

# **AVOIDING UNINTENDED CONSEQUENCES WHEN INSCRIBING INTANGIBLE HERITAGE ON UNESCO'S LISTS: SOME QUESTIONS FOR COMMUNITIES, SCHOLARS AND OFFICIALS**

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## **ABSTRACT**

This article examines the unforeseen risks and challenges that may arise in the process of nominating Binh Dinh Traditional Martial Arts for inscription as an Intangible Cultural Heritage (ICH) by UNESCO. The article provides an in-depth analysis of several key aspects of the value of Binh Dinh Traditional Martial Arts, including its diversity, characterized by a wide array of techniques and variations; the presence of numerous practice centers and schools; its role not only as a physical and mental training regimen but also as a form of “folk performing art”; and its capacity to foster overall health and well-being. Building upon this framework, the article critically assesses the potential risks associated with the ICH inscription process. These include the risk of mythologizing the past, which could lead to historical debates that overshadow the contemporary relevance of the heritage; the risk of diminishing the community's decisive role in managing ICH due to excessive administrative interference; the threat of undermining the inherent diversity of Binh Dinh Traditional Martial Arts through negative trends of standardization; and the risk of the heritage becoming over-commercialized.

**Keywords:** *Binh Dinh Traditional Martial Arts; Intangible cultural heritage; UNESCO registration; unintended consequences; community management; commercialization.*

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## 1. INTRODUCTION

UNESCO's 2003 Convention for the Safeguarding of the Intangible Cultural Heritage establishes two international lists with complementary purposes. The List of Intangible Cultural Heritage in Need of Urgent Safeguarding is intended to address the critical situation of intangible cultural heritage (ICH) expressions that are endangered and therefore in need of urgent safeguarding efforts (UNESCO 2003, *Convention*, Article 17). The Representative List of the Intangible Cultural Heritage of Humanity has a different objective: "to ensure better visibility of the ICH and awareness of its significance, and to encourage dialogue which respects cultural diversity" (UNESCO 2003, *Convention*, Article 16). Certain potential benefits of inscription on such lists are obvious, even self-evident. Being listed may strengthen a community's own safeguarding efforts and contribute to enhancing the viability of the ICH concerned so that future generations can continue to enjoy it. In the best of cases, communities, scholars and officials may be able to leverage the fact of inscription to mobilize financial resources, focus public attention, encourage practitioners and strengthen transmission. Countless people at the local, national and international levels may gain increased opportunities to encounter the heritage concerned, permitting them to enjoy cultural practices they would otherwise not have the possibility to experience. Vietnam has had notable success over the years with using the UNESCO inscription process as a means

of promoting broader public awareness of what ICH is and why its safeguarding is a local and national priority.

Too often, however, the many unintended risks and threats brought on by inscription have not been given enough attention. Experiences of communities within Vietnam and around the world have amply demonstrated the importance of giving the most careful consideration to such unintended consequences early in the nomination and inscription process. This does not mean that we should refrain from nominating ICH for inscription. It does mean, however, that we should do so with our eyes wide open so that we can take effective measures at every stage to prevent or at least to mitigate those potential harms.

As communities, scholars and officials collaborate to nominate *Võ cổ truyền Bình Định* (Bình Định Traditional Martial Arts) for inclusion on the UNESCO Representative List, what are the questions we should now be asking? Can we anticipate in advance some of the potential pitfalls that they may wish to consider and avoid? What lessons can be learned from the experience of Vietnam and other countries that have seen their elements inscribed by UNESCO? What measures can be built in – both before and after inscription – to help ensure that the potential benefits outweigh any anticipated risks? Most importantly, how can the process of inscription be used most effectively to strengthen rather than to weaken the communities concerned and to enhance rather than to diminish their sense of identity and continuity?

## 2. FOUR VALUABLE ATTRIBUTES

To begin, it may be beneficial to first examine some of the key attributes of Võ cổ truyền Bình Định (Bình Định Traditional Martial Arts) as they presently exist. The author does not claim to be an expert in traditional martial arts, but a careful review of the nomination file submitted in 2012 for its inclusion in the National List of Intangible Cultural Heritage (UBND Tỉnh Bình Định 2011), as well as the draft nomination for its inclusion on the Representative List (Cục Di sản văn hóa 2024), has led to several noteworthy observations.

The first notable characteristic is diversity which is an essential feature of Bình Định martial arts. While it represents a general phenomenon with certain common attributes, it encompasses numerous variants and techniques. It does not form a homogeneous entity but rather a collection of interrelated forms and expressions. One might liken it to a dish with as many flavors as there are chefs, yet still retaining certain shared elements that allow it to be recognized and identified.

Secondly, this diversity implies the existence of multiple centers of practice. It is evident that there are numerous prominent practitioners who uphold distinct “ways” or “paths” (võ đường), organized along various lines. Some of these centers operate as private, family-based establishments, while others are formalized as clubs (câu lạc bộ) or associations. These various schools or lineages have preserved distinctive variants over decades, or even

centuries, typically through formal transmission methods from master to apprentice.

Thirdly, these martial arts have, at least in part, come to be regarded as a “folk performing art” (*nghệ thuật trình diễn dân gian*), as evidenced by their inclusion in the National List of Intangible Cultural Heritage (ICH), in addition to serving as a form of bodily and mental self-cultivation and practice. In other words, they have adopted an element of public performance and entertainment, wherein martial artists demonstrate their exercises and bouts for an audience that, at least during such events, does not actively participate as practitioners. This creates a clear distinction between the performers and their spectators. This is even more true when the skills of martial arts are integrated into theatrical performances of *hat boi*.

Finally, *Võ cổ truyền Bình Định* (Bình Định Traditional Martial Arts) promotes not only physical health but also mental, moral, and social well-being. As indicated in the nomination file for the Representative List, students and apprentices are required to learn the principles of “humanity, rites, meaning, wisdom, and faith” (*nhân, lễ, nghĩa, trí, tín*) alongside the physical skills and capabilities necessary for safe participation in competitions. Significantly, the nomination files underscore that the health of society is enhanced by the practice of these martial arts, which are engaged in by both men and women, although the latter may be given more prominence in the documentation.

The above mentioned characteristics

underscore the martial art's cultural, historical and social significance. While it is possible that other significant aspects of Bình Định martial arts may have been overlooked, by highlighting these four key characteristics, the author seeks to offer an external perspective on some of the core values inherent in these martial arts, as represented in the nomination files. It would be unfortunate if the nomination and inscription process were to inadvertently diminish these essential aspects of the Intangible Cultural Heritage (ICH), either by oversimplifying its complexity or by neglecting key features that contribute to its uniqueness.

### **3. FOUR POTENTIAL RISKS**

The following section outlines several critical questions that should be considered by communities, scholars, and officials involved in the nomination process. The objective is to draw lessons from the experiences of both Vietnam and other countries to ensure that the benefits of nomination and inscription outweigh any potential risks or unintended negative consequences. While such outcomes are not inevitable, they can be mitigated through heightened awareness and proactive strategies.

One significant risk to consider, particularly given the long history of Bình Định martial arts, is the potential mythologization of its past, which could lead to divisive debates over historical accuracy. It is important to recognize that the 2003 UNESCO Convention on

Intangible Cultural Heritage (ICH) does not prioritize antiquity or the duration of practice. Instead, the Convention emphasizes the present and future significance of intangible heritage, rather than focusing on its historical roots. While the Vietnamese conception of ICH may differ slightly from the international definition, the 2024 Law on Cultural Heritage, for example, acknowledges ICH as possessing “historical, cultural and/or scientific value” (Article 3.1), and includes a criterion for inscription that requires an ICH expression to be “long-lasting” (Article 12.1.c). Without question, Bình Định martial arts embody these values and fulfill the criterion of duration. However, it may be more prudent to emphasize their contemporary cultural value as a practice that is deeply cherished by the people of Bình Định, serving as a living marker of identity and a continuous source of cultural continuity. The historical or scientific value of these martial arts should thus be considered secondary to their present cultural significance.

This approach is suggested based on precedents from both Vietnam and other regions, where communities have become entangled in contentious and often emotionally charged debates over historical details that have little relevance to contemporary cultural practices. A relevant example is the recent controversy surrounding the festival commemorating the death anniversary of Lady Phi Yến on Côn Đảo Island (Nguyen Ky Nam et al. 2023). For the majority of the Côn Đảo

community, the festival is a vital cultural event, valued as a key element of their heritage, regardless of the historical veracity of the legends surrounding Lady Phi Yến. As noted by Nam et al., proponents of the festival assert that “while there may be commonalities between history and heritage, historical records cannot explain intangible heritage issues”. One ICH expert further emphasizes that “history requires facts and truth, but intangible heritage does not” (Nguyen Ky Nam et al. 2023: 10). In contrast, critics of the festival and its potential inscription presented a petition to the Ministry of Culture, Sports, and Tourism, arguing that “inscribing the death anniversary of Lady Phi Yến as a national ICH element is an insult to Nguyễn Ánh, the founder of the Nguyễn Dynasty, and the Nguyễn Phúc descendants” (Nguyen Ky Nam et al. 2023: 13). These critics, relying on specific historical details, argued that associating Lady Phi Yến with the Nguyễn dynasty founders, particularly designating her as the Imperial Concubine of Nguyễn Phúc Ánh, was unacceptable. They contended that the celebration of her death anniversary, therefore, should not be recognized as a national ICH.

In the case of Lady Phi Yến, the critics fundamentally conflated history with heritage. This represents an example of what philosophers term a “category mistake”, or what is commonly referred to as a “false comparison” - akin to the expression “comparing apples and oranges”. It is essential not to confuse phenomena of heritage with those of history, or vice versa.

This distinction does not imply that, as a folklorist and anthropologist, we do not collaborate with historians. However, we would refrain from engaging in debates with them regarding epigraphy or ancient inscriptions, just as historians might refrain from involving themselves in discussions pertaining to Intangible Cultural Heritage (ICH).

In this connection, it is informative to compare the 2011 file nominating “*Võ cổ truyền Bình Định*” for inscription on the National List of ICH and the draft nomination prepared for submission to UNESCO. In the section describing the element, the 2011 file devotes almost 7.000 words (in Vietnamese) to recounting historical events and offers very little description of the element itself. The draft UNESCO file by contrast barely mentions history. In my view, and without in any way disparaging the authors of the 2011 file, the 2024 file is much more in line with the nature of ICH itself and can help to forestall potential future controversies over the history of the element or its connection to specific historical events. Looking forward, the communities, scholars and officials involved with Bình Định martial arts might be wise to avoid the temptation to immerse themselves in historical facts and details and should instead keep the focus squarely on current and recent cultural practices, rather than past historical events. Such a present and future focus can be an effective means of avoiding the unintended consequence of unproductive disputation like that we have seen elsewhere.

A second potential negative outcome of ICH inscription, observed in both Vietnam and other countries, is the tendency for bureaucrats and officials to assume control over ICH management, resulting in the “dispossession” of the communities concerned from their own heritage. More precisely, as the author argues, this dispossession pertains not to the heritage itself but to the communities’ decisive role in practicing and safeguarding that heritage for future generations. A strong critique of this tendency has been articulated in numerous works by the late Oscar Salemink. According to Salemink, dispossession or expropriation is both an intentional and inevitable aspect of heritage-making. While there are numerous examples that could support this view, the author does not fully endorse such a strong interpretation. In one influential essay, Salemink argues that the process of heritage-making within the international heritage system necessitates that ICH become the property of the State, thereby causing communities to lose ownership of their cultural property (Salemink 2013). While acknowledging that ownership issues in the context of tangible heritage – particularly within the UNESCO World Heritage system – are distinct from those concerning ICH, and recognizing that there are indeed instances where governments assert claims to the cultural property of communities, the author contends that, according to the 2003 Convention, intangible heritage is an inalienable possession of the communities, groups, and individuals who practice it and identify with

it. Consequently, ICH cannot be expropriated by governments as Salemink suggests without losing its essential character as ICH. Such a process may transform it into something else, but it would no longer qualify as intangible heritage in the strict sense.<sup>1</sup>

However, Salemink’s critique is worth consideration in that the process of heritage-making can – and all too often does – result in the communities concerned losing their decisive role in *managing* their own ICH. While the heritage does not cease to be the property of the communities, they may no longer retain the primary authority to determine how, when, by whom, and for what purposes it is practiced.<sup>2</sup> So, when we

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<sup>1</sup> Vietnam’s 2024 Law on Cultural Heritage addresses questions of ownership of different forms of cultural heritage in its Article 4, but it will require further careful study to understand the differences between ICH that falls “under the ownership of the whole people” (Article 4.2) including cases where ownership has been transferred by communities or groups to the State (Article 4.2.i), ICH that falls “under individual/private ownership” (Article 4.3), and ICH that falls “under common/shared ownership” (Article 4.4). We understand Bình Định martial arts to involve a mix of the second and third categories, with some knowledge and skills possessed by individuals but most shared in common within communities and groups. Further discussion is also needed of the circumstances under which communities or groups might wish to transfer ownership of their ICH to the State and – having done so – whether it still constitutes ICH as defined by UNESCO.

<sup>2</sup> In the case of built heritage, this is a frequent phenomenon: if one’s house is classified as a historical landmark, one may lose control over the ability to modify it or use it in certain ways, even if one’s private ownership as such is not in question. One may own an automobile, but that does not entail the right to drive beyond the speed limits or to modify the exhaust system to increase pollution.

use “dispossess” it is in this more limited sense: not that communities can ever lose ownership of their ICH (which would mean it ceases to be ICH), but that their decision-making about its management can be severely constrained or attenuated. Importantly, we emphasize, this process is by no means inevitable. With adequate awareness beforehand, we can take measures to maximize communities’ effective management and decision-making. Crucial here is to find the right balance between helping communities organize themselves most effectively to remain masters over future decisions while avoiding the tendency to establish cumbersome, highly bureaucratic management structures that overwhelm the communities’ self-determination.

Returning to Binh Định martial arts, we understand that there are already multiple studios and schools, family lineages, local associations, clubs and other forms of community-based institutions, with varying degrees of institutionalization and different modes of organization. The 2003 Convention identifies such groups and individuals as having primary responsibility for safeguarding and managing ICH.<sup>1</sup> At the

government level, the Binh Định Department of Culture and Sports and Binh Định Traditional Martial Arts Center obviously have essential roles to play in province-wide safeguarding efforts, as reemphasized in the 2024 Law on Cultural Heritage, particularly its Article 7. At an intermediate level comes the Traditional Martial Arts Federation of Binh Định (*Liên đoàn Võ thuật cổ truyền tỉnh Bình Định*), which provides an umbrella for “associations, branches, clubs, gymnasiums, traditional martial arts schools and martial arts activists in Binh Định province” (UBND Tỉnh Bình Định 2021, 259/QĐ-UBND, article 2). The activities of the Federation have the potential for significant impact, but we were particularly struck by its responsibility to “support local traditional martial arts organizations in terms of expertise and professionalism” (259/QĐ-UBND, Article 6.4). From an observational standpoint, it appears that the Federation can play a pivotal role in ensuring that community-based initiatives are implemented effectively and in alignment with the 2003 Convention and the 2024 Law on Cultural Heritage. This could be especially true in its efforts to support and enhance the capacities of grassroots organizations. As has been demonstrated with ICH globally, when community-based organizations are strong and efficient, the risks of bureaucratization and institutional inertia are mitigated, thereby maximizing the communities’ autonomy in safeguarding their heritage.

The third potential risk to consider is

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Property rights constitute a complex bundle, and in such cases ownership rights are respected, but use rights or modification rights are constrained.

<sup>1</sup> The 2024 Law on Cultural Heritage provides that “Management, protection and promotion of cultural heritage values are the rights, obligations and responsibilities of all agencies, organizations, communities and individuals” (Article 6.2); it is not clear, however, whether the sequence of entities in this list is intended to give primacy to one set of actors as compared to the others.

particularly significant, as it is evident from the nomination files that “*Võ cổ truyền Bình Định*” (Bình Định Traditional Martial Arts) comprises a diverse yet interrelated set of practices, with as many variants as there are masters. The draft nomination for UNESCO, for instance, highlights that “Bình Định traditional martial arts encompass numerous distinct lines and schools of martial arts, each often linked to a specific community or family” (Cục Di sản văn hóa 2024). Similarly, Bình Định martial arts are thought to have “evolved into various forms, schools, training spaces, and expressions found in other cultural forms”, noting the involvement of “families, lineages, villages, and schools, along with the principles, philosophies, arts, costumes, and music associated with them” (Viện Nghiên cứu văn hóa 2024). If correctly understood, this proliferation of diverse lineages and centers of practice ensures that each school or variant retains distinct particularities. Consequently, communities, scholars, and officials will face the important challenge of preserving this internal diversity following the inscription.

One potential negative consequence of inscription on UNESCO’s ICH lists, observed globally, is the tendency toward standardization, homogenization, freezing, or the loss of diversity. Undoubtedly, certain core characteristics of Bình Định martial arts exist –features shared across most lineages and schools, which distinguish Bình Định martial arts from other forms of martial arts, both within Vietnam and internationally. Moreover,

some activities within these martial arts, such as competitions, require standardized measures to ensure clear criteria for fair evaluation and comparison of competitors. However, the essential challenge moving forward will be to strike an appropriate balance between these two dynamics: unity and diversity. How can safeguarding efforts be shaped to preserve the shared, core characteristics of Bình Định martial arts, as they have evolved over generations, while simultaneously maintaining their intrinsic diversity and vitality? How can standards be established in a constructive manner, without succumbing to the tendency toward excessive standardization (or the negative sense of *xu hướng tiêu chuẩn hóa*, as used by Salemink 2016: 706)?

Looking again at the two nomination files, prepared in 2011 and in 2024, we see that the earlier dossier several times invokes the concept of “essence” (*thần hoa*) or “quintessence” (*thần túy nhất*) while the later dossier lacks such terminology. It is understandable that there is a tendency to seek such a basic core at the heart of any complex phenomenon such as the one we are discussing here. There must be certain characteristics that allow knowledgeable persons to identify something as being the martial arts of Bình Định and not being one of the world’s other martial arts traditions ranging from judo to karate to capoeira, mau rākau, taekwondo, muay Thai, and so on. Yet it would be truly unfortunate if that resulted in Bình Định martial arts becoming so fixed in form and so inflexible that communities, groups and individuals were



excluded from its practices just because their own local and lineage variants did not conform to some rigidly determined “essence”. It will thus be important in the wake of inscription that the bearers of Bình Định martial arts achieve a delicate balance between diversity and uniformity.

The issue of standardization is particularly sensitive in light of the demonstrated commitment by provincial authorities to incorporating martial arts into the public school curriculum. This commitment is commendable and aligns well with the objectives of the 2003 Convention, which emphasizes education, awareness-raising, and capacity-building (UNESCO 2003, *Convention*, Article 14), particularly with regard to “specific educational and training programs within the communities and groups concerned” (Article 14(a) (ii)). It is also reflected in the 2024 Law on Cultural Heritage, specifically in Article 86. However, to avoid the risk of standardization, it is crucial that educational programs be designed in ways that preserve and promote the internal diversity inherent in Bình Định martial arts. One potential strategy to achieve this would be to integrate local practitioners into the school setting and entrust them with the responsibility of implementing these training programs. Given that there are more than 200 elementary schools and nearly as many secondary schools in Bình Định Province, there is no justification for teaching a single, standardized style or “way” of martial arts across all institutions. Instead, through strategic partnerships with

local masters who can provide heritage education, the public school system could help strengthen the internal diversity that is a critical feature of both ICH in general and Bình Định martial arts in particular.

The unintended risk of standardization can also have a temporal dimension as well as a comparative dimension. This temporal standardization is often described as “freezing”, where an ICH expression becomes fixed in time, unchanging and unchangeable. We know that a defining characteristic of ICH is that it is “transmitted from generation to generation [and] constantly recreated by communities and groups” (UNESCO 2003, *Convention*, Article 2.1). This necessarily means that ICH also changes over time: the processes of transmission and constant recreation give ICH a fundamentally dynamic and evolving nature. Yet there are numerous examples around the world where countries have incorrectly decided that the moment of inscription constituted some kind of temporal threshold, and therefore that the dynamism that had previously characterized the ICH expression should instantly come to a halt so the tradition never again diverges from its golden age. Here we call attention to one positive aspect of the 2011 nomination file’s strong emphasis on history: not so much the relation of martial arts to external historical events, but the history of the martial arts traditions themselves, as they have continuously evolved and developed over centuries. The martial arts of 2024 certainly have continuities with past practices, but it is also

true that their present form is simply one moment in a long story of dynamic evolution.

However, if change is a constitutive feature of all ICH, a set of related questions arises: change in what direction(s), at what pace, to what extent and for what purposes? Most importantly, who is to decide on such changes?<sup>1</sup> It should not be surprising that we once again emphasize that decision-making about such ongoing evolution should remain the prerogative of the communities, groups and individuals concerned. To be sure, scholars and officials can and should support and facilitate such decision-making processes, but they should never preempt the practitioners or substitute their own views for those of the communities. This of course also echoes my previous remarks about avoiding bureaucratization and ensuring that the owners of heritage are also those deciding about its evolution, rather than other actors.

The fourth and final set of questions we will discuss here refers to one particular form of change that may follow inscription

in some cases - a kind of change that calls for careful anticipation and mitigation. These concerns center on the potential risk arising from over-commercialization of ICH, and specifically the martial arts of Bình Định. We learn from the two nomination files that the province hosts hundreds of centers for learning and practicing martial arts, from family-based schools to private businesses, as well as numerous clubs and associations and public bodies. Obviously, martial arts in Bình Định have long ago entered the stream of commerce, with many of these centers depending on fees, admission tickets, or other forms of remuneration to support their ongoing activities and contribute to the livelihoods of community members. In the 2024 Law on Cultural Heritage, such commercial activities fall squarely under Article 87 that provides for socialization as a means of safeguarding heritage. Specifically, the Law refers to commercial activities that may be involved in “restoration, practice, teaching, presentation, promotion, performance, festivals of intangible cultural heritage” (*phục hồi, thực hành, truyền dạy, giới thiệu, quảng bá, trình diễn, liên hoan về di sản văn hóa phi vật thể*) (Article 87.2.d). But where can we draw the line between acceptable commercial activity and the unintended negative consequences of “over-commercialization”? This precisely necessitates finding a proper balance that UNESCO itself has been trying to achieve in recent years (see Bortolotto 2021 on “commercialization without over-commercialization”). Early in the 2003

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<sup>1</sup> This topic has been anticipated by Salemkink three decades ago, when he posed the question in 1994, “Who decides who preserves what?” His answer was that the culture-carriers themselves “are the real experts on their cultures. They should be given an opportunity to represent their cultures themselves, to define and decide what they are, and what they should be” (Salemkink 2001: 211). At a conference in 2000, before his paper was published, we also asked, “Who [in Vietnam] will determine the directions that cultural changes take in the coming years?” My answer, like Salemkink’s, was that “people themselves should be empowered to make informed choices about the directions, scope and pace of cultural changes” (Proschan 2001: 270).

Convention's life, experts from numerous States Parties correctly agreed that commerce itself is not necessarily an enemy of ICH but is already built into many ICH expressions. Moreover, they insisted, monetary and other economic benefits can contribute to a community's sustainable development, one of the Convention's goals. However, in 2009, at the time of the very first inscriptions on the Representative List, the ICH Committee was already sounding the alarm about activities that could "lead to over-commercialization or to unsustainable tourism that may put at risk the intangible cultural heritage concerned" (Intergovernmental Committee 2009, Decision 4.COM 6, integrated into the *Operational Directives* in 2010). The Convention's *Operational Directives* therefore specify that "Commercial activities that can emerge from certain forms of intangible cultural heritage [...] can contribute to improving the living standards of the communities that bear and practice the heritage, enhance the local economy and contribute to social cohesion. These activities and trade should not, however, threaten the viability of the intangible cultural heritage" (General Assembly, *Operational Directives*, paragraph 116). Particular care should be taken, the *Directives* emphasized, "to ensuring that the commercial use does not distort the meaning and purpose of the intangible cultural heritage for the community concerned" (*Operational Directives*, paragraph 117).

A few years later, in 2015, the

Convention focused its attention specifically on the interface between ICH and sustainable development. In its Decision 10.COM 14.A, the ICH Committee adopted draft *Operational Directives* on "Safeguarding intangible cultural heritage and sustainable development at the national level", which were subsequently adopted by the General Assembly in 2016 (*Operational Directives*, paragraphs 170 - 197). On the one hand, the States Parties were encouraged to "promote opportunities for communities, groups and individuals to generate income and sustain their livelihood so that the sustainable practice, transmission and safeguarding of their intangible cultural heritage can be ensured" (*Operational Directives*, paragraph 185(b) (i)). Vietnam's 2024 Law is squarely in line with this Directive when it discusses socialization of safeguarding. On the other hand, the States Parties are also encouraged to "ensure that the communities, groups and individuals concerned are the primary beneficiaries of income generated as a result of their own intangible cultural heritage" (*Operational Directives*, paragraph 185(b) (iii)).<sup>1</sup> Once again, however, the Convention's governing bodies missed the opportunity to provide a definition of "over-commercialization" that we can usefully apply in any given case.

Most recently, the Committee has adopted a guidance note on "Economic dimensions of safeguarding intangible

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<sup>1</sup> The 2024 Law on Cultural Heritage appears to be silent on the question of who should be the primary financial beneficiaries from commerce involving ICH.

cultural heritage” that is intended to give greater precision to the directives on sustainable development and safeguarding ICH (Intergovernmental Committee, Document 18.COM 12, 2023). In this note we encounter what is in effect the first UNESCO definition of “over-commercialization”, defined therein as “overly intensive economic activity associated with intangible cultural heritage” and characterized as an “inappropriate use [of ICH]”. However, this definition is again expressed in relative terms: intensive economic activity is praiseworthy, so long as it is not “overly intensive” and inappropriate (i.e., carried out by outsiders). States Parties are nevertheless encouraged to “maximize beneficial opportunities for communities, groups and individuals concerned linked to economic dimensions of intangible cultural heritage practice and transmission, while preventing and mitigating threats and risks”. Further, if communities so request, “mitigation measures should be developed and implemented against identified harms arising from economic activity to ensure safeguarding of the intangible cultural heritage and to support equitable community benefit and control over it” (Document 18.COM 12).

The Intergovernmental Committee’s 2023 guidance note itself exemplifies the contradiction that Bortolotto (2021) identifies “between two logics underpinning the regulation of traditional culture. These logics reflect different moral economies, one based on the exclusivity of the

proprietary regime and the other on the inclusivity and sharedness of the heritage regime” (2021: 864). The notion of “inappropriate use” for UNESCO, Bortolotto notes, refers to use by outsiders who are not part of the community concerned; it is not just “overly intensive” activity that is the problem, but specifically activity by the “wrong” people. Here, by contrast to Bortolotto, we are concerned as well with the possibility of “overly intensive” use by people who may themselves be members of the communities and groups concerned and thus – in UNESCO’s terms – are actually “appropriate” users.

How then is the question of over-commercialization relevant to Bình Định martial arts, which as we noted have had a commercial aspect for a long time? We have seen elsewhere that inscription on a national or international list is sometimes accompanied by what has come to be called “branding”, the enhancement of the economic value of a particular ICH expression through creation and promotion of a commercial brand, label, trademark, etc.<sup>1</sup> Criteria and mechanisms are set forth to distinguish the genuine from the

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<sup>1</sup> Scholars have long discussed the “UNESCO brand” or the “World Heritage brand”, referring to a kind of place branding or destination branding in which a locality, city, or country gains increased attention from tourists and thus receives larger tourist revenues as a direct consequence of possessing a UNESCO-inscribed World Heritage site. Here I am talking instead about something slightly different, where it is not the “UNESCO brand” or the “ICH brand” that is most worrisome, but rather the creation of a “Bình Định martial arts brand”.

counterfeit, the real from the fake, that which is eligible to be called “X” from that which is not. All too often, this exclusivity is expressed using the very problematic concept of “authenticity”, even if, as UNESCO experts have long pointed out, “the term ‘authenticity’ [...] is not relevant when identifying and safeguarding intangible cultural heritage” (Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Cultural Heritage, 2004).

Worldwide, we see numerous examples of this kind of commercial branding of different forms of martial arts – regardless of whether that form has or has not been inscribed on a UNESCO list or identified as ICH. The very nature of martial arts in the modern world implies demonstrations and competitions, training programs and studios, development and promotion of an identifiable product – in short, commercial activities that all include within themselves the seed of over-commercialization. As UNESCO’s difficulties finding any kind of useful definition of over-commercialization remind us, drawing the line between what is beneficial and what is harmful is not a scientific process but a question of judgement and perception.

Even if they were originally developed to be applied to outsiders (those who, in UNESCO’s terms, presumptively cannot be “appropriate” users), these exclusionary, boundary-maintaining measures can come to be applied also to insiders within the practitioner community.

We have seen elsewhere, especially in other Asian cases, and with various forms of ICH, that this can develop into a de facto monopoly, as only certain practitioners are seen to be “entitled” to identify themselves with the ICH in question. The very name of the inscribed element becomes a kind of brand or trademark, and control over its usage becomes itself a thing of economic value, accessible to certain community members but not to others. Someone “entitled” to use the brand can command higher fees as a performer or trainer, for example, while others within the community are excluded from benefitting similarly. Complex mechanisms can develop to ensure that some members with the monopoly are able to preserve their economic advantage while others cannot enjoy the same opportunities. And the greater that such economic advantage becomes, the more opportunities arise for those mechanisms to be abused.

Such branding or monopolization of course is in direct contradiction to the guidance that economic activity surrounding ICH should “support equitable community benefit and control over it” (Document 18.COM 12) and should enhance community solidarity. This also brings us back to the question of how Bình Định martial arts can establish some degree of standards (for instance, fair criteria for judging competitions) while avoiding standardization. As with that question, the answer we think lies in ensuring that the fullest breadth and diversity of community members are involved in decision-making

about the future trajectories of these martial arts and that the goal should always be inclusion and equity rather than exclusion and unfairness.

#### 4. CONCLUSION

Several key questions were posed to communities, scholars, and officials for their consideration in order to avoid potential pitfalls from ICH in the future. What lessons can be drawn from Vietnam's own experience with other cases of ICH, as well as from other countries and what strategies should be adopted to mitigate the unintended negative consequences of inscription? Can we implement measures, both during the nomination phase and post-inscription, to maximize the likelihood that the benefits of inscription will outweigh any anticipated risks? How can we ensure that, to the greatest extent possible, the process of inscription strengthens the communities, groups, and individuals in Bình Định, enhancing their sense of identity and cultural continuity?

The discussion has centered on four closely related and sometimes overlapping issues. The first, which we term "heritage without history," concerns how Bình Định martial arts can emphasize their identity as a living tradition, constantly recreated and evolving, without becoming entangled in futile disputes over historical events. The second issue, "decisions without dispossession," addresses the importance of ensuring that the communities, groups, and individuals involved in *Võ cổ truyền Bình Định* (Bình Định Traditional Martial Arts)

remain the primary decision-makers concerning their heritage, preventing them from being dispossessed of this critical authority. The third, "standards without standardization", focuses on how to preserve the diversity and vitality of Bình Định martial arts while acknowledging the necessity of generally accepted criteria for evaluation, particularly in contexts such as competitions. The fourth issue, which we have framed as "commercialization without over-commercialization", examines how to balance the economic benefits flowing to the community with the need to prevent exploitation by external forces or conflict among internal stakeholders.

By addressing these and similar questions early in the process of nomination and inscription, it is hoped that we can ensure the eventual benefits of inscription will outweigh any unintended negative consequences.<sup>1</sup>

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<sup>1</sup> Presented at the "International conference: Safeguarding and Promotion of Intangible Cultural Heritage and Bình Định Traditional Martial Arts" (Bình Định, 4-5 January 2025), and published by permission of the conference's organizers.

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