

*Intangible Cultural Heritage in International
Law*
by Lucas Lixinski

Oxford, United Kingdom: Oxford University Press, 2013
(ISBN: 978-0-19-967950-8). 274 pp.

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Intangible Cultural Heritage in International Law by Lucas Lixinski tackles an emerging and highly relevant area of the law, and Lixinski approaches the safeguarding of intangible cultural heritage (ICH) in a highly engaging and analytical manner. ICH, broadly speaking, consists of living cultural practices passed from generation to generation, such as song, dance, traditional craftsmanship and other rituals. Due to the organic and perpetually evolving nature of ICH, legal and definitional challenges at all levels abound prove especially difficult to form legal protections while still allowing for living heritage to thrive.

Despite these challenges, Lixinski advocates an interventionist posture towards protecting cultural heritage even in the face of the possible risk of losing the localized nature of ICH through commercialization or international involvement. This work ambitiously covers a plethora of regions around the globe to illustrate how diverse ICH requires a multilevel, flexible approach through contractual arrangements and international cooperation as well as how commercialization can either harmfully exploit ICH or conversely provide economic and societal benefit when properly regulated.

The introduction addresses the vexing ‘theoretical tensions’ that shape legal issues within ICH, such as ‘tangible’ versus ‘intangible’

and ‘heritage’ versus ‘property’. ICH operates in a legal and cultural penumbra, and Lixinski provides a comprehensive exploration into the existing institutional structures as well the substantive legal components. One of the most interesting aspects of Lixinski’s book is the promotion of a contractually based, goal-oriented framework in ICH safeguarding, wherein a flexible approach operates to achieve specific outcomes and best safeguard for unique ICH within a community (e.g., prioritizing trade arrangements in heritage commodification for development goals or prioritizing inventories and listing for national identity cohesion goals). Inventorying or listing ICH is a vital practice in safeguarding ICH. While acknowledging that inventorying can lead to ‘mummification’ and ‘ossification’ of living heritages, this practice is still a helpful piece of the puzzle in gaining international recognition and fueling cohesive national pride and cultural identity.

The first half of the book proceeds to analyse ICH frameworks at the international, national, and local levels, including an excellent historical recount of the activities of international bodies including UNESCO, the World Intellectual Property Organisation, and accredited NGOs. The most relevant international instrument is the UNESCO 2003 Convention on Safeguarding Intangible Cultural Heritage, and this section includes a thorough and clear dissection of the international instrument’s obligations and recommendations with useful references to works by scholars heavily involved with the work’s drafting throughout the footnotes. Additionally, this section breaks down the complicated relationship between trade and ICH at the World Trade Organisation.

Lixinski illustrates how flexible, multi-level contractual arrangements are well suited to protecting ICH. Regional instruments

can provide non-binding guidance for lawmakers and reflect the state of the region, such as the African Union. Generally, these are used for common identity construction and regional cohesion and solidarity. National instruments often reflect the nature of the particular ICH, placing primacy with copyright concerns for artistic and literary works in Europe and with traditional knowledge and pharmaceutical exploitation in the Andes, enmeshed with cultural identity and traditional rituals and treatments. At a policy level, some governments offer sponsorships for traditional crafts and living knowledge repositories. While progressive and effective, this method presents risks of co-opting cultures, e.g., China and Taiwan. This example demonstrates the dangers of centralising control of heritage and defeats the purpose of allowing a living culture to flourish; Lixinski refers to this outcome as the ‘dark side’ of listing and raising awareness (p.129). Despite risks regarding determining authorised heritage discourse, over-politicization, and possible abuse of power, Lixinski maintains the state should remain the primary body responsible for safeguarding ICH through preventive and remedy-oriented measures, held in check by international remedies and wide community participation (p.211-13).

While the literary and artistic nature of some ICH seems to fit well within the intellectual property framework, many types of ICH do not fall under the intellectual property regime due to temporal, authorship, and subject matter restrictions. Only a *sui generis* response would allow for collective rights, away from the economic reward to isolated author or authors for a limited period of time. Further, limiting protection to commercial valuation will problematically shape and determine which practices thrive (those that are economically viable).

The second half of the book reviews remedies and substantive tools used to achieve positive outcomes, providing strong theoretical arguments in less legally strenuous format. Lixinski explores the connection to human rights and how its tools have protected ICH in a cultural identity context. Conversely, human rights remedies have serious limitations, such as proportionality, state discretion, and the limitation of addressing only individual, as opposed to community, injury. Nonetheless, Lixinski considers human rights to be the most ‘compelling’ justification for protection but acknowledges the ‘bridge’ is not undisputed, ‘the adjudicatory tensions are a reflection of a much more nuanced scholarly debate’ (p.149).

In order to investigate a range of culturally acceptable methods of forming consensus amongst communities and experts, Lixinski considers mechanisms outlined in such diverse conventions as the Convention on Biological Diversity, the Nagoya Protocol, and the Bonn Convention. These environmentally oriented international instruments focus on largely dissimilar subject matter to ICH, although the two do occasionally overlap; yet the recommendations regarding community involvement and free, prior, and informed consent, designating stakeholders, and benefit sharing is highly applicable and valuable in safeguarding ICH as it is to environmental protection.

The Appendix contains a flowchart which attempts to provide a visual guide to determining which methods of safeguarding ICH would be most effective. The flowchart is a laudable and useful initial tool which illustrates Lixinski’s goal-oriented approach to protecting ICH. It is a useful step towards providing clearer guidance for states and NGOs focused on properly allocating resources to ICH protection based on desired outcomes. While a chart may miss some subtleties and not address more gradual cultural erosion, it is a useful visual

summarization of possible safeguarding strategies. The focus on indigenous cultures and aboriginal peoples is difficult to avoid as the majority of substantial legislative and legal protections of culture relate to these groups. There is a field-wide legal and scholarly implication that cultural identities are primarily indigenous issues. However, this condition is circular in that these issues are more receptive to existing instruments and present a more urgent and apparent threat to ICH. This work provides a solid foundation for further examination of such cyclical legal challenges.

This book provides an excellent summary of overarching themes in efforts to safeguard ICH and provide remedies, including addressing the difficulties of providing legal protection for constantly evolving and self-defining living cultures. This task is further compounded by the challenges common to many international and regional legal instruments seeking to sufficiently maintain state sovereignties, still attracting signatories, and yet preserving strong enough mandates to give effect and force to the instrument. Lixinski presents balanced arguments while still justifying specific courses of action and intentional choices in structure and emphasis. This book is highly recommended for practitioners and students within the legal field, especially those focusing on intellectual property or cultural heritage sectors, and related interdisciplinary areas. Lixinski thoroughly covers novel theoretical tensions as well as complex substantive and institutional legal matters in a clear and readable manner, providing useful insights into legal and social issues surrounding ICH protection.