

## **SALVAGUARDA DO PATRIMÔNIO CULTURAL IMATERIAL** uma análise comparativa entre Brasil e Itália

F. Humberto Cunha Filho, Tullio Scovazzi ORGANIZADORES

### **também com textos de**

Anita Mattes, Benedetta Ubertazzi, Mário Pragmácio,  
Pier Luigi Petrillo, Rodrigo Vieira Costa



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CULTURAL IMATERIAL**

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Brasil e Itália

**UNIVERSIDADE FEDERAL DA BAHIA**

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O presente trabalho foi realizado com o apoio da Coordenação de Aperfeiçoamento de pessoal de nível superior – Brasil (CAPES) – Código de financiamento 001

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Salvador  
EDUFBA  
2020

Autores, 2020.

Direitos para esta edição cedidos à Edufba.

Feito o Depósito Legal.

Grafia atualizada conforme o Acordo Ortográfico da Língua Portuguesa de 1990, em vigor no Brasil desde 2009.

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Salvaguarda do patrimônio cultural imaterial : uma análise comparativa entre Brasil e Itália / F. Humberto Cunha Filho, Tullio Scovazzi (organizadores). – Salvador : EDUFBA, 2020.  
335 p.

Capítulos em Português, Italiano e Inglês.

ISBN: 978-65-5630-027-6

1. Patrimônio cultural – Proteção - Brasil. 2. Patrimônio cultural – Proteção - Itália. 3. Política cultural. 4. Bens não materiais. I. Filho Cunha, F. Humberto. II. Scovazzi, Tullio.

CDD – 363.69

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Elaborada por Jamilli Quaresma CRB-5: BA-001608/O

Editora afiliada à



Editora da UFBA

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s/n – Campus de Ondina

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### **Introduction**

Italy currently has nine elements inscribed on the Unesco Representative List of the Intangible Cultural Heritage of Humanity (hereinafter: “Representative List”), three of which are multi-national. Two of the elements inscribed concern culinary traditions. This raises interesting questions regarding the definition of ICH domains by the Convention. In addition, the Italian elements demonstrate the diversity of practicing communities and the creative means they employ to give free, prior and informed consent to the nomination of elements. Also, four of the elements inscribed by Italy have intellectual property rights (hereinafter: “IPRs”) associated with them. This raises interesting issues regarding the adoption of IPRs as ICH safeguarding measures.

### **The domains**

Article 2.2 of the Convention identifies the domains of ICH, by stating that:



‘intangible cultural heritage’ [...] is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship. (UNESCO, 2017b)

The domain(s) of ICH manifested by the Italian elements are shown in the Frame 1 (Appendix A).

Two Italian elements involve culinary traditions. The “Mediterranean Diet” concerns “a set of skills, knowledge, rituals, symbols and traditions concerning crops, harvesting, fishing, animal husbandry, conservation, processing, cooking, and particularly the sharing and consumption of food”. (UNESCO, 2013b) The “Art of Neapolitan ‘Pizzaiuolo’ [is a] culinary tradition [that] “represents the culinary know-how related to pizza-making”. (UNESCO, 2017a)

“Culinary traditions” is not a domain of ICH explicitly identified in Article 2.2 of the Convention. (MAFFEI, 2012) The 2006 Report of the Expert Meeting on Documenting and Archiving Intangible Cultural Heritage states that “other domains may be added [to the Convention] in the future; candidates could be: [...] (b) culinary traditions”. (UNESCO, 2010a, p. 10) Although new domains have not been added to the Convention, UNESCO recognises that “social practices, rituals and festive events involve a dazzling variety of forms: [...] [among which] culinary traditions; [and] include a wide variety of expressions and physical elements: [...] [like for instance] food”. (UNESCO, 2014a) Thus, the Italian culinary elements manifest “social practices, rituals and festive events”.<sup>1</sup> (UNESCO, 2017a)

The Subsidiary Body<sup>2</sup> recalled in its Report on its work in 2013 that “intangible heritage relating to foodways does not simply concern products but rather constitutes a set of complex cultural practices”.<sup>3</sup> Also, the Evaluation Body<sup>4</sup> recalled in its Report on its work in

2017 that “the [examined nomination] files also included [...] an increasing number of culinary practices”. (UNESCO, 2017d) Finally, the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (hereinafter: “Committee”), in its inscription decision of the “Art of Neapolitan ‘Pizzaiuolo’”, stated that

the inscription of the element would point to the importance of food traditions as strong identity markers that are easily accessible to a wide audience from different cultural backgrounds who share primordial nutritional needs; [and that] its inscription would contribute to the visibility and diversity of intangible cultural heritage by highlighting the specific nature of an element that combines craftsmanship and foodways. (UNESCO, 2017b)

## **Communities**

The Convention recognises that “communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of [...] intangible cultural heritage”.<sup>5</sup> The definition of ICH highlights that ICH is composed by “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith”<sup>6</sup> as long as “communities, groups and, in some cases, individuals recognize [them] as part of their cultural heritage”.<sup>7</sup> Article 11(b) of the Convention emphasises that “each State Party shall: [...] identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations”. (UNESCO, 2017c) In addition, the Criteria for Inscription on the Representative List establishes that

in nomination files, the submitting State(s) Party(ies) is (are) requested to demonstrate that [...] the element has been nominated following the widest possible participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent.<sup>8</sup> (UNESCO, 2008c, p. 5-6)

Also, according to the same criteria the submitting State(s) Party(ies) must identify the geographical location and range of the element and the respective communities by “provid[ing] information on the distribution of the element within the territory(ies) of the submitting State(s), indicating, if possible, the location(s) in which it is centred”.<sup>9</sup> (UNESCO, 2019, p. 2)

The Frame 2 (Appendix B) identifies the communities concerned with each Italian element, their geographical location and range, and the relevant communities’ means of demonstrating their free, prior and informed consent to the nomination of the element.

### Location of the Communities

Four of the Italian elements are “serial elements” involving communities that are located in Italy and other States (“multinational series”), as well as in different territories of Italy (“national series”). (SKOUNTI, 2012) The “Mediterranean Diet” and “Falconry, a living human heritage” are serial multinational elements, and “Celebrations of big shoulder-borne processional structures” is a serial national element.<sup>10</sup> (UNESCO, 2013d, p. 20) Finally, the “Art of dry stone walling, knowledge and techniques” is at the same time a serial multinational and national element.

In particular, the community of the “Mediterranean Diet” is composed by bearers that are located not only in Italy, but also in Cyprus,

Croatia, Spain, Greece, Morocco and Portugal. The community of “Falconry, a living human heritage” includes bearers that are located not only in Italy, but also in the United Arab Emirates, Austria, Belgium, the Czech Republic, France, Germany, Hungary, Kazakhstan, the Republic of Korea, Mongolia, Morocco, Pakistan, Portugal, Qatar, Saudi Arabia, Spain and the Syrian Arab Republic. The community of “Celebrations of big shoulder-borne processional structures” is composed by bearers of “Catholic processions featuring large shoulder-borne processional structures [that are] recreated periodically in four Italian cities” (UNESCO, 2013b), namely Nola, Palmi, Sassari and Viterbo. Therefore, the “Celebrations of big shoulder-borne processional structures” is a national serial element, rather than a multinational serial element. In the latter, bearers are “found on the territory of more than one State Party”, (UNESCO, 2018c, p. 13) whereas in the former communities are found on different parts of the territory of the same State Party. (SKOUNTI , 2012) Yet, in the Convention “only international nominations are concerned, not nomination by a single State of elements with anthropological, cultural or heritage links found in different parts of its territory”. (SKOUNTI, 2012, p. 18) Despite this, national serial elements were examined by the Open ended intergovernmental working group on the ‘right’ scale or scope of an element, convened by the Committee at its sixth session in 2011. (SKOUNTI , 2012) This group held that it was necessary to allow for nominating serial elements involving both multilateral and national series. (SKOUNTI , 2012) After that, Italy named the first national serial element to be inscribed on the Representative List, namely “Celebrations of big shoulder-borne processional structures”. Thus, the Committee’s decision to inscribe this element welcomed this seriality by highlighting that “inscription of the element [...] could encourage dialogue among its practitioners in [the] four cities”. (UNESCO, 2013b) Also, the Subsidiary Body considered the element’s nomination file to be one of “several well-prepared

nominations that might serve as models and sources of inspiration for other States Parties”.<sup>11</sup> In particular, it noted that the file was “particularly interesting as an example of a serial national nomination”. (UNESCO, 2013d, p. 20)

Interestingly, a serial multinational and national element is the “Art of dry stone walling, knowledge and techniques”. This element in fact is composed by bearers located in Croatia, Cyprus, France, Greece, Italy, Slovenia, Spain and Switzerland. In Italy, dry stone constructions appear in many different regions. A non-exhaustive list of locations includes in the North: Lombardia (Valtellina), Piemonte (Val d’Osola), Liguria (Cinque Terre), Friuli Venezia Giulia (Carso triestino, Carso goriziano), Valle d’Aosta, Trentino Alto Adige and Veneto (Val Posina, Val d’Astico); in the middle: Toscana (Colline del Chianti) and Lazio (Vallecorsa); in the South: Campania (Costiera amalfitana), Sicily (Monti Iblei, Pantelleria), Calabria (Costa Viola), Puglia (Valle d’Itria) and Sardinia (Ogliastra).

The “Art of Neapolitan ‘Pizzaiuolo’” is a national element where the community is originally located just in Naples, but today is “universal” in nature, being located not just in Italy but in different countries of the world. Although the nomination file locates the community in Naples, the same file clarifies that the community is composed by Pizzaiuoli, whereby “each Pizzaiuolo, inside or outside Naples, is a living link for the community with his cultural baggage of a strong sense of identity, continuity and respect”. (UNESCO, 2017a) Thus, it is apparent that the community composed by Pizzaiuoli is located in any single country of the world where Pizzaiouli live and perform. Furthermore, the element’s nomination file highlights that “the universal cultural values of the art of the Neapolitan Pizzaiuoli have been disseminated and transmitted during twinning programs with other communities, i.e. in Europe, Asia, North and South America”. (UNESCO, 2017a) In fact, “many Neapolitan bearers living abroad”

(UNESCO, 2017a) consented to the nomination of the element, and Pizzaiouli from all over the world came to manifest their consent to its inscription by attending the twelfth session of the Committee as community representatives.<sup>12</sup> (UNESCO, 2017d) This demonstrates the universal nature of the element and “testifies that [the] inscription [...] involve[d] all [of] the world”. (UNESCO, 2017a)

### **Free, prior and informed consent**

The free, prior and informed consent to the nomination of the element of the community is required, according to the criteria for inscription on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding and on the Representative List in the Operational Directives.<sup>13</sup> This consent “may be demonstrated through written or recorded concurrence, or through other means, according to the legal regiments of the State Party and the infinite variety of communities and groups concerned”. (UNESCO, 2019, p. 4) The Committee “welcome[s] a broad range of demonstrations or attestations of community consent in preference to standard or uniform declarations”. (UNESCO, 2019, p. 4)

Thus, in relation to the “traditional agricultural practice of cultivating the ‘vite ad alberello’ (head-trained bush vines) of the community of Pantelleria”, the “local community decide[d] to send some little branches of vine as real and tangible proof of its consent”,<sup>14</sup> as well as written concurrence.<sup>15</sup> In addition, in Italy “a Facebook group ‘Falconry Italian Intangible Cultural Heritage of Humanity’ [...] with over 800 members was created [by a board member of the International Association for Falconry and Conservation of Birds of Prey] to ensure the widest possible participation of the community of falconers”<sup>16</sup> in demonstrating consent to the nomination of “Falconry, a living human heritage”. Similarly, consent for the nomination of the “Art of Neapolitan ‘Pizzaiuolo’” was given by the community through various means, including “[an online,

global] petition supporting the nomination” (UNESCO, 2017b) that collected more than two million signatures from individuals from over 100 countries,<sup>17</sup> including “many Neapolitan bearers living abroad”, (UNESCO, 2017a) which testified once again that this element interested all of the world. In addition, “children’s artworks [depicting Pizzaiuoli were provided to] illustrate consent to the nomination, together with consent letters” (UNESCO, 2017b) from local associations and institutions, including the Associazione Pizzaiuoli Napoletani (APN), the Associazione Verace Pizza Napoletana (AVPN), and the Fondazione Univerde, among others.

### **Intellectual property rights as safeguarding measures**

Traditional IPRs require the identification of the physical author of the intellectual subject matter in order to be protected, are only granted for a limited duration, and concern only creations that will be reproduced in numerous series of protected exemplars. In contrast, a single owner of the ICH cannot be ascertained, ICH is transmitted from generation to generation and usually is not incorporated into a physical form. For many years this impeded the World Intellectual Property Organization, the Conference of the parties negotiating the Convention on Biological Diversity, and the World Trade Organization from adopting treaties to extend IPRs to folklore, traditional cultural expressions and traditional knowledge (whether associated or not to genetic resources). (UBERTAZZI, 2012) Indeed, a protection of these elements through sui generis IPRs was recently introduced not only by domestic systems of protection but also at the international level, in particular by the Nagoya Protocol to the Convention on Biological Diversity. (KONO; WRBKA, 2010)

The Convention establishes that nothing within it “may be interpreted as [...] affecting the rights and obligations of States Parties

deriving from any international instrument relating to intellectual property rights”. (UNESCO, 2003) The inscription of ICH elements on the Unesco Lists therefore does not impose the recognition of any corresponding IPRs, nor a determination of ownership of those IPRs. Yet, IPRs are extremely relevant to ICH. In fact, the Committee encouraged States Parties to adopt IPRs as measures to mitigate the risk of over-commercialisation and misappropriation of ICH, in light of their obligations to recognise, promote and enhance the importance of ICH as a strategic resource for sustainable development. According to the Committee, IPRs

promote creativity, innovation and utilisation of intangible cultural heritage while ensuring that the bearers of such heritage, whether communities, groups or individuals, benefit from the protection of the moral and material interests resulting from the use or adaptation of that heritage.<sup>18</sup>

In addition, IPRs “ensure that the rights of the communities, groups or individuals that create, bear and transmit their intangible cultural heritage are duly protected from misappropriation or abuse of their knowledge and skills”.<sup>19</sup> (UNESCO, 2015b, p. 17) Moreover, paragraph 173 of the Operational Directives encourages State Parties to

adopt appropriate legal, technical, administrative and financial measures, in particular through the application of intellectual property rights [...] to ensure that the rights of the communities, groups and individuals that create, bear and transmit their intangible cultural heritage are duly protected when raising awareness about their heritage or engaging in commercial activities.<sup>20</sup> (UNESCO, 2018c, p. 32)



Thus, IPRs are measures that safeguard the ICH elements favoring their sustainable development and mitigating the risks of over-commercialisation and misappropriation of ICH.

Over-commercialisation is an over-exploitation of natural resources with the aim of producing goods and services for unsustainable sale, bartering or tourism.<sup>21</sup> (UNESCO, 2018c) Commercial activities are intrinsic to certain forms of ICH, such as handicrafts and other practices that create products for sale or barter. These elements are not excluded from consideration under the Convention unlike elements incompatible with human rights or sustainable development. In fact, much ICH would not continue to be viable if there were no remuneration for time and other investments made in its practice and transmission. Ensuring that communities benefit economically from practising their ICH can motivate them to continue doing so. ICH practice and transmission can be supported financially in different ways, by remunerating practitioners of ICH,<sup>22</sup> or for the transmission of skills or knowledge of ICH,<sup>23</sup> or by purchasing or bartering ICH products.<sup>24</sup>

Commercialisation, however, should not lead to over-commercialisation. (CABOLI, 2014) A letter sent to the Unesco Secretariat regarding the multinational element “Mediterranean Diet”, nominated by Italy too, raised concerns over such over-commercialization. This element was criticized for having commercial aims, being against the spirit of the Convention and the inscription of this element on the Representative List would have been in violation of the same Convention. However, at that time a formal procedure to dealing with correspondence from civil society was absent; the necessary mechanism was introduced only in 2012.<sup>25</sup> Thus, the letter was disregarded and the element was inscribed on the Representative List in 2010.<sup>26</sup> Nonetheless, the Committee invited States Parties to avoid commercial misappropriation of ICH and to use the Convention’s emblem in commercial activities only in line with the relevant Convention’s

rules. According to these rules, firstly the Unesco Director-General shall expressly authorise any sale of goods or services bearing this emblem; then the Convention Secretariat after consulting the State party that nominated the ICH element, shall conclude contractual arrangements with the private subjects interested in commercializing the element, ensuring a benefit sharing mechanism in favour of the ICH Fund. (UBERTAZZI, 2011) Concerns of commercialisation were raised also with regard to the element of “the Traditional production of the Kranjska klobasa” (Carniolan sausage), named to be inscribed in 2015 on the Representative List. It was criticised for its commercial aims as “the nomination focuses more on the product than on the skills related to its production or the social function of its consumption” by “what appears to be an economically motivated interest group”. (UNESCO, 2015b, p. 23)

Misappropriation is inequitable benefit acquired in ways unacceptable to the ICH bearers through exploitation of communally held ICH.<sup>27</sup> (UNESCO, 2018c) The competent Unesco national Commissions must notify the Paris Union member States of the Convention’s emblem,<sup>28</sup> and shall have recourse to Parties’ domestic systems to prevent abusive use of said emblem, for instance, where such use falsely suggests a connection with Unesco and the Convention.<sup>29</sup> Parties shall provide the Secretariat with names and addresses of their domestic authorities charged with managing the use of the emblem. At the national level, those requesting use of the emblem shall consult these authorities and await potential authorization by the Secretariat. Although both the Secretariat and the national authorities cooperate to prevent domestic misuse, only the national authorities may initiate proceedings against unauthorized internal use. At the international level, the Director-General may monitor use of the emblem and initiate proceedings against abusive use.

In addition, the adoption of intellectual property rights as safeguarding measures is a specific component of an indicator of the implementation of the 2003 Convention as contained in the draft overall results framework approved by the General Assembly at its seventh session in June 2018. The General Assembly approved the following “[f]orms of legal protection, such as intellectual property rights and privacy rights, are provided to ICH practitioners, bearers and their communities when their ICH is exploited by others for commercial or other purposes”. (UNESCO, 2018a, p. 13) This framework was developed in response to recognition by the Internal Oversight of the difficulty of the Committee to monitor the implementation of the Convention without an overall results framework agreed upon by its State Parties. In this framework, core indicator number 14 is “the extent to which policies as well as legal and administrative measures respect customary rights, practices and expressions, particularly as regards the practice and transmission of ICH”. Importantly, one component of this indicator is the ‘forms of legal protection, such as intellectual property rights and privacy rights, are provided to ICH practitioners, bearers and their communities when their ICH is exploited by others for commercial or other purposes.

Finally, the Committee decided to inscribe in the Unesco Lists several ICH elements that clearly indicate in their nomination file the adoption of IPRs at the domestic level. Thus, the Committee itself began recognizing the place within the inscription decision of IPRs on ICH as proper safeguarding measures. Among such elements stand: Dikopelo folk music of Bakgatla ba Kgafela in Kgatleng District (Botswana), Sega tambour of Rodrigues Island (Republic of Mauritius) and Međimurska popevka, a folksong from Međimurje (Croatia) that adopt copyright; Indonesian Batik (Indonesia) that registers a certification trademark; and traditional violin craftsmanship in Cremona (Italy) that utilizes a collective trademark. (BORTOLOTTI;

UBERTAZZI, 2018) Furthermore, nomination files that adopted GIs include Weaving of Mosi (fine ramie) in the Hansan region (South Korea). (UNESCO, 2011) traditional craftsmanship of Çini-making (Turkey), (UNESCO, 2016b) know-how of cultivating mastic on the island of Chios (Greece) (UNESCO, 2014b) and Argan, practices and know-how concerning the argan tree (Morocco). (UNESCO, 2014a)

Among the various IPRs to be adopted by States as measures to mitigate the risk of over-commercialisation and misappropriation of ICH, those of a collective nature are particularly relevant. (KONO, 2009) To safeguard four of its ICH elements Italy registered the IPRs identified in the Frame 3 (Appendix C).

### **The proprietarisation of culture**

IPRs as safeguarding measures should avoid the proprietarisation of culture, and should favour the ICH bearers instead, and therefore typically communities. Therefore, those IPRs of a collective nature are better placed to reach this aim.

To safeguard “Traditional violin craftsmanship in Cremona”, a collective trademark and certification trademark, “Cremona Liuteria”, was registered in 2001 by the Consorzio Liutai in Italy and another 33 countries, namely Denmark, Finland, United Kingdom of Great Britain and Northern Ireland, Japan, Norway, Sweden, Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Benelux, Switzerland, China, Cuba, Czech Republic, Germany, Egypt, Spain, France, Croatia, Hungary, Liechtenstein, Monaco, Montenegro, Macedonia, Poland, Portugal, Romania, Serbia, Russian Federation and Slovenia. The trademark was registered under classes 15 (musical instruments), 16 (artists’ materials) and 41 (musical education and entertainment) of the Nice Classification,<sup>30</sup> and the conditions for obtaining a license to use the

collective trademark are specified in the “Rules for the Use of the ‘Cremona Liuteria’ Collective Trademark”.<sup>31</sup>

To safeguard “Traditional agricultural practice of cultivating the ‘vite ad alberello’ (head-trained bush vines) of the community of Pantelleria” collective IPRs have also been used. “Pantelleria”, “Moscato di Pantelleria” and “Passito de Pantelleria” were registered as a Controlled Designation of Origin (DOC) under Italian legislation in 1973, and were later registered as a wine with a Protected Designation of Origin (PDO) in 2004.<sup>32</sup>

To safeguard the “Art of Neapolitan ‘Pizzaiuolo’” a collective, European IPR was adopted, namely the designation ‘Pizza Napoletana’ was registered as Traditional Specialties Guaranteed (TSG) in 2009.<sup>33</sup>

To safeguard the “Mediterranean Diet”, the individual European Union trademark, “We Are What We Eat MedDiet Mediterranean Diet”,<sup>34</sup> also known as the “MedDiet Quality Label”, was registered in 2015. Yet, notwithstanding the fact that this trademark is individual, it was registered by several public entities from Italy, Spain, and Greece, serving as such a similar role to collective trademarks. The trademark has been used as a quality label for restaurants, whereby if the requirements in the MedDiet Quality Standard are met the restaurant is certified and can use the trademark.<sup>35</sup> These requirements include the use of seasonal and local products, a menu containing dishes that are made with traditional Mediterranean recipes and/or are in line with the Mediterranean diet, transparency in relation to food information, and the promotion of the Mediterranean diet lifestyle.<sup>36</sup> There are currently over 200 MedDiet restaurants throughout the Mediterranean, 42 of which are in Italy.<sup>37</sup>

### Freezing culture

IPRs as safeguarding measures should respect the dynamic nature of ICH, which is

constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. (UNESCO, 2003)

Among the various IPRs, those of a collective nature seem better placed to reach this aim. In fact, collective trademarks, GIs, PDOs and TSGs facilitate the protection of their related product or services in a dynamic context, where natural changes may prompt product and service variations reflected in periodical variations to the collective trademark's regulation, and to the GI, PDO or TSG product specification. According to Art. 53, para. 2, of the EU Regulation n° 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs, a major change to a GI or PDO product specification is one that: (a) relates to the essential characteristics of the product; (b) alters the link between the quality or characteristics of the product and the geographical environment (referred to in Art. 5, para. 1, which concerns the requirements for designation of origins), or the link between a given quality, the reputation or other characteristic of the product and the geographical origin of the product (referred to in Art. 5, para. 2, which concerns the requirements for geographical indications); (c) involves a change in the name, or any part of the name of the product; (d) affects the defined geographical area; or (e) represents an increase in restrictions on trade in the product or its raw materials. Similarly, a major change to a TSG product specification is one that: (a) relates to the essential characteristics of the product; (b) introduces essential changes to the production method; or (c) includes a change to the name, or to any part of the name of the product. (DEACON, 2018) If there is a major change, the modified product specification must be assessed according to the processes outlined in Arts. 49 to 52.

The flexibility in amending GI, PDO and TSG product specifications helps to prevent the freezing of culture.

In contrast, “the owner of a collective [trade]mark is responsible for ensuring the compliance with certain standards [...] by its members”, (WORLD INTELLECTUAL PROPERTY ORGANIZATION, 2017) which are “usually fixed in the regulations concerning the use of the collective mark”. (DEACON, 2018, p. 515) For example, the standards for the “Cremona Liuteria” trademark are found in the “Rules for the Use of the ‘Cremona Liuteria’ Collective Trademark.” In relation to EU collective trademarks, the regulations governing the use of such trademarks must:

specify the persons authorised to use the mark, the conditions of membership of the association [of manufacturers, producers, suppliers of services, or traders] and, where they exist, the conditions of use of the mark, including sanctions. These regulations must be submitted to the European Union Intellectual Property Office within two months of the date of filing of the trademark [Accordingly], the proprietor of an EU collective mark shall submit to the [European Union Intellectual Property] Office any amended regulations governing use [which] shall take effect only from the date of entry of the mention of the amendment in the Register. Parallel provisions exist in relation to EU certification marks. (EUROPEAN UNION, 2017)

In this way, the owner of a mark is able to amend the standards set in the trademark’s regulations and submit the amended regulations to the relevant trademark office to prevent the freezing of the safeguarded culture.

## Territoriality

IPRs as safeguarding measures should respect the principle of territoriality. IPRs are territorial and provide protection only in the country for which they are registered. Thus, adopting IPRs to safeguard ICH from transnational misappropriation raises two interrelated problems.

Firstly, IPRs on ICH must be registered not only in the country of origin, but also in each and every other State for which protection is required. So, for instance States Parties to the Convention have registered collective and certification trademarks or GIs, not only for their respective territory where the ICH originates, but also for several other jurisdictions. This is in order to protect their ICH not only in its country of origin, but also in other relevant territories, such as the EU. For example, the registration of EU GIs in the Database of Origin and Registration (DOOR) kept by the European Commission and the publication of said registration in the EU Official Journal gives rise to unitary IPRs, the effects of which cover the entire EU territory under Article 118(2) of the Treaty on the Functioning of the European Union (TFEU).

Italy has acquired unitary EU IPRs through the registration of the “Pantelleria”, “Moscato di Pantelleria” and “Passito de Pantelleria” PDO,<sup>38</sup> and the ‘Pizza Napoletana’ TSG.<sup>39</sup> Italy has also registered the “Cremona Liuteria” collective trademark not only in Italy, but also in another 33 countries.<sup>40</sup> In addition, the trademark “We Are What We Eat MedDiet Mediterranean Diet” is registered in the EU.<sup>41</sup>

Secondly, IPRs must be enforced not only in the country of origin, but also in each and every other States for which protection is required. So, for instance States Parties to the Convention that are non-EU member States, which have registered domestic IPRs and EU IPRs, must enforce these rights not only in their country of origin but also in every State of the entire EU territory to effectively protect their ICH from transnational misappropriations. (UBERTAZZI, 2017)



## Authenticity

IPRs as safeguarding measures should respect “the principles and spirit of the Convention”, (UNESCO, 2017d, p. 23) according to which the Lists are not to be interpreted or used as a means to authenticate the practice of an element in a specific country. (UNESCO, 2017d) In fact, “certain elements are shared across different countries and are not restricted to one specific country or specific groups [Thus,] the identification of a specific community in [a nomination] form does not necessarily exclude others from practising the element” (UNESCO, 2017d, p. 51) in other countries.

The “Art of Neapolitan ‘Pizzaiuolo’” nomination form, for example, states that proposed safeguarding measures “will be organized with the purpose of disseminating deep knowledge of the characteristics of genuineness and authenticity of this art”. (UNESCO, 2017e, p. 9) Thus, in its inscription decision, the Committee,

remind[ed] the State Party of the importance of using vocabulary and concepts that are appropriate to the Convention and to therefore avoid expressions such as ‘authenticity’, ‘counterfeit’, geographic ‘origin’, as well as any reference to exclusive ownership over intangible cultural heritage [It also] underline[d] that safeguarding measures aiming at ‘preserving the authenticity’ of an element of intangible cultural heritage are not in line with the spirit of the Convention and would contradict the evolving nature of living heritage, which is by definition constantly recreated by the communities concerned. (UNESCO, 2017b, p. 5)

These Committee comments highlight the need to pay attention to the drafting strategy, which is a very common situation for those operating within the various dimensions of the ICH safeguarding. The

registration and inscription of IPRs on the Unesco Lists are sometimes used in parallel to protect and promote the same tradition, for instance the same food production method. Yet, “there are substantial differences between ICH and GIs”, (UBERTAZZI, 2017) and this parallel adoption of different instruments occurs in various safeguarding dimensions, each of which has different applicable rules and purposes. Enforcing an IPR in a national context, to protect the tradition from counterfeiting purposes for instance, is a different scenario than mentioning the existence of said IPRs in an international framework, where the territorial scope of action does not coincide with that of the same right or in any case where enforcement purposes and mechanisms are absent.

The different adoption of IPRs in the various ICH safeguarding dimensions may create tensions, which however, may be reduced by paying careful attention to the drafting strategies. For instance, it is relevant to compare “the TSG specification for ‘*Pizza Napoletana*’ to the nomination file for ‘the art of Neapolitan *Pizzaiuolo*’ to explore the implications of using a parallel TSG registration and ICH inscription for safeguarding foodways as ‘intangible heritage’ in the sense of the Convention”. This comparison concludes that some tensions may arise. In fact,

registering a TSG on the use of a generic name such as ‘*Pizza Napoletana*’ provides limited IP rights protection, but does bolster its prestige as a ‘traditional’ product. This would be supported by an ICH nomination. This could benefit local producers by enabling them to compete more effectively in the market against frozen and factory-made pizzas, and thereby encourage the future practice and transmission of the art of making pizzas by hand. Ultimately, however, the tension between the TSG specification and the ICH nomination in regard to the naming and nature of the toppings may reduce the credibility of these instruments in promoting the credence attributes of the product. This is a problem

inherent in the TSG system, and can only be resolved by paying careful attention to the drafting of a 'traditional recipe' in specifications. (DEACON, 2018, p. 515)

From the IPRs perspective, however, the role of authenticity with respect to GIs shall be re-evaluated. The great majority of legal instruments regulating GIs, in fact, do not mention authenticity. Among those treaties stand the Stresa Convention on the Protection of Appellations of Origin and Names of Cheese (1951),<sup>42</sup> the Lisbon Agreement on the Protection of Appellation of Origin (1958),<sup>43</sup> the bilateral and multilateral agreements on GIs related to wine and spirits,<sup>44</sup> those concluded by the European Union with Switzerland (2011)<sup>45</sup> and Georgia (2012),<sup>46</sup> those that include GIs in Economic Partnership Agreements,<sup>47</sup> in the Stabilisation and Association Agreement,<sup>48</sup> (STABILISATION..., 2006) in the Free Trade Agreements (FTAs),<sup>49</sup> (FREE..., 2010) and finally the Geneva Act of the Lisbon Agreement concluded in 2015,<sup>50</sup> (THE GENEVA..., 2015) (altogether hereinafter: GI Treaties). Also, the EU Regulation n° 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs (QS Regulations) (EUROPEAN UNION, 2012) is relevant. Of these GI Treaties, only two bi-lateral agreements include reference to authenticity of the intended product of the agreement, and of these two bi-lateral agreements, authenticity is only mentioned one time in each.<sup>51</sup> Similarly, the QS Regulation adopt 17238 words to regulate GIs, and yet uses authenticity just twice: in Art 7(e), according to which the product specification may reference the "authentic" local methods, but just "where appropriate"; and in Art. 45, according to which "a group is entitle to ensure that the quality reputation and authenticity are guaranteed in the market", but only if authenticity was included in the specification. Thus, authenticity comes into play just at the IPR enforcement phase, rather than at their recognition and granting stage.

From the ICH perspective, the ICH Convention does not adopt an externally articulated notion of authenticity. (BORTOLOTTI, 2001) The issue with the ICH Convention's stance on authenticity is that it fails to sufficiently adopt an approach to authenticity that is community-defined. Hence, "the 'communities, groups and individuals concerned' have to identify what their ICH is, what value it has to them, and how to manage it. They should also be the ones to benefit from its use, according to ICH Convention's Ethical Principles (2015). They are, therefore, effectively the ones who determine the authenticity of a heritage practice or related product, or the "limits of acceptable change" that could indicate problems such as over-commercialization, misrepresentation or misappropriation. Nevertheless, paradoxically, the Committee still makes external judgments regarding the presence or absence of over-commercialization in the examination of nomination files. Thus, how communities are enabled to control and define what their heritage means needs to be re-examined, potentially by distinguishing between various kinds of authenticity, and by considering that, "from a consumer culture perspective, consumers and other actors (retailers, the media, influencers...) have a culture-producing role and can be considered co-creators of authenticity". (DEACON et al., 2019)

Finally, collective trademarks, GIs, PDOs and TSGs emphasise a territorial connection between the element and its geographical location. This may prompt States to invoke worldwide territorial exclusivity and highlight the authentic character of the elements at stake. Yet, as above mentioned, IPRs are territorial in nature and therefore cannot grant any worldwide exclusive rights and verify the authentic character of the elements involved. Thus, authenticity and exclusivity claims are against, not only the spirit of the Convention, but also the nature and scope of any IPRs, such as collective trademarks, GIs, PDOs and TSGs.

**APPENDIX A**

FRAME 1 – Domains of Italian elements inscribed on the Unesco Representative List of the Intangible Cultural Heritage of Humanity

(to be continued)

ELEMENT	DOMAINS OF INTANGIBLE CULTURAL HERITAGE				
	Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage	Performing arts	Social practices, rituals and festive events	Knowledge and practices concerning nature and the universe	Traditional craftsmanship
Opera dei Pupi, Sicilian puppet theatre (2008b)	<ul style="list-style-type: none"> <li>There is no nomination form for this element. However, the fact that “the puppeteers told stories based on medieval chivalric literature and other sources” and that “the dialogues in these performances were largely improvised by the puppeteers”, suggest that the element manifests the oral traditions and expressions, including language as a vehicle of the intangible cultural heritage, and the performing arts domains. In addition, “the carving, painting and construction of the puppets, renowned for their intense expressions, were carried out by craftspeople employing traditional methods” suggests that it also manifests the traditional craftsmanship domain.</li> <li>Item proclaimed ‘Masterpieces of the Oral and Intangible Heritage of Humanity’ in 2001. Intergovernmental Committee Decision 3.COM 1 (2008a, p. 2): “The Committee [...] incorporates in the Representative List of the Intangible Cultural Heritage of Humanity the 90 items proclaimed, ‘Masterpieces of the Oral and Intangible Heritage of Humanity’ before the entry into force of the Convention, as listed in document ITH/08/3.COM/CONF.203/1”<sup>52</sup></li> </ul>				
Canto a tenore, Sardinian pastoral songs (2008)	<ul style="list-style-type: none"> <li>There is no nomination form for this element. However, the fact that the element “represents a form of polyphonic singing performed by a group of four men using four different voices called bassu, contra, boche and mesu boche”, that “it is performed standing in a close circle” and that “the solo singers chants a piece of prose or a poem while the other voices form an accompanying chorus”, suggest that the element manifests the oral traditions and expressions, including language as a vehicle of the intangible cultural heritage, and the performing arts domains.</li> </ul>				

(conclusion)

<p>Canto a tenore, Sardinian pastoral songs (2008)</p>	<p>• Item proclaimed 'Masterpieces of the Oral and Intangible Heritage of Humanity' in 2005. Intergovernmental Committee Decision 3.COM 1(2008a): "The Committee [...] incorporates in the Representative List of the Intangible Cultural Heritage of Humanity the 90 items proclaimed, 'Masterpieces of the Oral and Intangible Heritage of Humanity' before the entry into force of the Convention, as listed in document ITH/08/3.COM/CONF.203/1".</p>				
<p>Traditional violin craftsmanship in Cremona (2008c)</p>	•	•	•	•	•
<p>*Mediterranean Diet (2010)<sup>63</sup></p>	•	•	•	•	•
<p>Celebrations of big shoulder-borne processional structures (2013)</p>	•	•	•	•	•
<p>Traditional agricultural practice of cultivating the 'vite ad alberello' (head-trained bush vines) of the community of Pantelleria (2014)</p>	•	•	•	•	•
<p>*Falconry, a living human heritage "replaces the inscription" (UNESCO, 2012; 2016)</p>	•	•	•	•	•
<p>Art of Neapolitan 'Pizzaiuolo' (2017)</p>	•	•	•	•	•
<p>*Art of dry stone walling, knowledge and techniques (2018)</p>	•	•	•	•	•

\* Multi-national element

Source: prepared by the author.

**APPENDIX B**

FRAME 2 – Italian elements inscribed on the Unesco Representative List of the Intangible Cultural Heritage of Humanity:  
Communities, Geographical Range and Consent (to be continued)

ELEMENT	COMMUNITIES	GEOGRAPHICAL LOCATION AND RANGE OF THE ELEMENT	MEANS OF FREE, PRIOR AND INFORMED CONSENT
Opera dei Pupi, Sicilian puppet theatre (2008b)	Although there is no nomination form, UNESCO states that “the puppet theatre known as the Opera dei Pupi emerged in Sicily at the beginning of the nineteenth century and enjoyed great success among the island’s working classes, [whereby] the puppeteers told stories based on medieval chivalric literature and other sources, such as Italian poems of the Renaissance, the lives of saints and tales of notorious bandits”. It also states that “the two main Sicilian puppet schools [were] in Palermo and Catania” and that “the carving, painting and construction of the puppets, renowned for their intense expressions, were carried out by craftspeople employing traditional methods”.	Although there is no nomination form, UNESCO states that the “Canto a tenore has developed within the pastoral culture of Sardinia, [and] represents a form of polyphonic singing performed by a group of four men using four different voices” In addition, “most practitioners live in the region of Barbagia and other parts of central Sardinia”.	141 violinmakers’ workshops, the violin-makers’ associations, “Consorzio Liutai Antonio Stradivari” and “Associazione Liutaria Italiana”, the teachers and students of the International School of Violin Making.
Canto a tenore, Sardinian pastoral songs (2008)	Written concurrence	Cremona	
Traditional violin craftsmanship in Cremona (2008c)			

(to be continued)

<p>Mediterranean Diet (UNESCO, 2010b; 2013c)</p>	<p>The national communities in Cyprus, Croatia, Spain, Greece, Italy, Morocco and Portugal.</p> <ul style="list-style-type: none"> <li>• Emblematic communities: Agros (Cyprus), Brač and Hvar (Croatia), Soria (Spain), Koroni/Coroni (Greece), Cilento (Italy), Chefchaouen (Morocco), Tavira (Portugal).</li> </ul>	<p>The territorial boundaries and respective human communities of Cyprus, Croatia, Spain, Greece, Italy, Morocco and Portugal.</p>	<p>Written concurrence</p>
<p>Celebrations of big shoulder-borne processional structures (2013a)</p>	<p>Members of the following associations in Nola, Palmi, Viterbo and Sassari: "Contea Nolana" Association (representing 28 other associations of Nola); "Association 'Mbuttaturi' of Varia di Palmi; Citizens' Committee "11 gennaio 1582"; "Per Palmi" Association and "Sodalizio della Varia di Palmi" Association; "Intergremio" and "Gremi con Candeliere" of the City of Sassari; "Sodalizio Facchini di Santa Rosa" of Viterbo.</p>	<p>"Throughout the country [Italy], but the most representative events of this heritage take place in the historical city centers of four Italian cities: Nola, Palmi, Sassari, Viterbo".</p>	<p>Written concurrence</p>
<p>Traditional agricultural practice of cultivating the 'vite ad alberello' (head-trained bush vines) of the community of Pantelleria (2014b)</p>	<p>The community of the island of Pantelleria: specifically, the community of vine growers and farmers of the island.</p>	<p>Pantelleria</p>	<p>Written concurrence and by sending small branches of vine</p>



(to be continued)

ELEMENT	COMMUNITIES	GEOGRAPHICAL LOCATION AND RANGE OF THE ELEMENT	MEANS OF FREE, PRIOR AND INFORMED CONSENT
<p>Falconry, a living human heritage 2016, “replaces the 2012 inscription” (UNESCO, 2012)</p>	<p>Villages and kinship groups, tribes, families and individuals, organized falconry clubs, falconry heritage trusts and institutions, supporting agencies and associations, such as falcon hospitals, breeding centres, conservation agencies, traditional falconry equipment makers, artists, poets, and professional falconers.</p> <ul style="list-style-type: none"> <li>• See the Nomination file for examples of specific communities, such as the Circolo dei Falconieri d'Italia per lo studio e la protezione dei rapaci, and the FIF (Federazione Italiana Falconieri).</li> </ul>	<p>The territories of the United Arab Emirates, Austria, Belgium, the Czech Republic, France, Germany, Hungary, Italy, Kazakhstan, the Republic of Korea, Mongolia, Morocco, Pakistan, Portugal, Qatar, Saudi Arabia, Spain and the Syrian Arab Republic.</p> <ul style="list-style-type: none"> <li>• Traditional migration flyways and corridors that run from north and east Asia and north Europe through Mediterranean Europe, the Middle East and the Caspian Sea countries to North Africa, and from North America, south to Central and South America.</li> <li>• Falconry retains an unbroken tradition in central, south and east Asia, the Middle East, North Africa and most parts of Europe.</li> </ul>	<p>Written concurrence – some of which was collected in Italy through a Facebook group, “Falconry Italian Intangible Cultural Heritage of Humanity” created by a board member of the International Association for Falconry and Conservation of Birds of Prey.</p>
<p>Art of Neapolitan ‘Pizzaiuolo’ (2017a)</p>	<p>The community of Naples, including 3,000 Pizzaiuolo who live and perform in Naples, and local associations. In addition, Pizzaiuoli who are located outside of Naples and perform in countries, such as Australia, the US, Japan and South Korea.</p>	<p>Naples</p>	<p>Written concurrence, children’s artworks and a global, public petition launched online through Change.org.<sup>54</sup></p>

(conclusion)

<p>Art of dry stone walling, knowledge and techniques (2018)</p>	<p>Villages and kinship groups, tribes, families and individuals, organized falconry clubs, falconry heritage trusts and institutions, supporting agencies and associations, such as falcon hospitals, breeding centres, conservation agencies, traditional falconry equipment makers, artists, poets, and professional falconers.</p> <ul style="list-style-type: none"><li>• See the Nomination file for examples of specific communities, such as Italy the following six municipalities (Vallecorsa in Lazio, Ragusa in Sicily, Talana, Baunei and Ilbono in Sardinia), together with dry stone masons, architects and representatives of the Italian Ministry of Agricultural, Food and Forestry Policies.</li></ul>	<p>In Italy, dry stone constructions appear in many different regions. A non-exhaustive list of locations includes in the North: Lombardia (Valtellina), Piemonte (Val d'Ossola), Liguria (Cinque Terre), Friuli Venezia Giulia (Carso triestino, Carso goriziano), Valle d'Aosta, Trentino Alto Adige and Veneto (Val Posina, Val d'Astico); in the middle: Toscana (Colline del Chianti) and Lazio (Vallecorsa); in the South: Campania (Costiera amalfitana), Sicily (Monti Iblei, Pantelleria), Calabria (Costa Viola), Puglia (Valle d'Itria) and Sardinia (Ogliastra).</p>	<p>In Italy: 18 letters of consent from various bearers of the element: 10 from local authorities (7 from mayors of municipalities and 3 from directors of regional departments involved in the nomination: Lazio, Sicily and Sardinia), 2 from academic architects and 6 from associations or local groups of practitioners and federations actively involved in the safeguarding of dry stone. Four of the persons signing the letters are female and fourteen are male.</p>
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Source: prepared by the author.





## APPENDIX C

FRAME 3 – Italian ICH with IP safeguards

(to be continued)

ELEMENT	IPR	NAME	APPLICANT
Traditional violin craftsmanship in Cremona, Italy	Collective word and figurative trademark	Consorzio Liutai	Consorzio Liutai 'Antonio Stradivari' Cremona
Mediterranean Diet	Individual figurative and word trademark	We are what we eat MedDiet Mediterranean Diet	UNIONCAMERE; Camera di Commercio di Cagliari; Associazione Nazionale Città dell'Olio; Fundación Dieta Mediterrán; La Chambre de Commerce et d'Industrie de Tunis; Cultural Foundation "The Routes of the Olive Tree"; Messinian Chamber of Commerce & Industry; Forum delle Camere di Commercio dell'Adriatico e dello Ionio; AEMO; Ascame; Confederation of Egyptian European Business Associations; INRAT; Chamber of Commerce, Industry and Agriculture of Beirut and Mount Lebanon
Wine-making in Pantelleria	Protected Designation of Origin (PDO)	Moscato di Pantelleria/ Pantelleria/ Passito di Pantelleria	IT
Art of Neapolitan 'Pizzaiuolo'	Traditional Speciality Guaranteed (TSG)	Pizza Napoletana	IT

(conclusion)

PLACE OF REGISTRATION AND DESIGNATIONS	NICE CLASSES	REGISTRATION DATE	REGULATIONS	MARK
International trademark IT, AL, AM, AT, BA, BG, BX, CH, CN, CU, CZ, DE, DK, EG, ES, FI, FR, GB, HR, HU, JP, KR, LI, MC, ME, MK, NO, PL, PT, RO, RS, RU, SI, SE, SK.	15, 16, 41	23.01.2001	<a href="http://www.cremonaviolins.com/en/the-consortium/the-trademark-cremona-liuteria-and-the-regulations/">http://www.cremonaviolins.com/en/the-consortium/the-trademark-cremona-liuteria-and-the-regulations/</a>	
EU Trademark: EU Member states	35, 41, 43	22.12.2015	Utilised as a quality standard: <a href="http://www.med-diet.eu/download/86.html">http://www.med-diet.eu/download/86.html</a>	
EU	-	14.04.2004  (Registered in ITA: 18.09.1973)	<a href="http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=pdfEccgi&amp;language=EN&amp;eccgild=8381">http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=pdfEccgi&amp;language=EN&amp;eccgild=8381</a>  Regulation: <a href="http://catalogoviti.politicheagricole.it/scheda_denom.php?t=dsc&amp;q=2224">http://catalogoviti.politicheagricole.it/scheda_denom.php?t=dsc&amp;q=2224</a>	
EU	2.3	05.02.2010	<a href="http://ec.europa.eu/agriculture/quality/door/registeredName.html?denominationId=916">http://ec.europa.eu/agriculture/quality/door/registeredName.html?denominationId=916</a>  Description/regulation: <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:040:0017:0025:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:040:0017:0025:EN:PDF</a>	

Source: prepared by the author.

## Notas

- <sup>1</sup> Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (2013), Nomination File for Mediterranean Diet, p. 5, see: <https://ich.unesco.org/doc/download.php?versionID=20926>.
- <sup>2</sup> The Subsidiary Body was established by the Committee to evaluate nominations for inscription on the Representative List. See Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, seventh session, Paris, France, 3 to 7 December 2012, Decision 7.COM 12.c. See: [https://ich.unesco.org/en/d%C3%A9cisions/7.COM/12.C?dec=decisions&ref\\_decision=7.COM](https://ich.unesco.org/en/d%C3%A9cisions/7.COM/12.C?dec=decisions&ref_decision=7.COM).
- <sup>3</sup> Report of the Subsidiary Body on its work in 2013 and examination of nominations for inscription on the Representative List of the Intangible Cultural Heritage of Humanity, ITH/13/8.COM/8 Add.2, para. 51. See: <https://ich.unesco.org/doc/src/ITH-13-8.COM-8+Add.2-EN.doc>. *Compte-rendu des journées de Vitré sur les pratiques alimentaires*, 3 avril 2009: Président du Comité intergouvernemental et la chef de la Section du patrimoine culturel immatériel de l'UNESCO et Secrétaire de la Convention. See also: <http://www.iiaac.cnrs.fr/article1007.html>: "Si les pratiques alimentaires ne sont pas explicitement mentionnées à l'article 2 (« Définitions ») de la Convention, celles-ci sont néanmoins parties intégrantes du patrimoine culturel immatériel [...] Il a été souligné d'emblée que les pratiques alimentaires ne devraient pas être considérées uniquement comme une réponse aux besoins biologiques, mais comme des expériences culturellement élaborées par les groupes humains tout au long de leur histoire. [...] Les experts ont estimé que, dans le cadre de la Convention, les pratiques alimentaires ont une dimension transversale vis-à-vis des domaines explicités à l'article 2 alinéa 2 en tant qu'elles s'intègrent à des systèmes articulés de relations sociales et de significations collectivement partagées. Les pratiques alimentaires concernent donc aussi bien les traditions et expressions orales, les arts du spectacle, les pratiques sociales, rituels et événements festifs, les connaissances et pratiques concernant la nature, ainsi que les savoir-faire liés à l'artisanat traditionnel. D'autre part, les experts ont considéré que les pratiques alimentaires ne sauraient être réduites à un ou plusieurs actes ou étapes de leur élaboration, mais que celles-ci se donnent à voir comme un processus structuré et complexe qui va de l'obtention des matières premières jusqu'à l'acte de consommation. Les experts ont estimé qu'en tant que patrimoine culturel immatériel, les pratiques alimentaires doivent être appréhendées dans leur profondeur historique et leur spécificité culturelle, autant dans leur ancrage local que dans leur résonance et mobilité. À cet égard, les pratiques alimentaires peuvent, par exemple, transcender les frontières et être partagées".
- <sup>4</sup> The Evaluation Body was established by the Committee following amendments to the Operational Directives abolishing the Subsidiary Body to evaluate nominations for inscription on the Representative List and to the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, proposals to the Register of Good Safeguarding Practices and requests for International Assistance greater than US\$100,000. See: Unesco (2016a)

- <sup>5</sup> Convention, Preamble. See: Unesco (2003)
- <sup>6</sup> See: Unesco (2003), art. 2.1.
- <sup>7</sup> See: Unesco (2003), art. 2.1.
- <sup>8</sup> Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the General Assembly of the States Parties to the Convention at its second session (UNESCO Headquarters, Paris, 16 to 19 June 2008), amended at its third session (UNESCO Headquarters, Paris, 22 to 24 June 2010), its fourth session (UNESCO Headquarters, Paris, 4 to 8 June 2012), its fifth session (UNESCO Headquarters, Paris, 2 to 4 June 2014) and its sixth session (UNESCO Headquarters, Paris, 30 May to 1 June 2016) ('Operational Directives (2016)'), Chapter I, I.2 Criteria for inscription on the Representative List of the Intangible Cultural Heritage of Humanity, R.4. See: [https://ich.unesco.org/doc/src/ICH-Operational\\_Directives-6.GA-PDF-EN.pdf](https://ich.unesco.org/doc/src/ICH-Operational_Directives-6.GA-PDF-EN.pdf).
- <sup>9</sup> UNESCO Representative List ICH-02 Form, ICH-02-2019-EN, Part D. See: <https://ich.unesco.org/en/forms>.
- <sup>10</sup> Report of the Subsidiary Body on its work in 2013 and examination of nominations for inscription on the Representative List of the Intangible Cultural Heritage of Humanity, cit., para. 20.
- <sup>11</sup> Report of the Subsidiary Body on its work in 2013 and examination of nominations for inscription on the "Representative List of the Intangible Cultural Heritage of Humanity" (2013d).
- <sup>12</sup> Namely, the Presidents of Associazione Verace Pizza Napoletana (AVPN) Australia, America, Japan, and Korea. See the list of participants of the twelfth session of the Intergovernmental Committee. See: Unesco (2017d).
- <sup>13</sup> See Operational Directives (2016), Chapter I, I.1 and I.2. See: Unesco (2018c, p. 1-2).
- <sup>14</sup> Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (2014), Nomination File for traditional agricultural practice of cultivating the 'vite ad alberello' (head-trained bush vines) of the community of Pantelleria, p. 14. See: <https://ich.unesco.org/doc/download.php?versionID=30503>.
- <sup>15</sup> See: <https://ich.unesco.org/doc/download.php?versionID=30503>.
- <sup>16</sup> Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (2016), Nomination File for Falconry, a living human heritage, p. 29. See: <https://ich.unesco.org/doc/download.php?versionID=40754>.
- <sup>17</sup> See: <http://www.pizzanelmondo.org/vittoria-larte-del-pizzaiuolo-napoletano-e-patrimonio-dellumanita/1272>.
- <sup>18</sup> See Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, tenth session, Windhoek, Namibia, 30 November to 4 December 2015, Item 14.a of the Provisional Agenda: Draft amendments to the Operational Directives on safeguarding intangible cultural heritage and sustainable development, para. 173. See: Unesco (2015a).

See also Expert Meeting on Safeguarding Intangible Cultural Heritage and Sustainable Development at the National Level, Istanbul, Turkey, 29 September to 1 October 2014; Draft Operational Directives on 'Safeguarding intangible cultural heritage and sustainable development at the national level', para 3. See: Unesco (2016a) paras. 104 and 173.

- <sup>19</sup> See: Unesco (2015a). Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, tenth session, Windhoek, Namibia, 30 November to 4 December 2015, Item 14.a of the Provisional Agenda: Draft amendments to the Operational Directives on safeguarding intangible cultural heritage and sustainable development, para. 17.
- <sup>20</sup> See: Unesco (2016a) para. 173(b).
- <sup>21</sup> See Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, tenth session, Windhoek, Namibia, 30 November to 4 December 2015, Item 14.a of the Provisional Agenda: Draft amendments to the Operational Directives on safeguarding intangible cultural heritage and sustainable development, para. 173; Operational Directives (2016), paras. 116 and 117.
- <sup>22</sup> The Khmer court supported the Royal Ballet of Cambodia, for over 1,000 years, remunerating the dancers and providing them with a space to train in the palace.
- <sup>23</sup> UNESCO Living Human Treasure systems encourage States to establish a national system to introduce these forms of remuneration. Art. 2.3 Convention for the Safeguarding of the Intangible Cultural Heritage places transmission among the safeguarding measures aimed at ensuring viability of this heritage.
- <sup>24</sup> While ICH consists in the first place of knowledge, skills and practices rather than products, the sale of the resulting products and services has often supported the continued practice and transmission thereof.
- <sup>25</sup> Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, seventh session, Paris, France, 3 to 7 December 2012, 7.COM.
- <sup>26</sup> See Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, fifth session, Nairobi, Kenya, 15 to 19 November 2010, Decision 5.COM 6.1.
- <sup>27</sup> See: Unesco (2018c).
- <sup>28</sup> Convention for the Protection of Industrial Property, Paris Industrial Property Convention, adopted 1883 and revised Stockholm, 1967, 828 U.N.T.S. 305, Art. 6.
- <sup>29</sup> Operational Directives (2016), paras. 145–150. See Ubertzzi (2011).
- <sup>30</sup> Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967, and at Geneva on May 13, 1977, and amended on September 28, 1979.
- <sup>31</sup> See the Rules: <http://www.cremonaviolins.com/en/the-consortium/the-trademark-cremona-liuteria-and-the-regulations/>.

- <sup>32</sup> See the entry on the Register of Protected Designation of Origin and Protected Geographical Indications: <http://ec.europa.eu/agriculture/markets/wine/ebacchus/index.cfm?event=pdfEccgi&language=EN&eccgid=8381>
- <sup>33</sup> See Council Regulation (EC) n° 509/2006 of 20 march2006 on agricultural products and foodstuffs as traditional specialties guaranteed : <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A66043>
- <sup>34</sup> See the trademark: <https://euiipo.europa.eu/eSearch/#basic/1+1+1+1/100+100+100+100/We%20are%20what%20we%20eat%20MedDiet%20Mediterranean%20Diet>.
- <sup>35</sup> MedDiet Quality Label for Restaurants, We are what we eat: MedDiet Mediterranean Diet. See: <http://www.med-diet.eu/P42A469C464S462/MedDiet-Quality-Label-for-Restaurants.htm>.
- <sup>36</sup> Restaurants, We are what we eat: MedDiet Mediterranean Diet. See: <http://med-diet.eu/P42A876C875S872/Restaurants.htm>.
- <sup>37</sup> We are what we eat: MedDiet Mediterranean Diet. See: <http://www.med-diet.eu/>.
- <sup>38</sup> See the entry on the Register of Protected Designation of Origin and Protected Geographical Indications,: <http://ec.europa.eu/agriculture/markets/wine/ebacchus/index.cfm?event=pdfEccgi&language=EN&eccgid=8381>.
- <sup>39</sup> See the entry on the Database of Origin and Registration (DOOR): <http://ec.europa.eu/agriculture/quality/door/registeredName.html?denominationId=916>.
- <sup>40</sup> The trademark was also registered in the following countries: Denmark, Finland, United Kingdom of Great Britain and Northern Ireland, Japan, Norway, Sweden, Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Benelux, Switzerland, China, Cuba, Czech Republic, Germany, Egypt, Spain, France, Croatia, Hungary, Liechtenstein, Monaco, Montenegro, Macedonia, Poland, Portugal, Romania, Serbia, Russian Federation and Slovenia.
- <sup>41</sup> See the trademark: <https://euiipo.europa.eu/eSearch/#basic/1+1+1+1/100+100+100+100/We%20are%20what%20we%20eat%20MedDiet%20Mediterranean%20Diet>.
- <sup>42</sup> See International Convention on the Use of Appellations of Origin and Denominations of Cheeses of June 1, 1951, Signed by: Austria, France, Italy, Netherlands, Switzerland: <https://www.admin.ch/opc/fr/classifiedcompilation/19510137/index.html>.
- <sup>43</sup> See Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958, Contracting Parties: 28 States: [http://www.wipo.int/lisbon/en/legal\\_texts/lisbon\\_agreement.html](http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.html).
- <sup>44</sup> See bilateral wine agreements between the European Union and third countries number at 20, notably with Mexico (1997), South Africa (1999), Chile (2002), Canada (2003) and the USA (2006) and Australia (2009).
- <sup>45</sup> See EU-Switzerland Agreement on the Protection of Designations of Origin and Geographical Indications for Agricultural Products and Foodstuffs of 19 January 2011 signed in Strasbourg, OJ L 297.



- <sup>46</sup> See Agreement between the European Union and Georgia on Protection of Geographical Indications of Agricultural Products and Foodstuffs of 14 July 2011 signed in Brussels, OJ L 93.
- <sup>47</sup> See Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part of 15 October 2008 signed in Bridgetown, Barbados, OJ L 289.
- <sup>48</sup> See Stabilisation and Association Agreement Between the European Communities and their Member States, of the one part, and the Republic Of Albania, of the other part of 12 June 2006 signed in Luxembourg, OJ L 107; Stabilisation and Association Agreement between the European Communities and their Members states, of the one part, and the Republic of Serbia, of the other part of 29 April 2008 signed in Luxembourg, OJ L 278; EU-Bosnia Herzegovina Stabilisation and Association Agreement of 16 June 2008 signed in Luxembourg, OJ L 164 [SAA Agreement].
- <sup>49</sup> See Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part of 6 October 2010 signed in Brussels, OJ L 127. Free Trade Agreement between the Swiss Confederation and the People's Republic of China of 6 July 2013 signed in Beijing, China.
- <sup>50</sup> See The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, adopted on 20 May 2015.
- <sup>51</sup> Article 5.2(b). Agreement between the European Community and Canada on trade in wines and spirit drinks. 2004. Official Journal of the European Union. See: [https://eur-lex.europa.eu/resource.html?uri=cellar:b3a39f74-d5dc-48db-ad8e-b633d2545ef8.0004.02/DOC\\_1&format=;](https://eur-lex.europa.eu/resource.html?uri=cellar:b3a39f74-d5dc-48db-ad8e-b633d2545ef8.0004.02/DOC_1&format=;) Article 7.2.II. Agreement between the European Community and Australia on trade in wine. 2009. Official Journal of the European Union (L28/3) See: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:028:0003:0087:en:PDF>.
- <sup>52</sup> Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Third session, Istanbul, Turkey, 4 to 8 November 2008, Decision 3.COM 1 (2008a, p.2), Convention, Art. 31.1: "The Committee shall incorporate in the Representative List of the Intangible Cultural Heritage of Humanity the items proclaimed "Masterpieces of the Oral and Intangible Heritage of Humanity" before the entry into force of this Convention".
- <sup>53</sup> The element was inscribed by Spain, Greece, Italy and Morocco in 2010 and inscribed by Cyprus, Croatia, Spain, Greece, Italy, Morocco and Portugal in 2013.
- <sup>54</sup> See the La Globalizzazione non Distrugga L'arte dei Pizzaiuoli Napoletani. La tua Firma perchè Diventi Patrimonio UNESCO petition, Change. See: <https://www.change.org/p/la-globalizzazione-non-distrugga-l-arte-dei-pizzaiuoli-napoletani-la-tua-firma-perch%C3%A9-diventi-patrimonio-unesco>.

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