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Jack Lee

*Expert Member, International Scientific Committee on Legal, Administrative and Financial Issues (ICLAFI),
International Council on Monuments and Sites (ICOMOS) and President, Singapore Heritage Society,
jack.tt.lee@gmail.com*

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SENSE OF PLACE: THE INTERSECTION BETWEEN BUILT HERITAGE AND INTANGIBLE CULTURAL HERITAGE IN SINGAPORE

Jack Tsen-Ta Lee*

ABSTRACT

Built heritage in Singapore is safeguarded through two legal regimes, one relating to national monuments declared under the Preservation of Monuments Act (Chapter 239, 2011 Revised Edition), and the other relating to conservation areas declared under the Planning Act (Cap 232, 1998 Rev Ed). In contrast, no particular legal protection exists for intangible cultural heritage. Considering examples such as tomb inscriptions and rituals for honouring the deceased at Bukit Brown Cemetery, this article explores how built heritage can be secured and enriched by giving greater recognition and protection in international and domestic law to the intangible cultural heritage associated with it. There is also scope for built heritage to be used as a means of protecting intangible cultural heritage.

INTRODUCTION

Tangible and intangible cultural property are sometimes thought of as occupying discrete spheres, with the result that different legal frameworks are required for their protection. While this may be true in some instances, in others there is likely to be an overlap. It is submitted that the protection of built heritage – a form of tangible cultural property – is one of the latter areas. In this chapter, I will suggest that the concept of intangible cultural heritage can be used to assist in the preservation of built heritage, both in the international and domestic legal spheres. Conversely, built heritage can also help to safeguard some aspects of intangible cultural heritage. The discussion will be situated in the context of Singapore, a small city-state in Southeast Asia where the imperatives of urban development constantly pose a threat to its natural environment and its built heritage.

* LLB (Hons) (Nat'l University of Singapore), LLM (UCL, Lond); PhD (B'ham); Advocate & Solicitor (Singapore), Solicitor (England & Wales); President, Singapore Heritage Society; Expert Member, International Scientific Committee on Legal, Administrative and Financial Issues (ICLAFI), International Council on Monuments and Sites (ICOMOS); Member, ICOMOS Singapore. An earlier version of this paper was delivered at the 2016 ICLAFI meeting on the theme *Historical Perspective on Heritage Legislation: Balance between Laws and Values* held in Tallinn, Estonia, 12–15 October 2016.

I. THE INTERNATIONAL LAW DIMENSION

A. INTANGIBLE CULTURAL HERITAGE

Singapore, which became an independent republic in 1965, was a member of UNESCO from that year until it left at the end of 1985, at that time the first developing country to do so.¹ This happened in the wake of the United States' decision to leave on 31 December 1984 over criticisms that the agency was then "overly political, badly managed, and often anti-Western",² not to mention "riddled with corruption".³ Nonetheless, Singapore's Ambassador to France, who acted as the country's permanent representative to UNESCO, claimed that the decision was "totally independent" of the action taken by the US decision and had been "in the works for a long time, a very long time, way before the United States made known its reactions". It was "not intended to indicate any disagreement or disapproval or criticism"; rather, over the years Singapore had not found participating in the agency's activities "of immediate interest", and as a small country it had other priorities "for our limited resources".⁴ It appears the Government felt that Singapore had been asked to pay a disproportionate contribution to the agency's coffers.⁵

A hiatus of more than two decades followed, until Singapore officially rejoined UNESCO on 8 October 2007, having been wooed back by Director General Koichiro Matsuura.⁶ (The United States had resumed membership in 2002.) In relatively short order, Singapore accepted the 1972 World Heritage

¹ "Singapore Says It Plans to Leave UNESCO", *The New York Times* (28 December 1984) <<https://www.nytimes.com/1984/12/28/world/singapore-says-it-plans-to-leave-unesco.html>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20180213174012/http://www.nytimes.com/1984/12/28/world/singapore-says-it-plans-to-leave-unesco.html>>); "Singapore Gives Notice It Will Leave Unesco", *Financial Times* (29 December 1984).

² Associated Press, "Britain Threatens to Leave UNESCO", *The Record* (Hackensack, NJ, USA) (23 November 1984).

³ "UNESCO: Getting Personal", *The Wall Street Journal* (4 January 1985).

⁴ "Singapore Says It Plans to Leave UNESCO", above, n 1.

⁵ Edgar Koh, "Idealism and Realism Converge", *The Straits Times* (Singapore) (23 October 2007).

⁶ Koh, *ibid*; see also Theresa Tan, "Singapore Rejoins Unesco", *The Straits Times* (9 October 2007); "S'pore Back with Unesco after 22 Years", *The Straits Times* (18 October 2007).

Convention⁷ (‘WHC’) on 19 June 2012,⁸ and welcomed its first world heritage site – the Singapore Botanic Gardens – on 4 July 2015.⁹

On 22 February 2018, Singapore ratified the 2003 Intangible Cultural Heritage Convention (‘ICHC’),¹⁰ and about a year later on 27 March 2019 it submitted a nomination for Singapore hawker culture to be inscribed on to the UNESCO Representative List of the Intangible Cultural Heritage of Humanity.¹¹ The Convention has gained wide international acceptance with 178

⁷ Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972).

⁸ *Ratified Conventions: Singapore*, UNESCO website <http://www.unesco.org/eri/la/conventions_by_country.asp?contr=SG&language=E&typeconv=1> (accessed 12 November 2019; archived at <https://web.archive.org/web/20190610194058/http://www.unesco.org/eri/la/conventions_by_country.asp?contr=SG&language=E&typeconv=1>).

⁹ National Parks Board, National Heritage Board, and Ministry of Culture, Community and Youth, “The Singapore Botanic Gardens becomes Singapore’s First UNESCO World Heritage Site”, National Heritage Board website (4 July 2015) <https://www.nhb.gov.sg/~media/nhb/files/media/releases/new%20releases/media%20release_singapore%20botanic%20gardens%20inscribed%20as%20unesco%20world%20heritage%20site_4%20july.pdf> (accessed 12 November 2019; archived at <https://web.archive.org/web/20151023220719/http://www.nhb.gov.sg/~media/nhb/files/media/releases/new%20releases/media%20release_singapore%20botanic%20gardens%20inscribed%20as%20unesco%20world%20heritage%20site_4%20july.pdf>); Melody Zaccheus, “Singapore Botanic Gardens Clinches Prestigious Unesco World Heritage Site Status”, *The Straits Times* (4 July 2015); Melody Zaccheus, “Yes, Botanic Gardens is a World Heritage Site”, *The Straits Times* (5 July 2015).

¹⁰ Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003) (‘ICHC’), which entered into force with respect to Singapore on 22 May 2018: “Ratification by Singapore of the Convention for the Safeguarding of the Intangible Cultural Heritage”, UNESCO website (5 March 2018) <http://portal.unesco.org/en/ev.php-URL_ID=49459&URL_DO=DO_TOPIC&URL_SECTION=201.html> (accessed 12 November 2019; archived at <https://web.archive.org/web/20190329171224/http://portal.unesco.org/en/ev.php-URL_ID=49459&URL_DO=DO_TOPIC&URL_SECTION=201.html>). Some heritage conventions that Singapore has not ratified include the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970), the Convention on the Protection of the Underwater Cultural Heritage (adopted 2 November 2001), and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005); see *Singapore: Non-ratified Conventions*, UNESCO website <http://www.unesco.org/eri/la/conventions_by_country.asp?contr=SG&language=E&typeconv=0> (accessed 12 November 2019; archived at <https://web.archive.org/web/20190610194101/http://www.unesco.org/eri/la/conventions_by_country.asp?contr=SG&language=E&typeconv=0>).

¹¹ *Media Release: Hawker Culture in Singapore Submitted for Inscription on UNESCO’s Representative List of the Intangible Cultural Heritage of Humanity*, NHB website (28 March 2019) <<https://www.nhb.gov.sg/~media/nhb/files/media/releases/new->

states parties as of 11 May 2018. Article 2(1) of the Convention defines *intangible cultural heritage* in the following terms:

The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and *cultural spaces* associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, 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. [...] [Emphasis added.]

Intangible cultural heritage is therefore seen as a “response to [the] environment”, and embraces “cultural spaces” associated with practices, expressions, and so on. This obliges a state party, when fulfilling its obligation to “take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory”,¹² to provide adequate protection for built heritage that is associated with the strictly intangible elements of cultural heritage.

The reference to “cultural spaces” in the ICHC harks back to UNESCO’s Masterpieces of Oral and Intangible Heritage of Humanity programme which was established in 1997 before the adoption of the Convention. In the annex to

releases/media-release-and-annexes-for-the-submission-of-hawker-culture-in-sg-nomination.pdf> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20191112075123/https://www.nhb.gov.sg/-/media/nhb/files/media/releases/new-releases/media-release-and-annexes-for-the-submission-of-hawker-culture-in-sg-nomination.pdf>>); Melody Zaccheus, “Singapore Submits Unesco Bid to Recognise Hawker Culture”, *The Straits Times* (29 March 2019) <<https://www.straitstimes.com/singapore/singapore-submits-unesco-bid-to-recognise-hawker-culture>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20190814225539/https://www.straitstimes.com/singapore/singapore-submits-unesco-bid-to-recognise-hawker-culture>>). I am a member of the Nomination Committee for Hawker Culture in my capacity as President of the Singapore Heritage Society: Charmaine Ng, “14-member Committee Set Up to Oversee Singapore’s Hawker Culture Nomination”, *The Straits Times* (22 October 2018) <<https://www.straitstimes.com/singapore/14-member-committee-set-up-to-oversee-singapores-hawker-culture-nomination>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20190819020825/https://www.straitstimes.com/singapore/14-member-committee-set-up-to-oversee-singapores-hawker-culture-nomination>>).

¹² ICHC, *id.*, Art 11(a).

a letter dated 26 April 2000 from the UNESCO Director-General to member states, a cultural space was defined as follows:¹³

[T]he anthropological concept of a cultural space shall be taken to mean a place in which popular and traditional cultural activities are concentrated, but also a time generally characterized by a certain periodicity (cyclical, seasonal, calendar, etc.) or by an event. Finally, this temporal and physical space should owe its existence to the cultural activities that have traditionally taken place there.

Harriet Deacon and Olwen Beazley have noted that “[i]ntangible heritage is probably best described as a kind of significance or value, indicating non-material aspects of heritage that are significant, rather than a separate kind of ‘non-material’ heritage”, and includes “social and spiritual associations, symbolic meanings and memories associated with objects and places. Tangible heritage forms all gain meaning through intangible practice, use and interpretation: ‘the tangible can only be interpreted through the intangible’.”¹⁴

The interconnectedness between cultural practices and built heritage is emphasized in the 2011 UNESCO Recommendation on the Historic Urban Landscape.¹⁵ Clause 9 defines the term *historic urban landscape* as including “social and cultural practices and values, economic processes and the *intangible dimensions of heritage* as related to diversity and identity”. Hence, when

¹³ *Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity* (letter from the Director-General of UNESCO to member states; reference no CL/3553) (26 April 2000), annex (“Regulations Relating to the Proclamation by UNESCO of Masterpieces of the Oral and Intangible Heritage of Humanity”), Art 1, para (c) <<https://unesdoc.unesco.org/ark:/48223/pf0000154155>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20161008130224/http://unesdoc.unesco.org/images/0015/001541/154155E.pdf>>). See also Janet Blake, “Cultural Heritage: Intangible Aspects” in *International Cultural Heritage Law* (Oxford: Oxford University Press, 2015), 150 at 161–162.

¹⁴ Harriet Deacon & Olwen Beazley, “Safeguarding Intangible Heritage Values under the World Heritage Convention: Auschwitz, Hiroshima and Robben Island” in Janet Blake (ed), *Safeguarding Intangible Cultural Heritage – Challenges and Approaches* (Institute of Art and Law, 2007) at 93–108, quoted in Blake, “Cultural Heritage: Intangible Aspects”, *id* at 152. The statement “the tangible can only be interpreted through the intangible” is from Javier Pérez de Cuéllar [*et al*], “Cultural Heritage for Development” in *Our Creative Diversity: Report of the World Commission on Culture and Development: Summary Version* (July 1996) at 34 <<https://unesdoc.unesco.org/ark:/48223/pf0000105586>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20160802004033/http://unesdoc.unesco.org/images/0010/01055/105586e.pdf>>).

¹⁵ Recommendation on the Historic Urban Landscape (adopted 10 November 2011).

seeking to conserve urban heritage, intangible cultural heritage cannot be ignored.

The importance of this fact may be illustrated in the Singapore context by considering two adjoining cemeteries used by the Chinese community, Bukit Brown Cemetery and the smaller Seh Ong Cemetery – I will refer to them collectively as ‘Bukit Brown Cemetery’. The cemetery was established in the late 19th century by Chinese individuals and clan associations, and the land passed into the ownership of another clan association, the Seh Ong Kongsu. In 1922, despite resistance from the clan association, the Government compulsorily acquired the land and converted the private cemetery into a municipal one. It remained in use until 1973 and is estimated to contain some 100,000 graves, making it the largest Chinese cemetery outside China.¹⁶ There is democratization in death: the cemetery is the resting place of well-known pioneers of the Chinese community as well as of ordinary people, some of whom occupy the sections of the burial ground designated for “paupers”.¹⁷ The cemetery was also a battle zone during World War II, and contains unmarked war graves.

From October 2013, the Government began constructing a four-lane road across the cemetery to deal with traffic congestion in the area,¹⁸ with the loss of 4,153 graves.¹⁹ Before the graves were exhumed, a documentation

¹⁶ Terence Chong, *Position Paper on Bukit Brown* (Singapore: Singapore Heritage Society, 2012) at 6 and 20–24 <https://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf> (accessed 12 November 2019; archived at <https://web.archive.org/web/20121022225529/http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf>); Elizabeth McKenzie, “Bukit Brown: A Garden of History and Heritage” in Kevin Y[ew] L[ee] Tan (ed), *Spaces of the Dead: A Case from the Living* (Singapore: Singapore Heritage Society; Ethos Books, 2011) at 58.

¹⁷ Chong, *Position Paper on Bukit Brown*, *id* at 6.

¹⁸ Land Transport Authority, URA, and National Parks Board, “Construction of New Dual Four-lane Road to Relieve Congestion along PIE & Lornie Road and Serve Future Developments”, Urban Redevelopment Authority website (12 September 2011) <<http://www.ura.gov.sg/pr/text/2011/pr11-109.html>> (accessed 13 January 2014; archived at <<https://web.archive.org/web/20140108063907/http://www.ura.gov.sg/pr/text/2011/pr11-109.html>>); “LTA Finalises Alignment of New Road across Bukit Brown: Fewer Graves Affected than Earlier Estimated; More Time for Next-of-kin to Register Claims; Preliminary Documentation for Affected Graves Completed”, URA website (19 March 2012) <<http://www.ura.gov.sg/pr/text/2012/pr12-26.html>> (accessed 27 February 2013; archived at <<https://web.archive.org/web/20121001071635/http://www.ura.gov.sg/pr/text/2012/pr12-26.html>>).

¹⁹ *Siau Ming En*, “Exhumation of Bukit Brown Graves to Start in Oct”, *Today* (6 August 2013) <<https://www.todayonline.com/singapore/exhumation-bukit-brown-graves-start>>

project was carried out on them. The cemetery as a whole remains in a highly vulnerable position as the Government has announced that it will eventually be cleared completely to make way for public housing.²⁰ Upon being nominated by an informal interest group called All Things Bukit Brown, the cemetery was placed on the 2014 World Monuments Watch list of cultural heritage sites at risk “from the forces of nature and the impact of social, political, and economic change”,²¹ the first time a Singapore site has been listed.²²

There are numerous forms of intangible cultural heritage associated with Bukit Brown Cemetery. The tombs themselves vary in grandeur, depending on the wealth of the deceased persons’ families. Many of them consist of a throne-shaped front portion into which an inscribed tombstone and an altar are incorporated, with a horseshoe-shaped wall forming the rear portion. The area within the wall is filled with soil, forming a mound. Explanations for this tomb shape vary; one is that the tomb is meant to resemble the womb, with the suggestion that the deceased is thus ‘reborn’ into another realm. Another is that the tomb represents a tortoise, a symbol for longevity.²³

oct> (accessed 10 January 2014; archived at <<https://web.archive.org/web/20130908074635/http://www.todayonline.com/singapore/exhumation-bukit-brown-graves-start-oct>>).

²⁰ On 30 May 2011, the URA announced that the cemetery would eventually be developed into a housing estate: Chong, *Position Paper on Bukit Brown*, above, n 16 at 11 and 16; *A High Quality Living Environment for All Singaporeans: Land Use Plan to Support Singapore’s Future Population* (Singapore: Ministry of National Development, 2013) at 19, para 3.4.6 <<https://www.mnd.gov.sg/landuseplan/e-book/files/assets/common/downloads/Land%20Use%20Plan%20to%20Support%20Singapore.pdf>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20151102202209/http://www.mnd.gov.sg/landuseplan/e-book/files/assets/common/downloads/Land%20Use%20Plan%20to%20Support%20Singapore.pdf>>).

²¹ *World Monuments Fund, 2014 World Monuments Watch* (2013) <<http://www.wmf.org/downloads/press-kit/2014-Map-ENG.pdf>> (accessed 11 January 2014; archived at <<https://web.archive.org/web/20140110172853/http://www.wmf.org/downloads/press-kit/2014-Map-ENG.pdf>>); World Monuments Fund, *Bukit Brown* (2013) <<http://www.wmf.org/project/bukit-brown>> (accessed 11 January 2014; archived at <<https://web.archive.org/web/20140110173234/http://www.wmf.org/project/bukit-brown>>).

²² Grace Chua, “Bukit Brown Put on World Watch List: Partial Redevelopment of Site a Loss to Society, says New York-based Group”, *The Straits Times* (reproduced on the website of the Institute of Policy Studies, National University of Singapore; 10 October 2013) <http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/09/ST_Bukit-Brown-put-on-world-watch-list_101013.pdf> (accessed 11 January 2014; archived at <https://web.archive.org/web/20140110173832/http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/09/ST_Bukit-Brown-put-on-world-watch-list_101013.pdf>).

²³ McKenzie, “Bukit Brown”, above, n 16 at 61 and 64.

The tombs are often embellished with colourful tiles, some imported from Europe,²⁴ and poetry and sculptures from Chinese mythology. For example, some tombs feature statues of a young boy and girl – the *Jingtong* (Golden Boy) and *Yunü* (Jade Maiden), who may be disciples of the Buddha guiding the deceased’s soul through the underworld to paradise.²⁵ Tombs are also frequently supplied with sculpted protectors, either in the form of lions, *menshen* (‘door gods’ dressed in warriors’ garb), or – possibly unique to this part of the world – Indian guards. The Chinese in Singapore were familiar with immigrants from India working as police officers, soldiers and security guards, and saw supernatural significance in these roles.²⁶

Tombs were positioned according to principles of *fengshui* (literally ‘wind–water’), a system of philosophy which calls for structures such as buildings and gravesites to be oriented in certain ways with respect to the environment in order to bring good luck to deceased persons and their living survivors. High ground was believed to be particularly auspicious, which may explain the popularity of Bukit Brown as a burial site – *bukit* is a Malay word meaning ‘hill’. This belief was not well understood by the colonial government, which thought it undesirable that “all the small hills, which are the only suitable places for healthy houses in these countries, are taken forever, merely as a monument to the honour of one Chinese family and the personal vanity of one Chinese individual”.²⁷

Also of importance are the religious rituals carried out at the cemetery, especially during the *Qingming* Festival (‘Bright and Clear Festival’ or ‘Festival of Clarity’), which falls on the 23rd day of the second lunar month, or in early April according to the Gregorian calendar. People visit their relatives’ tombs to clean them and to make offerings. The spring-cleaning may involve having the tomb repainted and the grass cut, and sweeping the area. A typical ritual begins with prayers made to the *Tudi Gong* (Earth God), often at a shrine that is part of the tomb itself, for permission for the deceased to accept the offerings. Food, candles and joss sticks are then laid out on the altar of the tomb, and a libation of tea or wine made. ‘Hell money’ and other paper offerings in the form of clothes and consumer goods are burned, the belief being that the smoke conveys the items to the deceased relative in the spirit world. Finally, pieces of coloured paper are scattered over the tomb’s mound to beautify it and show that the family has carried out its duties. Sometimes, such rituals are performed by

²⁴ Such tiles were also used to decorate homes and offices: *id* at 92–93.

²⁵ *Id* at 74–75. Information on other types of sculptures appears *id* at 77–83.

²⁶ Chong, *Position Paper on Bukit Brown*, above, n 16 at 4–5; McKenzie, *id* at 72–73 and 88–89.

²⁷ Jonas Daniel Vaughan, *The Manners and Customs of the Chinese of the Straits Settlements* (Singapore: Mission Press, 1879), cited in McKenzie, *id* at 60.

temples or other organizations to honour forgotten ancestors whose family members have not come to pay their respects.²⁸

There is arguably some justification for these aspects of intangible cultural heritage to be collectively inscribed on to the Representative List of the Intangible Cultural Heritage of Humanity or the List of Intangible Cultural Heritage in Need of Urgent Safeguarding now that Singapore has ratified the ICHC, with the consequence that Bukit Brown Cemetery itself should be protected as the locus of the heritage. Indeed, the cemetery itself might be regarded as a cultural space deserving of inscription. Comparable examples of cultural spaces on the Representative List include Jemaa el-Fna Square in Marrakesh, Morocco, which “represents a unique concentration of popular Moroccan cultural traditions performed through musical, religious and artistic expressions”,²⁹ and sacred hills in Querétaro, central Mexico, which are an annual pilgrimage site for the Otomí-Chichimeca people.³⁰

Concomitantly, it is submitted that the material culture and ritual practices associated with Bukit Brown Cemetery might also support it being declared a World Heritage Site under the WHC. In fact, this possibility was floated when the Government announced its bid to have the Singapore Botanic Gardens inscribed on the World Heritage List.³¹ This prospect has been ruled out by the Singapore Government, at least for the time being. In July 2013 when Lawrence Wong, the Acting Minister for Culture, Community and Youth, was asked in Parliament whether, among other things, the Government would study if the cemetery met the criteria for qualifying as a world heritage site and whether a portion of the cemetery not designated for future residential development would be preserved, the Government’s written response was that “[n]ot all sites with local heritage value will qualify”, and that when it was

²⁸ McKenzie, above, n 16 at 90–91.

²⁹ *Cultural Space of Jemaa el-Fna Square* (originally proclaimed in 2001 as a Masterpiece of Oral and Intangible Heritage of Humanity, and inscribed in 2008), UNESCO website <<https://ich.unesco.org/en/RL/cultural-space-of-jemaa-el-fna-square-00014>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20160308211457/http://www.unesco.org/culture/ich/en/RL/cultural-space-of-jemaa-el-fna-square-00014>>).

³⁰ *Places of Memory and Living Traditions of the Otomí-Chichimecas People of Tolimán: The Peña de Bernal, Guardian of a Sacred Territory* (inscribed in 2009), UNESCO website <<https://ich.unesco.org/en/RL/places-of-memory-and-living-traditions-of-the-otomi-chichimecas-people-of-toliman-the-pena-de-bernal-guardian-of-a-sacred-territory-00174>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20190831155611/https://ich.unesco.org/en/RL/places-of-memory-and-living-traditions-of-the-otomi-chichimecas-people-of-toliman-the-pena-de-bernal-guardian-of-a-sacred-territory-00174>>).

³¹ Tan Dawn Wei, “Unesco Bid: How about Tiong Bahru, Bukit Brown?”, *The Straits Times* (14 April 2013).

considering which sites could be put up for a bid, “none of our stakeholders had surfaced the Bukit Brown cemetery as a candidate for consideration”. Nonetheless the Government recognized the cemetery’s “heritage value” and would study how it could be preserved, “taking into account future development plans for the area”. It intended to focus on the Botanic Gardens bid, as this would allow the Government “an opportunity to better understand UNESCO’s requirements and processes, before exploring other possibilities in the future”.³²

The takeaway from the above discussion is the reciprocity between built (tangible) and intangible cultural heritage: built heritage may be protected as a locale closely associated with intangible cultural heritage (or even as intangible cultural heritage itself as a cultural space), while intangible cultural heritage may provide the significance justifying protection of built heritage.

B. MEMORY OF THE WORLD

An intriguing possibility is whether documentary content that is linked to built heritage, which is a form of intangible cultural heritage, may justify the protection of built heritage. In 1992, UNESCO launched the Memory of the World Programme (‘MWP’), and the first items of documentary heritage were inscribed on to the Memory of the World Register in 1997. According to the Organization, the programme’s vision “is that the world’s documentary heritage belongs to all, should be fully preserved and protected for all and, with due recognition of cultural mores and practicalities, should be permanently accessible to all without hindrance”.³³ A significant feature of the MWP is that nominations for the Register can be made by individuals and non-governmental organizations.³⁴ In contrast, under the World Heritage Site and Intangible

³² Lawrence Wong (Acting Minister for Culture, Community and Youth), “Bukit Brown Cemetery as a UNESCO Heritage Site”, *Singapore Parliamentary Debates, Official Report* (9 July 2013), vol 90. The parliamentary question was asked by Ms Janice Koh, a Nominated Member of Parliament. See also Tan Dawn Wei, “What World Heritage Status would Mean for the Botanic Gardens”, *The Straits Times* (6 April 2013); Melody Zaccheus, “An Estate Steeped in History”, *The Straits Times* (15 April 2013); “Parliament: In Brief: Bukit Brown Site not Unesco Contender”, *The Straits Times* (10 July 2013).

³³ *Memory of the World: Programme Objectives*, UNESCO website <<https://en.unesco.org/programme/mow>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20190830022118/https://en.unesco.org/programme/mow>>).

³⁴ Ray Edmondson, *Memory of the World: General Guidelines to Safeguard Documentary Heritage* (reference no CII-95/WS-11rev; rev ed) (Paris: UNESCO, 2002), para 4.3.3 <<https://unesdoc.unesco.org/ark:/48223/pf0000125637>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20160304213230/http://unesdoc.unesco.org/images/0012/001256/125637e.pdf>>).

Cultural Heritage schemes, nominations can only be made by the governments of member states.

The tombstones in Bukit Brown Cemetery contain a wealth of epigraphic material. Apart from lines of poetry and pictorial representations of Chinese legends, the inscriptions contain information about the deceased persons' ancestral villages in China, which may be used to reconstruct migration patterns. Biographical data such as achievements and honours received, photographs, and the names of spouses and descendants may also be present. It has been noted that female family members are often omitted from written genealogies, so examining tomb inscriptions may be the only way to draw up more complete family trees.³⁵

Whether the cemetery would in fact meet the MWP's criteria would require much more study, but it is worth noting that inscriptions on stone stelae have been entered into the Register. These include the 82 stelae at the Temple of Literature in Hanoi, Vietnam, bearing information about laureates of Royal Examinations held between 1442 and 1779 which were given recognition in 2011,³⁶ and the Kuthodaw Inscription Shrines in Mandalay, Myanmar, consisting of 729 slabs on which are carved the Buddhist *Tipitaka* which were included in the Register in 2013.³⁷

³⁵ Chong, *Position Paper on Bukit Brown*, above, n 16 at 4–5.

³⁶ *Stone Stele Records of Royal Examinations of the Le and Mac Dynasties (1442–1779)*, Memory of the World, UNESCO website <<http://www.unesco.org/new/en/communication-and-information/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-8/stone-stele-records-of-royal-examinations-of-the-le-and-mac-dynasties-1442-1779/>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20161009114026/http://www.unesco.org/new/en/communication-and-information/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-8/stone-stele-records-of-royal-examinations-of-the-le-and-mac-dynasties-1442-1779/>>).

³⁷ *Maha Lawkamarazein or Kuthodaw Inscription Shrines*, Memory of the World, UNESCO website <<http://www.unesco.org/new/en/communication-and-information/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-5/maha-lawkamarazein-or-kuthodaw-inscription-shrines/>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20161009114516/http://www.unesco.org/new/en/communication-and-information/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-5/maha-lawkamarazein-or-kuthodaw-inscription-shrines/>>).

II. THE DOMESTIC LAW DIMENSION

A. THE ROLE OF INTANGIBLE CULTURAL HERITAGE IN PROTECTING BUILT HERITAGE

Naturally, one would expect the interconnectedness of built heritage and intangible cultural heritage that is evident in international law to be reflected in domestic law as well. In Singapore, built heritage is legally protected through two schemes: the conservation area scheme under the Planning Act ('PA'),³⁸ and the national monument scheme under the Preservation of Monuments Act ('PMA').³⁹

The conservation area scheme is part of the broader way in which land development is managed according to a Master Plan applicable to the entire country. Essentially, the Minister for National Development has power to amend the Master Plan to declare an entire area, group of buildings, or even a single building as a conservation area.⁴⁰ The Urban Redevelopment Authority ('URA'), which is the government agency responsible for planning matters, then issues guidelines on how buildings or land within a conservation area may be developed, and the measures that must be taken to protect the setting.⁴¹ A conservation area is defined as "any area [...] of special architectural, historic, traditional or aesthetic interest".⁴²

The national monuments scheme gives to built heritage in Singapore the highest form of legal protection available. Hitherto, the status of 'national monument' has generally been accorded to iconic structures such as large public buildings constructed during the colonial era, and religious buildings such as churches, mosques and temples. Under the PMA, one of the key functions of the National Heritage Board ('NHB') is "to identify monuments that are of such historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance and national importance as to be worthy of preservation under this Act, and to make recommendations to the Minister for the preservation under this Act of the monuments so identified".⁴³ Having consulted with the NHB, the Minister for Culture, Community and Youth may make a preservation order giving a site the status of a national monument. The preservation order may extend to land adjacent to a monument which is in the same ownership as the monument that is necessary to preserve the monument in its setting, to provide

³⁸ Chapter 232, 1998 Revised Edition ('PA').

³⁹ Cap 239, 2011 Rev Ed ('PMA').

⁴⁰ PA, above, n 38, s 9.

⁴¹ *Id.*, s 11(1).

⁴² *Id.*, s 9.

⁴³ PMA, above, n 39, s 4(a).

or facilitate access to the monument, or to enable the monument to be properly controlled or managed.⁴⁴

It is also the NHB's responsibility "to determine standards and issue guidelines for the restoration and preservation of monuments [...] and for the proper control, management and use of such monuments", and "to determine the best method for the preservation of any national monument, and to cause or facilitate the preservation of such national monument in accordance with such method".⁴⁵ Owners and occupiers of national monuments have a duty to take all reasonable measures to properly maintain monuments in accordance with guidelines issued by the Board.⁴⁶

The references to "historic", "cultural" and "traditional" interests or significance in the PA and PMA suggest that at least in some cases intangible cultural heritage such as traditional uses of, or activities associated with, a particular site are relevant when deciding whether the site should be gazetted as a conservation area or a national monument. The extent to which these matters are taken into account is unclear, as the processes for declaring sites to be conservation areas or national monuments tend not to involve much public participation.⁴⁷ There is no legal requirement for heritage impact assessments to be conducted and publicized, though presumably confidential assessments of some kind are carried out.

Moreover, although the URA has an obligation to notify the public of any proposal to amend the Master Plan by adding or removing a conservation area and allow people to submit objections or representations, and to hold a hearing or public inquiry,⁴⁸ the Minister for National Development has taken the position that a hearing may be dispensed with if nothing "new" and "substantive" has been raised.⁴⁹ This is despite the fact that the legislation only allows for "frivolous" representations to be disregarded.⁵⁰ Before a site is sought

⁴⁴ *Id.*, ss 11(1)–(3).

⁴⁵ *Id.*, ss 4(c) and (d).

⁴⁶ *Id.*, s 13(1).

⁴⁷ See, generally, Jack Tsen-Ta Lee, "We Built This City: Public Participation in Land Use Decisions in Singapore" (2016) 10(2) *Asian J Comp L* 213.

⁴⁸ Planning (Master Plan) Rules (Cap 232, R 1, 2000 Rev Ed), rr 4–6.

⁴⁹ "Feedback and Objections Received for Draft Master Plan 2013", *Singapore Parliamentary Debates, Official Report* (9 July 2014), vol 92; see also Ministry of National Development, *Written Answer by Ministry of National Development on Draft Master Plan 2013* (9 July 2014) <<http://app.mnd.gov.sg/Newsroom/NewsPage.aspx?ID=5483>> (accessed 12 November 2019; archived at <<http://perma.cc/36A5-YXDU>>).

⁵⁰ Planning (Master Plan) Rules, above, n 48, r 6(1). See Lee, "We Built This City", above, n 47 at 216–221.

to be declared a national monument, the NHB is only required to give written notice to “the owner and occupier of the monument and any land adjacent thereto which will be affected by the making [...] of the preservation order”.⁵¹ As the Minister’s intention to issue a preservation order is given no wider publicity, it is hard to see how other stakeholders such as non-governmental organizations can participate in the process unless they are specifically invited by the NHB to do so.⁵² There is therefore scope for making the conservation area and national monument schemes more transparent and participative in general, which may aid in identifying intangible cultural heritage associated with built heritage that would bolster a case for the latter to receive legal protection.

B. THE ROLE OF BUILT HERITAGE IN PROTECTING INTANGIBLE CULTURAL HERITAGE

Now that Singapore has ratified the ICHC, thought should perhaps be given to whether legal protection should be given to intangible cultural heritage in its own right, perhaps through a statute akin to Japan’s Law for the Protection of Cultural Properties.⁵³ Such a law might, in fact, help the authorities administer the conservation area and national monument schemes by ascertaining in advance important manifestations of intangible cultural property that should be taken into account. In the meantime, it is worth thinking about

⁵¹ PMA, above, n 39, s 11(7)(a). The same procedure applies if the preservation order relating to a national monument is to be amended or revoked.

⁵² See also Lee, “We Built This City”, above, n 47 at 227–230.

⁵³ See, for example, Agency for Cultural Affairs (Japan), *Intangible Cultural Heritage: Protection System for Intangible Cultural Heritage in Japan* (Tokyo: Asia-Pacific Cultural Centre for UNESCO, undated) at 9–12 and 16–18 <http://www.bunka.go.jp/tokei_hakusho_shuppan/shuppanbutsu/bunkazai_pamphlet/pdf/pamphlet_en_05.pdf> (accessed 12 November 2019; archived at <https://web.archive.org/web/20160402180333/http://www.bunka.go.jp/tokei_hakusho_shuppan/shuppanbutsu/bunkazai_pamphlet/pdf/pamphlet_en_05.pdf>). On 30 October 2019, Singapore’s NHB announced the introduction of the Stewards of Singapore’s intangible cultural heritage Award which will be given annually to practitioners of intangible cultural heritage who “demonstrate excellence in knowledge and skill of the practice” and also “show a long-term commitment to the continuation of the practice or craft, as well as consistent efforts to transmit their skills and knowledge through education, and regular engagement with the wider community”: *Media Factsheet: NHB Launches the Stewards of Singapore’s Intangible Cultural Heritage Award*, NHB website (30 October 2019) at 3, para 7 <https://www.nhb.gov.sg/-/media/nhb/files/media/releases/new-releases/media_release---nhb_launches_the_stewards_of_singapores_intangible_cultural_heritage_award.pdf> (accessed 12 November 2019; archived at <https://web.archive.org/web/20191112085201/https://www.nhb.gov.sg/-/media/nhb/files/media/releases/new-releases/media_release---nhb_launches_the_stewards_of_singapores_intangible_cultural_heritage_award.pdf>).

how built heritage can be one of the means of protecting intangible cultural heritage.

Given that built heritage often embodies the cultural space within which intangible cultural heritage is given expression, it stands to reason that it may be appropriate to regulate some sites in ways that preserve and promote cultural activities and practices associated with them. Where conservation areas and national monuments are concerned, the relevant authorities can achieve this by specifying prohibited and permitted (or preferred) uses for the sites.

An illustration of how the insensitive use of a site can lead to anger and unhappiness is provided by an incident involving CHIJMES, a dining and retail complex in the city centre occupying a former convent and school called the Convent of the Holy Infant Jesus (often abbreviated to ‘CHIJ’). The convent’s chapel, now renamed CHIJMES Hall, was deconsecrated and declared a national monument in 1990, while other parts of the complex are a conservation area. The Hall may be rented for functions such as weddings and what the CHIJMES website calls “corporate events”.

In 2012, complaints were made to the police and various government departments about an event at the CHIJMES Hall billed as the “Escape Chapel Party” to be held on Holy Saturday, the day between Good Friday and Easter Sunday. In promotional material for the event, the organizer, which had rented CHIJMES Hall, had said it would be a “sacrilegious night of partying”, and included photographs of women dressed in skimpy costumes resembling nuns’ habits.⁵⁴ The Roman Catholic Archbishop of Singapore, whose official residence happens to be across the street from CHIJMES, called the event “scandalous to the Church” and said it should not be held in the chapel.⁵⁵ The

⁵⁴ “‘Chapel Party’ at Chijmes Called Off: Images Used to Promote the Party had Offended the Catholic Church”, *AsiaOne* (3 April 2012)

<<https://www.asiaone.com/print/News/Latest%2BNews/Singapore/Story/A1Story20120403-337575.html>> (accessed 12 November 2019; archived at

<<https://web.archive.org/web/20150403071618/http://news.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20120403-337575.html>>).

⁵⁵ Lediati Tan, “Party Theme Riles Catholics”, *The New Paper* (reproduced on *AsiaOne*) (5 April 2012)

<<https://www.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20120403-337477.html>> (accessed 12 November 2019; archived at

<<https://web.archive.org/web/20161011232348/http://news.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20120403-337477.html>>); see also Nicholas Chia,

“Archbishop’s Message on CHIJMES Chapel Party Issue”, *Catholic News* (22 April 2012)

<https://catholicnews.sg/?option=com_content&view=article&id=7359%3Aarchbishops-message-on-chijmes-chapel-party-issue&catid=305&Itemid=473> (accessed 12 November 2019; archived at

<<https://web.archive.org/web/20161011232701/http://catholicnews.sg/index.php?option=>

company managing CHIJMES eventually stepped in and asked the organizer to cancel the event, and the organizer issued an apology for any offence caused.⁵⁶

Although some people might have considered the event harmless fun, it clearly offended the Roman Catholic Church and some of its adherents. The fact that CHIJMES Hall had been deconsecrated and was no longer a chapel in the strict sense of the word made no difference – there remained a strong connection between the building and its previous use as a place of worship. In a statement, the Ministry of Home Affairs said that if the event had gone ahead, the organizer might have breached one of the conditions of the public entertainment licence issued for the event.⁵⁷ In addition, given CHIJMES's status as a national monument and conservation area, should the NHB and URA have issued guidelines proscribing certain uses of the complex to preserve people's 'cultural memory' of the buildings' significance and thus safeguard the intangible cultural heritage associated with the complex?

III. CONCLUSION: THE CHALLENGES AHEAD

Intangible cultural heritage and built heritage are frequently intertwined, and thus mutually supporting. The intangible cultural property associated with built heritage may be the element that makes the mere bricks and mortar worthy of preservation. Indeed, the built heritage itself may be a form of intangible cultural property as a space in which cultural activities and practices are performed. On the other hand, built heritage may continue to resonate with the cultural memory of its former use, and thus preserving a site may help to protect intangible cultural property.

Of course, protection of cultural heritage in all forms poses various challenges. For instance, given Singapore's largely immigrant population and close cultural links to neighbouring countries, claims over what constitutes its intangible cultural heritage are likely to be controversial. In 2009, Malaysia's then Tourism Minister, Ng Yen Yen, claimed that "other countries" which she did not name had "hijack[ed]" some of its traditional dishes. Versions of some

com_content&view=article&id=7359:archbishops-message-on-chijmes-chapel-party-issue&catid=305&Itemid=473>).

⁵⁶ "Police Investigate CHIJMES 'Chapel Party'", *Yahoo! News Singapore* (5 April 2012) <<https://sg.news.yahoo.com/chijmes-%E2%80%98chapel-party%E2%80%99-draws-flak-from-catholic-community.html>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20131028155619/http://sg.news.yahoo.com/chijmes-%E2%80%98chapel-party%E2%80%99-draws-flak-from-catholic-community.html>>).

⁵⁷ *MHA Statement on Escape Chapel Party*, Ministry of Home Affairs website (4 April 2012) <<https://www.mha.gov.sg/Newsroom/press-releases/Pages/MHA-Statement-on-Escape-Chapel-Party.aspx>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20161011234510/https://www.mha.gov.sg/Newsroom/press-releases/Pages/MHA-Statement-on-Escape-Chapel-Party.aspx>>).

of the dishes she identified, such as *bak kut teh* (pork rib soup), chilli crab, Hainanese chicken rice, and *laksa* (noodles in coconut gravy), can be readily found in a number of Asian countries, including Singapore.⁵⁸ Similar criticisms were expressed following the announcement that Singapore would be nominating its hawker culture for inscription on UNESCO's Intangible Cultural Heritage Representative List. For example, claims were made that Malaysian street food tastes better than Singaporean hawker food,⁵⁹ and that Singapore is attempting to steal a march on Malaysia by having its hawker culture recognized first.⁶⁰ The NHB's response was that Singapore's nomination is neither an attempt to claim that hawker culture originated in Singapore, nor that it is unique or superior to analogous cultures in other countries. Rather, an inscription on the Representative List is a recognition of whether a cultural practice is valued within a country, and whether there is a commitment to support and safeguard it.⁶¹

This sort of contestation was foreseen by the ICHC which recognizes that intangible cultural property often cannot be confined within the borders of one country, and thus encourages countries to propose multinational inscriptions.⁶² In fact, a politician from Penang, one of the states of Malaysia, suggested that Singapore and Malaysia should submit a joint nomination of

⁵⁸ Teh Eng Hock, "Laksa and Nasi Lemak among Our Pride Says Yen Yen", *The Star* (Malaysia) (17 September 2009) <<https://www.thestar.com.my/news/nation/2009/09/17/laksa-and-nasi-lemak-among-our-pride-says-yen-yen/>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20191112072911/https://www.thestar.com.my/news/nation/2009/09/17/laksa-and-nasi-lemak-among-our-pride-says-yen-yen/>>).

⁵⁹ "Unesco Nod for Hawker Food? Not so Fast, Malaysians tell Singapore", *Today* (6 November 2018, updated 9 November 2018) <<https://www.todayonline.com/world/unesco-nod-hawker-food-not-so-fast-malaysians-tell-singapore>> (accessed 12 November 2019).

⁶⁰ "Don't let Singapore Monopolise Recognition of 'Hawker Culture', says Penang Lawmaker", *Today* (2 May 2019) <<https://www.todayonline.com/world/dont-let-singapore-monopolise-recognition-hawker-culture-says-penang-lawmaker>> (accessed 12 November 2019).

⁶¹ Low Youjin, "S'pore's Bid for Unesco Recognition of Hawker Culture 'Not about Origins' of Certain Dishes", *Today* (28 March 2019, updated 29 March 2019) <<https://www.todayonline.com/singapore/singapore-bid-unesco-recognition-hawker-culture-not-about-origins-certain-dishes>> (accessed 12 November 2019). For further information about Singapore's hawker culture, see *Media Release: Hawker Culture in Singapore Submitted for Inscription on UNESCO's Representative List of the Intangible Cultural Heritage of Humanity*, above, n 11; and John Kwok, "How Singapore's Hawker Culture Started", *Today* (3 April 2019, updated 10 September 2019) <<https://www.todayonline.com/commentary/how-singapores-hawker-culture-started>>.

⁶² Blake, "Cultural Heritage: Intangible Aspects", above, n 13 at 179–180.

hawker culture to UNESCO,⁶³ though shortly thereafter he changed his mind and said that Singapore's hawker cuisine was not very "authentic" and that Malaysia should make a sole bid.⁶⁴ It appears that the Malaysian Federal Government has not formally responded to either suggestion.

We have already seen how economic development may be prioritized above preserving heritage. While legally restricting the uses to which built heritage can be put in the name of protecting intangible cultural heritage seems like a good idea, one must be aware that such conditions may conflict with the principle of adaptive reuse of buildings. Restrictions may also cause such buildings to become less attractive to developers or lessees, resulting in a fall in value. It may be worth exploring whether a combination of restrictions and the use of incentives to encourage voluntary adherence to recommended or preferred uses would be more appropriate. Ultimately, if a nation's people are not to feel dislocated or that they have lost their identity, some way to accommodate both heritage and progress must be found.

⁶³ Cheryl Teh, "Penang Proposes Joint Singapore–Malaysia Unesco Hawker Culture Bid", *The Straits Times* (5 May 2019) <<https://www.straitstimes.com/asia/se-asia/penang-proposes-joint-spore-malaysia-unesco-hawker-culture-bid>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20190929084945/https://www.straitstimes.com/asia/se-asia/penang-proposes-joint-spore-malaysia-unesco-hawker-culture-bid>>).

⁶⁴ "Penang Official Suggests Malaysia Make Unesco Bid without Singapore whose Hawker Culture is Not 'so Authentic'", *The Straits Times* (5 May 2019) <<https://www.straitstimes.com/asia/se-asia/penang-official-suggests-malaysia-make-unesco-bid-without-singapore-whose-hawker>> (accessed 12 November 2019; archived at <<https://web.archive.org/web/20190511141031/https://www.straitstimes.com/asia/se-asia/penang-official-suggests-malaysia-make-unesco-bid-without-singapore-whose-hawker>>).