

THAILAND

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage: Thailand's Implementation

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A nation's culture resides in the hearts and in the soul of its people.

Mahatma Gandhi

1. Introduction

Thailand is blessed with cultural diversity. Its cultural heritage¹ is recognized worldwide. Kick boxing, traditional massage, and Thai food are distinctly unique to Thai culture. If Thailand remains silent on the protection of intangible cultural heritage ("ICH"), it must soon face consistent loss of its heritage through globalization.² The recent trend towards uniformity is a danger to the rich, cultural diversity of mankind.³ Unlike tangible cultural heritage that is created during a certain period and then remains relatively static over time, ICH changes dynamically in the course of human history.

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¹ C. BAKER (ED.), *PROTECTING SIAM'S HERITAGE* (2013); *RIGHTS TO CULTURE: HERITAGE, LANGUAGE, AND COMMUNITY IN THAILAND* (2013).

² Gil-Manuel Hernández i Martí, *The deterritorialization of cultural heritage in a globalized modernity*, available at http://lull.cat/IMAGES_175/transfer01-foc04.pdf (last visited on Oct. 1, 2016). Roland Robertson defines the globalization as the compression and the intensification of consciousness of the world as a whole. See R. ROBERTSON, *GLOBALIZATION: SOCIAL THEORY AND GLOBAL CULTURE* 8 (1992). Cf. M. BROWN, *Heritage Trouble: Recent Work on the Protection of the Intangible Cultural Property*, 12 INT'L J. CULTURAL PROP. 43 (2005). In this article, the globalization is referred to as a scapegoat.

³ F. Francioni, *Culture, Heritage and Human Rights: an Introduction*, 95 CULTURAL HUM. RTS. 1-16 (2008).

In order to protect and preserve Thailand's traditional culture, in 2016, the Thai government ratified the United Nations Educational and Scientific Organization ("UNESCO") Convention for the Safeguarding of Intangible Cultural Heritage 2003 (hereinafter ICH Convention), along with 170 partner States.

2. Background

The idea of preserving culture through a legal instrument can be traced back to the 1950s.⁴ It originated exclusively in the event of an armed conflict.⁵ By the early 1970s, the international community had realized that in order to fully protect a culture, they should reach beyond tangible heritage.⁶ In 1972, the UNESCO began paying attention to ICH. At that time, Bolivia⁷ and several other States felt that the Convention concerning the Protection of World Culture and Natural Heritage of 1972 (hereinafter World Heritage Convention)⁸ was insufficient,⁹ so that they needed to create new *sui generis* regulatory regimes.¹⁰ This led to the creation of the World Heritage List subsequent to the adoption of the World Heritage Convention.¹¹

Unfortunately, little action was taken until Recommendation on the Safeguarding

⁴ See generally Yudhishtir Raj Isar, *UNESCO and Heritage: Global Doctrine, Global Practice*, in *CULTURES AND GLOBALIZATION: HERITAGE, MEMORY AND IDENTITY* 39-52 (H. Anheier & Yudhishtir Raj Isar eds., 2011).

⁵ E.g. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954; Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954; Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict of 1999.

⁶ B. GARNER, *THE POLITICS OF CULTURAL DEVELOPMENT: TRADE, CULTURAL POLICY AND THE UNESCO CONVENTION ON CULTURAL DIVERSITY* 157-159 (2016). See also D. Munjeri, *Tangible and Intangible Heritage: from difference to convergence*, 56 *MUSEUM INT'L* 12-20 (2004).

⁷ The incident of this action was due to the early 1970s' Western pop musicians. They released song "El Condor Pasa," which was soon identified as a Bolivian folk song without copyright protection. Since the record brought the author remunerative success, it was felt that some should be returned back to Bolivia. See S. Sherkin, *A Historical Study on the Preparation of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore*, available at <http://www.folklife.si.edu/resources/Unesco/sherkin.htm> (last visited on Oct. 1, 2016).

⁸ 1037 U.N.T.S. 151; 11 I.L.M. 1358 (1972).

⁹ L. LIXINSKI, *INTANGIBLE CULTURAL HERITAGE IN INTERNATIONAL LAW* 18-23 (2013).

¹⁰ See generally M. BROWN, *WHO OWNS NATIVE CULTURE?* (2003); E. Coleman, *Aboriginal Art and Identity: Crossing the Border of Law's Imagination*, 12 *J. POLITICAL PHILOSOPHY* 20-40 (2004); S. Kirsch, *Lost Worlds: Environmental Disaster, 'Cultural Loss,' and the Law*, 42 *CURRENT ANTHROPOLOGY* 167-98 (2001); *INDIGENOUS INTELLECTUAL PROPERTY RIGHTS: LEGAL OBSTACLES AND INNOVATIVE SOLUTIONS*, (M. Riley ed., 2004); and *SAFEGUARDING TRADITIONAL CULTURES: A GLOBAL ASSESSMENT*, (P. Seitel, ed., 2004).

¹¹ S. LABADI, *UNESCO, CULTURAL HERITAGE, AND OUTSTANDING UNIVERSAL VALUE: VALUE-BASED ANALYSES OF THE WORLD HERITAGE AND INTANGIBLE CULTURAL HERITAGE CONVENTIONS* 11-58 (2013). Cf. B. Frey & L. Steiner, *World Heritage List: does it make sense?*, 17 *INT'L J. CULTURAL POL'Y* 1-19 (2011).