inscribed under the 2003 Convention.

Heritage has acquired enormous economic value, notably as one of the mainstays of the vast tourism industry. But it is also fundamental to cultural identity; it is those things that underpin our identity as communities – national, regional, local, even family. These are things about which we are usually proud; but sometimes they may be important and worthy of conservation because they are reminders of how societies can go wrong; they provide salutary lessons for present and future generations.

Heritage, tangible and intangible, provides the basis of humanity's rich cultural diversity. The flyer for the conference that led to this book asked whether cultural heritage matters enough to go to war for. Clearly large parts of the world think so. Conflicts over cultural heritage and cultural identity abound the world over and are the subject of media scrutiny and academic scholarship, from local disputes through to ethnic cleansing over larger regions and to Samuel P. Huntington's grand clash of civilizations.

UNESCO and Cultural Diversity

At the global level, UNESCO is the peak organization engaged in shaping attitudes to, forming statements of principle about, and engaging with its Member States in projects to protect cultural heritage and cultural diversity. These interests were present in UNESCO's program from the outset: its Constitution refers to the preservation of the "integrity and fruitful diversity of the cultures" of the Member States. But the organization's emphasis has made a number of significant shifts since its establishment in 1946 (Yusuf 2005). In the immediate post-World War II years (late 1940s and 1950s), UNESCO emphasized "intercultural dialogue" as a key strategy for peace building. During the period of rapid postwar decolonization, UNESCO's General Conference adopted in 1966 a *Declaration on the Principles of International Cultural Cooperation*, Article 1 of which states that: "Each culture has a dignity and value which must be respected and preserved," that "every people has the right and duty to develop its culture," and that "In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind."

"Establishing the link between human rights, human dignity and culture," according to Abdulqawi Yusuf, Director of UNESCO's Office of International Standard and Legal Affairs, in a presentation to the third Forum on Human Development in January 2005, "was an important step in bringing culture into the political mainstream of international cooperation, making it constitutive and not only expressive of individual and group identity and independence. This was particularly important for the newly independent countries" (Yusuf 2005: 2).

In the 1970s and 1980s, the emphasis of UNESCO's work on cultural relations shifted to the "culture and development" relationship and to the protection of cultural heritage. The objective was, Yusuf (2005: 2) says, "to ensure the promotion of cultural identity within the context of a global development strategy, which was

at the time being fostered by the international community." Following the 1982 World Conference on Cultural Policies in Mexico, an important conceptual shift occurred in the manner in which UNESCO considered culture in its work. The earlier definition focusing on traditional "arts and literature" was replaced by a new definition that saw culture "in its widest sense, [as] the whole complex of distinctive spiritual, material, intellectual, and emotional features that characterize a society and social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs" (Mexico Declaration on Cultural Policies 1982).

It was during the 1990s that the diversity theme, and especially the protection of diversity, began to emerge as a major focus of UNESCO activities, in large part due to fears that globalization is antithetical to the survival of cultural diversity. The UN had declared the years 1988–1997 as a "Decade for Cultural Development," with "cultural diversity" as a key theme (Lacoste 1994). The Decade ended with the 1998 Stockholm Intergovernmental Conference on "Cultural Policies for Development," which recommended that Member States should "promote the idea that cultural goods and services should be fully recognized and treated as being not like any other form of merchandise." The World Commission on Culture and Development, meanwhile, presented its final report under the title *Our Creative Diversity* in 1995.

During 2000, the then recently appointed UNESCO Director General, Koïchiro Matsuura, established a scheme called *Proclamation of Master Pieces of the Oral and Intangible Heritage of Humanity*, which became the advance guard of the 2003 Intangible Heritage Convention. Then, in October 2000, UNESCO's Executive Board invited the Director General to identify the basic elements of a UNESCO declaration on cultural diversity. In doing so the Executive Board referred explicitly to the need to strengthen UNESCO's role in "promoting cultural diversity in the context of globalization."

The resulting instrument, the *UNESCO Universal Declaration on Cultural Diversity*, was adopted unanimously by the 185 Member States represented at the 31st session of the General Conference in 2001. The UNESCO Web site (2006) refers to it as the founding act of a new ethic being promoted by the organization at the dawn of the twenty-first century, particularly because it provides the international community, for the first time, with a "wide-ranging standard-setting instrument to underpin its conviction that respect for cultural diversity and intercultural dialogue is one of the surest guarantees of development and peace."

Limiting the Scope of Cultural Heritage Deemed Worthy of Protection

The *Universal Declaration on Cultural Diversity* maintains that cultural diversity is the "common heritage of humanity," "a source of exchange, innovation and creativity," and "as necessary for humankind as biodiversity is for nature." Most of us would

agree that the protection of cultural diversity alongside biological diversity is a worthwhile enterprise. There is a richness in the world worth keeping.

There is a claim, often implicit, in the UNESCO documents, however, that conservation should be directed at *all* cultural heritages equally. As an intergovernmental organization, UNESCO has to work diplomatically to achieve consensus, and consequently the emphasis on equal treatment is generally necessary. But there are patently some dimensions of our own culture that we might not want to keep at all – and some elements of other people's cultures that we might hope they would abandon. With tangible forms of heritage, we might just let them disintegrate over time; with intangible forms – living heritage, embodied in people – the issue is not as simple. It is not ethically possible to "own" people in the way that we can own, buy and sell, destroy, rebuild, or preserve physical property – places and artifacts.

Nevertheless, some cultural practices have been eradicated in the past, including social forms such as Chinese foot-binding, and economic forms such as "New World" slavery. The Indian practice of suttee has largely died out. It was banned by the British in the 1820s, but continued to be practiced. The last Indian legislation was as recent as 1987, following the death of a 17-year-old girl, Roop Kanwar, on her husband's funeral pyre in Rajasthan.

Other forms continue today but are actively discouraged by some sections of the world community. These include the burning of female children in northern India (reported on the BBC during April 2006) or female and male genital mutilation practiced by some religious groups. These practices are justified on religious (i.e., cultural) grounds. In the case of the child burning, the perpetrators (village men) believe that these sacrifices to the Hindu goddess of destruction, Kali, bring them a better life in this world. Apparently some 200 cases are known to India's police.

The difficulty with the anthropological definition of culture lies in its breadth, making it possible to claim almost all aspects of human behavior as part of one's "culture." Thus even political behavior like Ku Klux Klan rituals can be seen as a cultural manifestation – one example of many cultural forms held to be important by communities and groups within various countries. Unlike the World Heritage system for heritage places, where the Operational Guidelines (last revised in early 2005) contain a list of ten criteria to be used in the listing process, the Intangible Heritage Convention contains, at present, no criteria – no prescription about which elements within cultures might be regarded as significant and worthy of protection. This may be relatively unproblematic while dealing with exotic art forms, such as traditional music or dance; but it is clearly unsatisfactory when a broader view of culture is taken.

The Convention requires the establishment of two lists: the *Representative List of the Intangible Cultural Heritage of Humanity* and the *List of Intangible Cultural Heritage in Need of Urgent Safeguarding*. As the title of the first, main list indicates, the intangible heritage system is opting for heritage elements that are "representative" rather than the best or the unique. This, too, is problematic: representative of what? How will it be possible to limit the number of representatives on the list? The Convention refers to a future intergovernmental Committee that will have the

responsibility of drawing up a set of criteria for the establishment, updating, and publication of the lists and submitting to the General Assembly for approval the criteria (Articles 16.2 and 17.2). UNESCO advice at the present time times is that "the raw material for these criteria can be found in the Convention's definition of Intangible Cultural Heritage and elsewhere in the text of the Convention".

How then are we to choose which elements of cultures to protect and which to let perish? As I have said, increasingly the issue of preserving cultural heritage is linked to cultural rights as a form of human rights. But where is the universal right to the preservation of cultural heritage articulated? Does recourse to the notion of human rights and to the human right instruments solve our problems completely? My conclusion is that we can, of course, take recourse to the range of international statements (or instruments) concerning human rights and cultural heritage to support our endeavors – but this does not eliminate all our problems as the cases I will raise shortly demonstrate.

Indeed, even within the human rights statements and in the interpretative discourse surrounding them, a deficiency is noted with regard to how the key concepts are seen to interrelate with each other. One human rights scholar, Rodolfo Stavenhagen, writing in 1998, made the point that "Cultural rights [a term we may take to include the right to maintain and enjoy one's own cultural heritage] have not been given much importance in theoretical texts on human rights and . . . are treated rather as a residual category" (1998: 1). This was certainly true in the earlier statements. Asbjørn Eide and Allan Rosas (2001: 289) note that, in both the *Universal Declaration of Human Rights* (1948) and the *International Covenanton Economic, Social and Cultural Rights* (1966), "cultural rights" seem like a left-over category coming at the end of the rights listed in both documents.

Another major difficulty in many of the human rights instruments, such as these two, as well as in much of the discourse, is that they are concerned more with individual than group, community, or societal rights. The *International Covenant on Civil and Political Rights* (1966), moves more clearly beyond individual human rights, particularly in Article 27:

> In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.

This approach, underlining the protection of minority group human rights, is strengthened by the 1992 UN *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities.*

The 2001 *Declaration on Cultural Diversity* and the 2003 *Convention for the Safeguarding of Intangible Heritage* bring human rights to the foreground. Article 4 of the 2001 Declaration deals specifically with human rights as the guarantor of cultural diversity and limits the application of the instrument to those aspects of cultural heritage that do not infringe human rights. This is extended in Article 5 dealing with cultural rights as an enabling environment for cultural diversity. The preamble of the Intangible Heritage Convention also

starts by referring to existing international human rights instruments, and Article 2 includes the statement that:

> For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

In summary, one of the complexities flying out of Pandora's box seems to be dealt with adequately. As Ayton-Shenker said in a 2003 background paper for a Commonwealth Parliamentary Association conference in Bangladesh:

> Every human has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights, however, are not unlimited. The right to culture is limited at the point at which it infringes on another human right. No right can be used at the expense or destruction of another, in accordance with international law.

However, in practice the issue is not settled: this resolution, while having the appeal of apparent simplicity, is insufficient in theory and practice. Moreover, it is being ignored by many regimes around the world.

The Clash Between Universalism and Cultural Relativism

This chapter does not dwell on the theoretical issues, other than to highlight two difficulties that impact seriously on human rights practice. The Academy of European Law (2005) puts its finger on the first difficulty when it notes that:

> Cultural rights are torn between two different but linked meanings: first, as a sub-category of human rights, cultural rights are endowed with universal character, which is a major characteristic and postulate of human rights as a whole; second, cultural rights are clearly related to cultural diversity and cultural diversity is an obvious challenge to the very idea of universal human rights.

That is, there is an apparent disjuncture between human rights, as universal and all-encompassing, and cultural diversity and cultural heritages, which are by definition culturally and temporally specific.

This leads inevitably to the thorny conflict between universalism and cultural relativism. I have written elsewhere about the ways in which the former – universalism – is linked to the modernist way of conceiving the world, which prevailed at the time UNESCO was established, while the latter – cultural relativism – is closely tied with the postmodernist view of the world (Logan 2002). It is a tension that is seen in the makeup of UNESCO itself, an inherent contradiction between UNESCO as a modernist organization with globalizing impacts, and UNESCO as a supporter, from the outset, of cultural diversity. This contradiction permeates the various UNESCO legal instruments.

The postmodern outlook should lead, one would hope, to a greater awareness of the need for intercultural sensitivity. In the cultural heritage field, this would

mean taking greater note of local opinions and involving local professionals and communities in genuine rather than token ways. It would reinforce efforts to protect traditional popular arts and crafts and vernacular buildings alongside the "high" forms that once tended to dominate official conservation efforts. It would mean fully engaging indigenous minorities in the conservation of their own cultural heritage.

Unfortunately these hopes are not always translated into practice. The insistence of the right of all voices to be heard does not necessarily imply end goals of conciliation or reconciliation. Indeed, while the argument that "local communities know best" has often been associated with the term cultural relativism, another term – cultural exceptionalism (Franck 2001) – is sometimes also invoked by local communities that want to reject negotiated outcomes.

The second key difficulty has already been mentioned – the residual nature of cultural considerations in the various human rights instruments. This seems to be largely by accident rather than design, the result of the relatively late recognition of cultural rights. But this in turn probably reflects a perception in the general community (and particularly the legal community drawing up the human rights instruments) that cultural matters are less critical than the economic, political, and social. At times, however, it might be useful in practice if a hierarchy of human rights forms was generally accepted. I will try to show, using some case studies drawn from around the world, how this would help settle many of the cases where conflicting human rights arguments are being made on the basis of cultural heritage claims.

Cultural Heritage, Cultural Rights, and Cultural Politics

The implications of the various cultural heritage instruments are, of course, deeply political, with potentially major impacts, especially for suppressed minority cultural groups in many countries but also for governments and for dominant ethnic groups which feel their power is being undercut by efforts to raise the status of minority groups and their cultures. It is clear that in some countries the 2001 *UNESCO Universal Declaration on Cultural Diversity* and the 2003 *Intangible Cultural Heritage Convention* reinforce the political anxieties held by the national governments.

At least three broad types of conflict can be defined in which the interrelationships between cultural heritage and human rights issues are implicated. These might form a useful starting point for the development of new university research and teaching agendas in the cultural heritage field.

1. *Cultural right of minority groups to maintain their intangible cultural heritage is threatened.*

Albro and Bauer, editors of a recent (2005: 31) issue of *Human Rights Dialogue* focused on "cultural rights," note that cultural rights claims are being recognized

as an "important means for the recuperation of identity and as an essential basis for advancing social justice." They comment that this process has been slow, despite the fact that cultural rights have long been enshrined in international law. The weak political commitment to cultural rights is explained, they argue, by a series of political considerations made by national governments. Governments of states where there is a cultural majority population see a threatening linkage between cultural rights, arguments for self-determination, and threats to the state-based model of sovereignty.

Thus Myanmar and Laos, both countries with significant tensions between dominant and minority ethnic cultural groups, are not among the 30 countries that have ratified the Convention at this stage, although, perhaps surprisingly, China, Vietnam, and India have.

In the case of Myanmar, it is clear that the Myanmar junta is using Buddhist heritage conservation projects, especially religious monuments, as a way of legitimizing its own position, strengthening the dominance of the majority ethnic group, and marginalizing the cultures of the Karen and Mon minorities so as to force these groups to assimilate (Philp 2004). Here the definition of democracy is important: democracy is not simply the rule of the dominant electoral group, but a respect for minority rights. While it might be argued that the government is serving the interests of the numerically stronger Burmese group, there is no democracy in that country and the winner of the last democratic elections, Aung San Suu Kyi, is, as we know, still under house arrest. UNESCO's World Heritage Center officers have had to be exceedingly wary about engaging with Myanmar under these circumstances.

It is much more difficult for us to find a theoretical solution – much less a practical one – about the conflict between democratic principles and maintenance of cultural diversity and cultural heritage that has been taking place in Fiji. Here we can argue that the protection of the country's cultural diversity requires support for both the indigenous Fijian culture and the culture of the Indian immigrant population. However, the Indian population has grown numerically to the point where it was able to win a democratic national election. The indigenous population perceived this as losing control of its very homeland.

Clearly many nation states experiencing conflicts over language, religion, and ethnicity fear "balkanization." The Declaration and the 2003 Convention raise the concern that cultural heritage may be used as emblems around which resistance by minority groups to government policies can be mobilized. Indonesia seems to fall into this category, its national *Pancasila* principles being challenged by the post-Suharto devolution of powers to the provinces, the independence of Timor Leste and the secessionist movements in Aceh and West Irian.

As far as I know, the United States shows no sign of ratifying the Convention, nor has the Australian Government. I do not know the reasons for the US decision, but its stance in UNESCO, having rejoined in 2003 after a 17-year absence, seems to be that culture looks after itself and needs no government intervention. This is easy to say when American culture is promoted globally by Hollywood, the music recording industry and dominance of print and television media.

I am on safer ground hypothesizing that the Australian Government sees the Convention as strengthening multiculturalism, a policy approach it has been winding back. Perhaps it fears that cultural divisions will be reinforced by any renewed emphasis on minority cultures. This is not to say that the Australian Government has no interest in promoting cultural heritage. In fact the opposite is true. It does have some low-level commitment to indigenous heritage through the Maintenance of Indigenous Languages and Cultures and media access programs administered by the national Department of Communication, Information Technology and the Arts (DCITA). And it argues that it also shows commitment to intangible cultural heritage protection generally through its funding of agencies such as the National Sound and Screen Archives.

It is using a carefully selected set of cultural heritage items as the core around which they are seeking to reshape the nation. Thus we have great government interest (and expenditure) on places like Anzac Cove in Gallipoli, Turkey, and negotiations with the Turkish Government have taken place to find a way to inscribe Anzac Cove on the Australian National Heritage List. Gallipoli was the site of a disastrous encounter with the Turkish army in World War I, but it has acquired iconic status as a place where Australians finally realized that their future had to be one of independence from Britain.

On the other hand, the Australian Government has occasionally put the cultural heritage of minority groups on the line, as in the case of World Heritage-listed Kakadu in the Northern Territory. Here the conflict was between the Government, acting for the transnational company mining uranium, and the Mirrar people who, while numerically small, are the traditional landowners of the area. Transnational business corporations have frequently ignored cultural rights, as can be seen in the many disputes between corporations and traditional peoples. The case caused a major headache for the World Heritage Committee and all concerned. It seems far from over, with the current push toward the development of Australia's uranium industry.

2. *Selective interpretations of cultural heritage are used to influence mainstream cultural identity and opinion to the detriment of human rights.*

Cultural heritage can, of course, be used to manipulate people. Governments commonly use cultural heritage to try to weld disparate ethnic groups into a more cohesive and harmonious national entity. They use cultural heritage to shape public opinion. All of these manipulative activities may be benign if they promote tolerant states and societies based on human rights. Interpretations of the past can be opened out so as to recognize the roles played by minority groups in the national story, to engage them more fully in celebration of the nation's achievements, and to recognize injustices done to them in the past. Efforts to rediscover "unpleasant" episodes in our national histories can result in the empowering of indigenous minorities.

But the use of heritage can be malign as well as benign. In too many cases governments have used selective versions of the "national cultural heritage" to force minority groups to adopt the dominant culture, effectively wiping out their own cultural identity. The Myanmar case has been mentioned. The "Troubles" in Northern Ireland are seen as being a clash of religion-based cultures. Protestant and

Catholic areas are demarcated with kerbsides painted in orange or green, flags, and wall painting. But we have to be careful to ensure that cultural heritage is not taking the rap for social problems which, in fact, have deeper economic and political causes. Indeed, "cultural heritage" is in danger of getting a bad name when often it is not warranted.

Worse, selective appropriations of the past are too often used by state leaders to boost jingoism and facilitate aggression toward others outside national borders. Despite the UNESCO *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (The Hague Convention of 1954) and all the best efforts of the International Blue Shield Committee, it is still a deliberate strategy in wars to attack the physical manifestations of the enemy's cultural identity and to lower the enemy's morale by so doing.

This applies to civil wars as well as international wars, as evidenced in February 2006 by the bombing of the Al-Askari Mosque in Samarra, a major holy place of Iraqi Shiites, and the counterattack on Sunni mosques. In Africa, where the chief forms of heritage are intangible, the deliberate slaughter of opponent tribes has been atrocious. I recall the speech of a Rwandan at the 2001 Forum UNESCO international seminar making the point that his people's heritage died with every victim of the genocide that occurred there in the 1990s. The catastrophe in Cambodia under Pol Pot very nearly wiped out the country's rich cultural heritage of dance and music. Fortunately a few ageing women in the Cambodian diaspora have been able to return to train a new generation of young dancers and musicians in traditional techniques.

It is therefore important to have the declarations by UN, UNESCO, and other global bodies, including recently even the WTO under former President James Wolfensohn (1999), reaffirming the ethical position that the right to protect cultural diversity and cultural heritage is a cultural right, part of the panoply of human rights.

3. *Cultural practice claimed as a human right, even though the practice contravenes local laws and/or fundamental human rights instruments.*

The third type of conflict is in many ways the most difficult to deal with in that the problems lie in the inherent contradictions in the human rights framework of concepts and instruments themselves. "Cultural rights arguments have their detractors across the political spectrum," according to Albro and Bauer (2005), and even when defended, as by human rights workers themselves, cultural rights are "perceived to be a challenging arena for advocacy." This is because cultural rights can be in direct conflict with other human rights, particularly the rights of individuals and children and women as groups.

What really is the cultural heritage value of the fine west Asian rugs and carpets in cases where they are made using child labor? In Australia there continues to be arranged marriages of girls in certain ethnic communities and the restriction of female student participation in certain school subjects, such as sport or music. Attempts to outlaw particular cultural manifestations within a society often reflect the prejudices of the majority and such biases are often

fiercely resisted. Prohibiting the wearing of the Muslim veil in French schools has caused bitter controversy in that country and beyond. Such resistance, at its most extreme, can feed into separatist movements as witnessed in the last decade from Aceh to Chechnya.

Ambiguities and Contradictions Within the Human Rights Instruments

Three problems within the cultural rights and human rights instruments themselves are worth commenting on here. First, there are, as we have seen, problems in defining the very concept of "culture" and it is used in different ways at the international and national levels, so that the standards of cultural rights and cultural diversity and heritage protection are inconsistent. The concept of "cultural heritage," being subsidiary, shares the same problem.

The most fundamental conceptual contradiction is that, while human rights constitute a universal category, the concept of cultural heritage is culturally, temporally, and geographically specific. This disjuncture does not merely occur when one term or the other is inappropriately used or misunderstood, but rather is written into the structure of human rights instruments at a fundamental level. Articles 22, 27, and 29 of the *Universal Declaration of Human Rights* (1948) acknowledge cultural heritage matters *as* human rights. This creates problems of interpretation when specific cultural practices are claimed as intangible heritage in cases that contravene the universal human rights instruments in other ways.

Second, there is also the problem that cultural rights, as human rights, have both a collective and individual dimension. As rights with a collective dimension, they may come into conflict with individual human rights or individual perceptions of human rights (Academy of European Law 2005). Tensions arise relating to the role of the state in seeking to adjudicate between the collective and individual dimensions: To what extent should the state remain tolerant in respect of cultural practices that appear to restrict the enjoyment of some human rights by members of a community? To what extent should it enforce individual rights even in relation to religious, ethnic, and cultural communities?

Take an example. The Indian Ocean island of North Sentinel has a population of about 250 people living in traditional manner – loin-clothed hunter-gatherers, with their Sentinelese language intact. The island is off-limits to the outside world, with Indian laws prohibiting visitors from landing. On 12 February 2006 the *Observer* reported that two poachers from another Andaman Island had drifted ashore and had been slaughtered by Sentinelese tribesmen. According to the *Observer*, "The local authorities, under pressure from international preservation groups and a largely sympathetic local [Andaman] population, are reluctant to pursue the matter." Here, it seems to me, the heritage (cultural rights) argument has to take back seat. Maintenance of human life must be seen as the highest "human right" – our highest priority.

Take another example from Myanmar. Nwe and Philp (2002: 153) describe the way that the Myanmar junta, the State Peace and Development Council (SPDC), has consistently denied allegations of human rights abuses as they relate to forced labor on state projects, including restoration of heritage monuments. One would think that such practices would be irreconcilable with Article 4 of the *Universal Declaration of Human Rights*, which prohibits slavery in any form, and Article 5, which stipulates that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Yet the junta argues that their labor practices are part of the Burmese heritage and linked to traditional Buddhist concepts of merit-making. In other words, Myanmar makes the case that cultural heritage overrides these other notions of human rights.

This is where an accepted hierarchy of human rights would be helpful. But this is not to be found in the UDHR or other instruments. The most help we get is the view referred to above, that "no right can be used at the expense or destruction of another, in accordance with international law." In any case, many governments, agencies, and members of threatened cultural minorities ignore instruments such as the UDHR when making decisions over contested cultural heritage.

An Indonesian case that blew up in 2006 comes to mind here – a case in which one form of universal human rights (freedom of religion) is pitted against another form (women's rights). But the case is made more complicated because the cultural heritage protection program involved (protection of Islamic culture) is a form of identity manipulation that has nationalistic ideological and political motivation. Additionally, the various protagonists are making selective use of human rights principles, highlighting the ambiguities, and contradictions within them. No one seems to be talking in terms of the agreed but vague position in international law that no right can be invoked at the expense of another.

The case centers around the attempt by the Indonesian government to crack down on pornography in Indonesia (Forbes 2006a: 19). The Indonesian Parliament is considering an "antipornography" law that would impose a 5-year imprisonment term on couples who kiss in public, or persons (presumably women only) who flaunt a "sensual body part," including the navel. Tight clothing would also be outlawed. Into this controversy has stepped an Indonesian feminist, Gadis Arriva, making media headlines around the world. "This law is something very alien to us," she argues. Indonesians have a sensuality, she maintains, that is part of their culture: women wear tight dresses and there are bare-breasted women in Bali and Papua. She claims the law is "part of an agenda to reshape Indonesia, with pornography a symbol of Western culture to the many Muslims who believe globalization aims to destroy their culture" (Forbes 2006b: 19).

The director of Balinese Provincial Government's tourism authority, Gede Nurjaya, is also concerned about the impact of the proposed law on the struggling tourism-based economy in Bali. Traditional Balinese art and dance could become illegal, he fears, and certainly tourists who want to bathe in mixed company would be deterred. The conflict continues at the time of writing (May 2006), with tens of thousands of demonstrators marching in Jakarta in favor of the proposed legislative crackdown.

Last year Vietnam celebrated the addition of its "Tay gong-playing skills" to the 90-strong list of intangible heritage items proclaimed by UNESCO as "Masterpieces of the Oral and Intangible Heritage of Humanity." This focused the world's attention, if briefly, on the plateaus of the mid-Tay Nguyen (Vietnam's Central Highlands) where gong-playing is an essential part of the birth, wedding, harvest, and funeral rituals practiced by the Ba Na, Xo Dang, Gia Rai, and others of the 54 ethnic minorities officially recognized by the Vietnamese Government in Hanoi. In this case study the key issue is the claims to cultural autonomy made by the Central Highland minorities and the claims to religious freedom made by those seeking to intervene in the lives of the ethnic groups.

Some background is necessary. There has been a long history of political instability and resistance to mainstream Kinh Vietnamese governments, whether of the capitalist south or communist north. This goes back to French colonial days when the French authorities attempted to buy off the ethnic minorities, especially the White Thai in Tonkin and the Hmong in Laos, by turning a blind eye to their opium smuggling. This had political impacts as well as public health and social problems associated with opium production, smuggling, and consumption that still persist among these groups today.

During the early 1960s the Central Highlands fought President Ngo Dinh Diem's transplantation of northern Catholics onto their lands; in the 1970s and 1980s they resisted the government of Ho Chi Minh and formed a minor insurgency group known as FULRO (from the French *Front Uni pour la Libération des Races Opprimées*); and in the last 10 years there have been a number of land rights-based clashes with the authorities. Complicating the picture in recent times is the fact that American Protestant missionaries have been working in the area, fanning Hanoi suspicions of CIA involvement and leading to some crack down on missionary activities.

How does one judge this scenario in terms of cultural rights? Should the missionaries be stopped because they are undermining the traditional culture of the ethnic minority group? Or would that infringe the minority group's right to choose whatever religion they want? Should they be stopped because they represent interference in the running of Vietnam by its duly elected government? Is this a case where national sovereignty rights are threatened by external forces? Without more facts it is difficult to know for certain.

What is clear, though, is the relevance of concepts of "power" to the case. On the one hand, the US does not acknowledge involvement in the missionary activities in Vietnam, in the same way that it does not officially back the Fa Lun Gong in China. On the other hand, to use Joseph Nye's (2004) concept of "soft power," the US seeks to exert influence by setting the discourse, using human rights arguments to undercut Vietnamese and Chinese status in the world's eyes. Such tactics fit the US state interest. One conclusion that might be drawn is that this is primarily about power in the global setting, and only secondarily about human rights.

On their side, the dominant Kinh Viet group has never held the ethnic minority groups, or their human rights, in high regard. For long their term for the minorities was "moi" – primitives – and they have exerted their political and economic power

over the past 50 years to force the minorities to toe the line. Patricia Pelley (1998) provides an excellent analysis of the efforts made by the Vietnamese government from the 1950s to "sedentarize the nomads." So what does the listing of the Tay gongs have to do with this? Does the newly found interest in the ethnic minority's culture mark the abandonment by the Hanoi government of its assimilationist approach? The answer is probably no, although perhaps there is a softening of that approach. It is more likely to be part of an attempt to use cultural heritage as a focus of national pride and to win the closer cooperation of the ethnic minority groups in Vietnam's increasingly lucrative cultural tourism industry.

Cultural Heritage, Human Rights, and Democratic Rights

A number of the preceding cases revolve around conflicts between desires to protect cultural diversity and cultural heritage and arguments about the rights of individuals and groups to have some say in determining their life circumstances through democratic institutions of government and the rights of democratically elected governments to govern. In the case of Fiji, the democratically elected Indian-dominated government was seen in 2000 to represent a threat to Fijian cultural identity. In the cases of Vietnam and China, there are fears of external interference deriving from the US. Let me return to the Kakadu case in Australia's Northern Territory, to demonstrate another form of international interference – the conflict between conceptions of national sovereignty and perceptions of interference from the global heritage bodies themselves. I was involved in this conflict as member of the Australia ICOMOS national executive and then as president and then, a few years later, as an intermediary called in by the Mirrar people to assist in sorting out their options for future action.

Kakadu National Park was inscribed on the World Heritage List in 1981 as a natural site. The boundaries were extended in 1987 and it was reinscribed in 1992 for its cultural values (Aplin 2004). These cultural values are essentially intangible, being the sacred meaning given to the landscape by the local indigenous people. A small central area of these exceptionally beautiful wetlands had been excluded from the site on the basis of an agreement negotiated in 1982 between the Mirrar traditional land-owners (through the Northern Lands Council) and the national government. The government issued a uranium mining permit to the Pan-Continental mining company for that excluded area. By 1998, the situation had changed considerably. The Jabiluka mining rights had been acquired by Environmental Resources of Australia and the leadership of the Mirrar people had passed to Yvonne Margarula who disputed whether her father had clearly understood the agreement he was making back in 1982. Furthermore, leakages of contaminated water from the mine had occurred and the Mirrar perceived these as threatening the natural and cultural values of their land and the World Heritage site.

Frustrated by the stonewalling of the national government, which was seen as siding with the mining company, the traditional owners, acting through the

Gundjehmi Aboriginal Corporation, broke the normal UNESCO protocols, by-passed Canberra, and went directly to the World Heritage Committee asking it to place Kakadu National Park on the "World Heritage in Danger" list. The government was both fearful and furious – fearful that it would face a gigantic compensation claim from the mining company if the mining contract was cut short and furious – and embarrassed – that the case had been taken to Paris and out of its jurisdiction. UNESCO was forced to adjudicate on the merits of the Mirrar's case and sent in a delegation of experts. This was taken as an infringement of national sovereignty by the government and a restriction on its powers as a democratically elected government. Australia ICOMOS was in a difficult position because it sided with the Mirrar. The government considered this disloyal, overlooking the fact that Australia ICOMOS is the national committee of ICOMOS international, an organization of professionals that is supposed to be independent of governments.

Thus, despite the predictions of scholars who saw globalization reducing the power of nation states, national interests continue to loom large in human rights, cultural rights, and cultural heritage issues. At the global level of cultural heritage protection this is especially true since UNESCO is an international governmental organization. National governments place enormous importance on UNESCO listing, whether this relates to places on the World Heritage List or intangible elements under the 2003 Convention (or indeed Memory of the World, or other UNESCO programs). Their interest is multifaceted and includes the economic benefits of tourism but particularly the international status that comes from having part of the national heritage recognized as of world significance and the electoral status from having made a successful submission to the World Heritage Committee. There is very often a loss of face in having something put on the World Heritage in Danger list or the list of Intangible elements "in need of urgent safeguarding."

The difficulty is that, being an IGO like the UN, UNESCO, the World Heritage Committee and its secretariat, the World Heritage Center, cannot be openly critical of a Member State. Diplomatic maneuvers are usually used to achieve difficult ends. In the case of Kakadu, however, and for the overall good of the global heritage conservation system, the World Heritage Committee was forced to take a legalistic approach and to resolve the previously ambiguous issue of whether it could place an inscribed site that was in trouble onto the World Heritage in Danger List *without the prior consent* of the government concerned. After taking legal advice and after numerous bitter committee meetings, it was finally decided that the 1972 Convention should be interpreted to allow this possibility. In the event this was not necessary in the Australian case, although Nepal's Katmandu Valley was immediately placed on the In Danger list despite the opposition of the Nepalese government.

Kakadu was a clash between neoliberal politics, on the one hand, and intangible cultural heritage and cultural rights on the other. While the sacred nature of the area threatened by mining expansion was relevant, in the end the case before UNESCO turned on the scientific evidence about the damage to natural heritage values. In other cases, religious values play a much more definitive role and are often more complex because of it.

The Power to Decide: Challenges for the Conservation Profession

Conservation policy-makers, practitioners, researchers, and educators face many key challenges, especially arising out of the extension of practice into the intangible cultural heritage field. To what extent should and do we take these considerations into account in their practice?

Of course, issues bearing on human rights exist in relation to *tangible* heritage. But the World Heritage system has found ways to use conservation as a positive force supporting the maintenance and extension of human rights. In particular, it uses the conservation of cultural heritage places to remind us of our responsibilities to protect the human rights of people. The island of Gorée in Senegal is listed because of its infamous role as a slave camp, a rounding up point from which Africans were shipped to the New World. Auschwitz is another listed place – a memorial to those who perished there and a warning to people today and in the future about the depths of depravity to which we can sink if we abandon human rights principles.

This is not limited to World Heritage. The torture chamber at Tuol Sleng in Cambodia, for instance, is not listed. But there are national places in Australia that we should perhaps be conserving for similar reasons. The Woomera Detention Center and other places in Australia's deserts and tropical islands where refugees, including children, have been detained for inordinate lengths of time might some day become national heritage sites reflecting the theme of "pain and shame" and acting to remind future generations of the lapse that is currently taking place in Australia in relation to the protection of basic human rights.

Another World Heritage example – the Rice Terraces of the Philippines Cordillera – demonstrates some of the negative issues. The terraces were listed in 1995 under the new Cultural Landscape category as an "Organically evolved landscape" of the subtype: "Continuing landscape which retains an active social role in contemporary society associated with a traditional way of life and in which the evolutionary process is still in progress and where it exhibits significant material evidence of its evolution over time." Unfortunately for the listing, the local population has grown weary of the rigors of this traditional way of life and see better prospects in jobs elsewhere in the Philippines.

In short, the problem here was that the decision to inscribe was made not by the local population whose heritage it is, but by professionals and policy-makers in Manila and Paris. Here again we see the underlying issue of power – who has the power to decide that a place has heritage significance and to impose heritage controls. The inscription was imposed to protect an exotic landscape, but it overlooked the fact that the landscape depends on the intangible heritage bound up in the local community's life style and skills in irrigation and terrace construction practices. In fact the inscription could only succeed if it denied the human rights of the local population – their right to determine their own life circumstances.

Situations like this can often be avoided where the local community is engaged in the decision-making process from the outset. The response of the professions

globally has been to argue for greater involvement of the local communities in the processes of identification, inscription, and management of World Heritage sites. Let the community choose, as best it can, given that community dynamics are far from perfect.

Such involvement is part of "cultural rights" as defined in the instruments I have talked about, part of "human rights." But how absolute is this "right"? In practice it varies from country to country, regime to regime, totalitarian through to democratic. However, in all countries, local ambitions need to be negotiated against broader community, regional and national interests and, indeed, between various interests within the same local community.

With intangible cultural heritage, the newcomer in the heritage conservation field, these problems are still to be broached. Although, as "living heritage embodied in people" it is the form of heritage most directly connected to human right principles and their abuse, we have yet to see a professional response emerge to take up the challenge. It is clear that both the destruction of monuments and the restriction of living cultural practices demoralizes indeed de-legitimizes people, inhibits intercultural understanding, and impedes economic development based on heritage tourism. Much research is needed to explore the apparent disjuncture between human rights, as universal and all-encompassing, and cultural heritages, which are by definition culturally and temporally specific. And there are an infinite number of cases where various forms of human rights are themselves in conflict – a rich subject for university scholarship.

Our work as researchers is committed; the goal is to win greater social justice. We need to see cultural heritage within the wider human rights framework. The less well-known part of the Pandora legend is that, along with pestilence, crimes, and suffering, she released from the box a final creature – hope. One can hope that UNESCO will move quickly to sort out the issues that at present seem to militate against the successful implementation of the *Convention on Intangible Cultural Heritage*. The General Assembly of States Parties to the Convention met for the first time in June 2006. One of their tasks was to incorporate those of the items proclaimed as Masterpieces of the Oral and Intangible Heritage of Humanity that lie on the territory of a State Party (that is, the 45 signatories at that time – the other UNESCO members will have to wait). To do this, a list of selection criteria will have to be settled. This task is delegated to an elected subset of the General Assembly, the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, and should be completed during 2007.

One would also hope that the international human rights and aid communities will incorporate cultural diversity and cultural heritage protection more fully into their work. This will mean clarifying the ambiguities and contradictions within and between the various instruments and finding ways to ensure that conservation goals are effectively implemented. In the end, however, the UNESCO systems and the human rights and aid communities cannot alone achieve a reduction in the number of culture-based conflicts. This ultimately depends on the world's governments and an increased sense of global responsibility.

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