
The book under review raises very topical issues of the legal status and the implementation of the 2003 Convention on the Safeguarding of Intangible Cultural Heritage (ICH) Convention.

This book is a very welcome publication on such an important Convention, as until now it had not been described and analysed in much detail. It is a collection of essays by prominent scholars and practitioners. The aim of the Convention is to safeguard intangible cultural heritage of concerned communities, groups and individuals “to ensure respect for it; to raise awareness at the local, national and international levels of its importance and importance of ensuring mutual appreciation thereof; and to establish a necessary foundation for international cooperation and assistance” (Kono, p. 3). As can be seen from the above quotation, there are quite ambitious tasks set for this Convention. It has to be added that notoriously difficult issues of intellectual property rights and the coordination with other international instruments which, at least in part, deal with similar questions – such as the 1992 Convention on Biological Diversity – form to a certain extent a cluster of legal problems concerning the treaty. The book under review takes a broad analytical outlook at the Convention. It is divided into five parts: Part One, Safeguarding of Intangible Cultural Heritage and Intellectual Cultural Heritage and Intellectual Property; Part Two, Designing a Means for the Safeguarding of Intangible Cultural Heritage; Part Three, Conceptualisation of Community; Part Four, Community Prior Informed Consent; Part Five, Benefits and Potential Hazards to Communities and Their Intangible Cultural Heritage.

The ICH Convention is a framework Convention, which provides a blueprint for safeguarding processes which left out many issues to be fleshed out at later stages of implementation and application. Such an approach is the result of, *inter alia*, the lack of consensus between the negotiating parties on certain questions. However, as Kono observes, such a solution may prove to be useful as a convention that would provide a detailed regulation to all questions could become outdated very easily. One of the main provisions of the ICH Convention is Article 3(b) which provides that

“[n]othing in this Convention may be interpreted as … affecting rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties”.

The present reviewer is of the view that in fact such a provision (that is also included in many other treaties), does not solve the important and difficult issue of the conflict of norms between various treaties, a question which, despite the
existence of the limited in scope Article 30 of the 1969 Vienna Convention on the Law of Treaties, has not been solved. There are several treaties such as the 1992 Convention on Biological Diversity and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), as well as the work done under the auspices of the World Intellectual Property Organisation, which may conflict with the provisions of the ICH Convention, in spite of Article 3(b). In fact, it may be noted that the proliferation of international law-making contributed to a phenomenon which is termed ‘fragmentation of international law’, that was a subject of the work of a Study Group set up within the International Law Commission. In the view of the present author, such an important and fundamental issue, constituting part and parcel of general international law, and of great practical importance for the States Parties to the ICH Convention, should have been dealt with in this book in some detail. It would have made the analysis even more comprehensive than it already is.

It may be noted that in his chapter Kono recognises the problem of reconciling various international instruments. The same author also raises several other issues that are pertinent to the ICH Convention. Kono presents three main groups of unresolved questions deriving from the ICH Convention. The first relates to the establishing of inventories within States Parties’ jurisdictions. As Koto observes, their operation and maintenance can bring out several controversies, such as the relationship of already established inventories to the ones required under the ICH Convention and most important restrictions for recognising intangible cultural heritage under the ICH Convention and possible impacts on affected intangible cultural heritage and its ownership (p. 21). There are also serious issues linked with intangible property rights held by communities. In order to establish such rights, the first step must be the identification of a community as a holder of such rights. It may be observed that the ICH Convention fails to define many pertinent notions that are, in the view of the present reviewer, indispensible for the implementation of the ICH Convention, and one of them is what constitutes a community. In general, it appears that the Convention is quite controversial and that its many aspects, such as the conceptualisation of inventories under the Convention, “created conceptual dilemmas, and raised concerns from an intellectual property rights perspective” (Van Uytse and Kono, p. 47). The managing of intellectual property options (documenting, recording and digitalising) is also a very complicated task as evidenced by the very informative essays of Wendland and Van Uystel. It appears that yet another difficulty relating to communities and intellectual property rights is to find an adequate regulatory solution for and scope of entitlements held by a community as a holder of its intangible property rights (Hazucha and Kono and Hazucha). One of the authors (Hazucha) supports the multidimensional approach to safeguarding intangible cultural heritage. The institution of a prior informed consent is a fundamental requirement to protect traditional knowledge (Dalibard and Kono). There are three groups of criteria