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PRELIMINARY STUDY ON THE TECHNICAL AND LEGAL ASPECTS
OF THE SAFEGUARDING OF FOLKLORE

SUMMARY

Pursuant to resolution 5/03 adopted by the General Conference at its twenty-first session, the Director-General submits to the Executive Board, in accordance with Article 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution, a preliminary study on the technical and legal aspects of the safeguarding of folklore, so that the Board may decide whether the question should be included in the provisional agenda of the twenty-second session of the General Conference.

Decision: paragraph 157

1. Under the terms of resolution 5/03 adopted by the General Conference at its twenty-first session, the Director-General was invited to prepare a preliminary study on the technical and legal aspects of the safeguarding of folklore with a view to the possible regulation of the matter on an international basis.
2. The Work Plan relating to that resolution envisaged the following procedure:

'Two committees of governmental experts (category II) will be convened. The first will be held at Headquarters in 1981, with a view to defining measures to safeguard the existence, development and authenticity of folklore and traditional popular culture and to protect them against the risk of distortion; the second, preceded by a committee meeting (category VI), will be organized jointly with WIPO in 1982 and will be responsible for drawing up proposals for regulating the 'intellectual property' aspects of the protection of folklore and traditional popular culture. Three working groups will be convened jointly with WIPO in 1981, 1982 and 1983, in Latin America and the Caribbean, Africa, and Asia and the Pacific respectively, to seek means of applying such regulations at the regional level, taking account of the characteristics of this cultural heritage in each region as factors in identifying an ethnic group or a national community .. In the light of the findings of the 1981 and 1982 committees of governmental experts, and in pursuance of 21 C/Resolution 5/03, a preliminary study will be made for submission to the Executive Board in 1983, and possibly to the General Conference at its twenty-second session, to enable it to decide whether it would be advisable to adopt a recommendation to Member States on this question'.
3. The two committees of governmental experts provided for in the Work Plan of 21 C/Resolution 5/03 were convened from 22 to 26 February 1982 at the Headquarters of Unesco and WIPO respectively. The different aspects of the safeguarding of folklore were examined at these meetings with a view to identifying the areas to be covered by a possible international instrument.
4. This preliminary study on the technical and legal aspects of the question, which the Director-General has drawn up in pursuance of 21 C/Resolution 5/03 and in accordance with the provisions of Article 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution, takes into consideration not only the findings of the committees of governmental experts referred to above but also a survey of Member States and the conclusions of the working groups convened jointly with WIPO in Latin America and the Caribbean, Africa and Asia.
5. The Executive Board is asked to take a decision on the inclusion in the provisional agenda of the twenty-second session of the General Conference of a proposal concerning the regulation of the safeguarding of folklore on an international basis.
6. In accordance with the provisions of the Rules of Procedures concerning recommendations to Member States and International Conventions, the Executive Board 'may communicate to the General Conference any comments it may deem necessary' on this subject. It 'may decide to instruct the Secretariat, one or more experts or a Committee of Experts, to carry out a thorough study of the matters dealt with in the aforementioned proposals, and to prepare a report for communication to the General Conference' (Article 4).
7. It should also be noted that according to the Rules of Procedure:
 - (a) It is for the General Conference to take the final decision on whether a question should be regulated at the international level and, if so, to determine to what extent the question can be regulated and whether the method adopted should be a recommendation to Member States or an international convention.

- (b) No draft regulation can be adopted before the ordinary session following that at which the General Conference has taken the aforementioned decisions; consequently, it would not be possible to adopt an international instrument regulating the question prior to the twenty-third session of the General Conference, which is to be held in 1985.

8. If the Executive Board decides to place the question of the desirability of adopting an international instrument on the safeguarding of folklore on the provisional agenda of the General Conference, the Director-General will communicate to Member States, in accordance with Article 5 of the above-mentioned Rules of Procedure, a copy of the preliminary study together with the Executive Board's observations and decisions thereon.

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I. INTRODUCTION

1. Folklore is a legacy which has emerged from the shadows of time and the peoples who created it. For modern man, it is a record of the earliest sources of all expressions of human culture.
2. In countries with a long cultural tradition, it is obviously only one component of the cultural substratum of a specific population group. But its importance and the role it plays tend to increase in line with sociological and psychological resistance to the progress characteristics of scientific societies.
3. In developing countries, by contrast, folklore is of major importance. It is a source of identification of membership in an ethnic group or national community and the chief constituent of a cultural heritage which, with its roots in the distant past, is one of the most valuable possessions of a living popular culture. As a store of tradition, it enables a people to enter on a phase of technical progress without suffering cultural traumas.
4. Whether its place in a nation's culture is preponderant or accessory, folklore is at all events a reality, deeply rooted in the collective unconscious and nourishing its substance.
5. It is also because of its capacity for making the inherent characteristics of a people known and understood that in the present age of globalization folklore has become an increasingly important element in cultural exchanges between nations, extending the limits of our view of the cultural heritage of mankind beyond the field of books, works of art, monuments or scientific discoveries, which are passed on from generation to generation by means of fixation in a material form which resists the wear and tear of time.
6. A new audience with a taste for folklore has thus gradually come into being, a phenomenon which has given an unprecedented commercial boost to recordings of traditional music or folk tales, with the result that the repertory of the recording companies in this field has grown substantially.
7. Many Member States have therefore drawn the attention of the international community to the need to safeguard folklore--that other form of intellectual creativity which has yet to gain full acceptance in the most venerable forums of international thought--and to regulate its use. In this context, the recommendations made to Unesco by the intergovernmental conferences on cultural policies in Asia, Africa and Latin America and, more recently, by the World Conference on Cultural Policies in July-August 1982 call for emergency action to preserve popular traditions.

II. THE VARIOUS ASPECTS INVOLVED IN THE SAFEGUARDING OF FOLKLORE

8. The relationship between folklore and the law is a highly topical problem, but one which is not easy to solve. Although universal folklore is a cultural phenomenon of extreme complexity and the mechanisms underlying its creation and development require not only a detailed investigation of the very notion of folklore but also the establishment of rules for identifying the constituents of each category of expression belonging to this cultural heritage, and for its conservation, preservation and protection against unjustifiable exploitation.

(1) Definition of folklore

(a) Etymology

9. The word folklore means, literally, science (lore) of the people (folk). It was introduced into the English language in 1846, when W.J. Thoms, writing in an article published in the Athenaeum magazine for August of that year

under the pseudonym of Ambrose Merton, proposed the use of the Saxon compound 'folklore' for the whole range of popular antiquities and literature. The new term gained rapid currency in both English and French. Science of the people for some, knowledge of things pertaining to the people for others, the term was accepted without question from the middle of the nineteenth century onwards.

10. These explanations of a terminological nature do not, however, dispel either the imprecision of the term folklore or its ambiguity.
11. The word folklore is imprecise, as it covers a multitude of folkloristic situations. Each country, province or locality possesses, to mention a few examples, a religious, legal, musical and agrarian folklore. The term folklore, without specification of the particular field of application, is thus so general that it creates confusion as to the constituent elements of the phenomena to which it applies.
12. The term is ambiguous, as it designates both the science (lore) and its subject (folk). This being the case, one is subject to the combined uncertainties of the science (since one speaks of 'folklore research' as well as 'French folklore' or 'legal folklore') and of its subject (since the term 'folk' signifies at the same time the nation, politically defined, and the units which it contains or the races of which it is composed).
13. However, as this study is concerned with the subject of folklore, specific facts pertaining to its characteristics may be identified.

(b) Characteristics of folklore

14. It appears to be unanimously recognized today that the fundamental feature of folklore is that it represents a form of artistic expression of the people, its basic elements being its impersonal, traditional and oral character.

(i) Impersonal character of folklore

15. Folklore is impersonal because it is collective and has no known individual author.
16. If not always collective in origin, folklore is certainly collective in function. It is the culture of populations of varying size where individualities mingle and disappear, if only by reason of the uniformity of their preferences. This uniformity is reflected in the anonymity of the works produced. In the absence of a material medium of transmission, all research concerning individual authorship is a matter of very recondite scholarship, or even mere guesswork.

(ii) Traditional character of folklore

17. Folklore is traditional in so far as it is transmitted by means of stereotyped patterns, formulae or structures to which the performer, under pain of losing his audience, must conform. This characteristic is explained by reasons of a sociological nature: folklore is rooted in very coherent social milieux whose members are all more or less of the same cultural level. Manifesting his sensitivity in this way, the story-teller, dancer, singer or musician expresses ideas and feelings common to all. His artistic sensibility reflects that of the group. He is a collective mouthpiece whose aim is to conserve and at the same time preserve the heritage that has been handed down to him.

(iii) Oral character of folklore

18. As well as being impersonal and traditional, folklore is also orally transmitted. Its propagation is through the oral channel, the sole temporal and spatial route open in this culture, which leaves on it its own unique imprint, for folklore does not simply circulate unchanged, but undergoes many transformations as it spreads like a creeping plant.
19. This oral character seems to be the criterion for an important distinction. Any folklore-type phenomenon in any material form belongs to folk art, not to folklore in the strict sense of the term, so that costumes, drawings, rugs, altars, masks and generally speaking, all three-dimensional forms fall into a neighbouring but not identical category.

(2) The identification of folklore

20. Once folklore has been defined and the different components of the phenomenon determined, it is time to leave the field of concepts for that of reality and the problem of identification. This is a complex problem, and one involving a considerable amount of work, which, although it is already under way in some fields, in others has not yet begun. Thus any attempt to solve the problems arising from the existence of folklore, whether in the short or long term, must be based on a methodological foundation one essential feature of which is the determination of the analytical framework to be selected. To be precise, two questions must be answered: (a) on what sectors will attention be focused, i.e. what forms of expression will be counted as belonging to folklore? (b) what methods will be used to determine, in each of the chosen sectors, the content and forms of this folklore?

(a) Fields covered by folklore

21. It is immediately obvious that the field to be covered is very large. One is even tempted to say that any form of expression, any composition of whatever order and in whatever sector may turn out to be folklore. We have seen, however, that it seems necessary to draw a distinction between expressions of folklore in some physical form and non-material expressions of folklore.
22. Some examples of physical expressions of folklore are musical instruments, costumes, carpets, textiles and textile designs, votive offerings, statuettes, amulets, totems, ritual masks and, in general, everything related to the plastic arts.
23. It must be agreed that the non-material expressions of folklore are many and various. Without drawing up a complete list, we can mention a number of genres which belong indisputably to folklore, such as stories, fairy stories, tales of the supernatural, legends, beliefs connected with particular periods or places, myths and symbols. Music, whether instrumental or choral--songs connected with the activities of everyday life in a particular community or with the events which have affected the history of the group, whether these songs are religious or profane--are also part of folklore. If songs are included, poetry must also be considered as folklore; and poetry automatically subsumes linguistics, which is undoubtedly, as Van Gennep has maintained in his Manuel du folklore, the discipline most closely related to folklore, as 'linguists are aware that every language, whether general or special, is in a constant state of transformation'. We must therefore consider the question of dialects and patois and decide whether or not they should be defined as folklore.
24. On an even more general level, it seems that some regard as belonging to folklore, although they also come within the scope of ethnology, religious and pagan ceremonies and practices such as sorcery, magic and medicine (although reliable surveys have proved that some of the incantatory formulas used by folk healers had been taken from books sold by pedlars, various alterations and

additions having been made to the texts). Rituals, including transition rites, marriage and death rites, etc., fertility rites, engagement ceremonies and sexual practices may also be seen as belonging to folklore. Two other types of activity also clearly belong to folklore: games and dance.

25. This brief enumeration shows that the first job is to draw up as detailed a list as possible of all the different forms of folklore and then to organize them into a more general classification by sector, field or type. The work of drawing up an inventory within each group should then be undertaken.

(b) Methods of identification

26. Modern resources facilitate the use of the comparative method at its three levels: collection of information, filing and classification.

(i) Collection

27. This is based on the tried and tested methods of the direct survey, which may have various different aspects: direct note-taking by the researcher, prepared questionnaires or mapping, but also recordings on tape and film which may then be transferred to another medium in clear or in coded version (microfilm, punched cards or computer memory). In general, the maximum of information should be collected on the phenomenon in question (time, place, performers). Each item collected should be accompanied by a filing card situating it in its environment, without which it would be meaningless.

(ii) Filing

28. Once the information has been collected the material must be filed to make it possible to integrate it into a system. Mechanical transcription of the item, including variations which may have been noted, will often be necessary.

29. In fact the filing system depends on the field concerned. In the field of music, for example, a 'double-entry' system, grouping on one side all tunes from the same geographical area and on the other all belonging to the same musical genre, would seem to be the most appropriate.

30. Generally speaking, it will be sufficient for the purposes of filing by region to use the administrative divisions of the country, in alphabetical order, which will make it possible easily to identify the melodies of any region.

31. Two questions must, however, be settled: the question of interpolations and that of terminology:

still in the field of music, does a Moldavian melody sung by a Moldavian in Bucharest, for example, belong to the Moldavian repertoire or should it be considered as belonging to the musical repertoire of Bucharest at the time of its collection?

the terminology used often varies from one province or even from one locality to another. Thus, for example, the asymmetrical, monotonic melody described by Bartók in one of its versions (that of the province of Maramures) and commonly called 'doina' is called by another name in the very areas in which it abounds: in Oltenia as well as in the Maramures, it is said to be a long song (example taken from Brailoiu's Methodology of musical folklore). Conventional terms must therefore be employed and their meaning clearly defined in the key to the code used. The file which is drawn up must thus re-establish the authentic terminology.

(iii) Classification

32. Once the information has been ordered, it should be classified by means of a catalogue or directory by type or theme. A classification system was established by Danielle Dumas in her thesis on the folk poetry of the Andalusian gypsies (Montpellier, 1971). Her classification is based on the following categories: anecdotal themes; historical themes (persecutions, the price of freedom, death and imprisonment, references to crafts, etc.); lyrical themes (the definitions of love, the effects of love, love and passion, love and sensuality, love and women, the power of love, etc.); mythical themes (aetiological myths, myths concerned with purity, pantheistic myths, etc.); religious and philosophical themes (superstitions, idolatry, religious history, punishment, moral judgements, fate, death, etc.); sociological themes (money, poverty, mother and family, etc.); themes with esoteric symbolism.

(3) The conservation of folklore

33. Two basic aspects must be examined: the maintenance of the social milieu which produces the phenomena of folklore and the recording of its manifestations by all suitable means.

(a) Maintenance of the social milieu which produces the phenomena of folklore

34. Folklore, like language, is a living thing, and its habitat must be protected. In fact this cultural heritage can be seen, in some parts of the world, to be dying out as a result of the gradual deterioration of its natural environment and of encroachments from the outside.

35. The World Conference on Cultural Policies (Mexico City, 26 July-6 August 1982) perceived this situation very clearly. For instance, paragraph 25 of the 'Mexico City Declaration' states: 'The cultural heritage¹ has frequently suffered damage or destruction as a result of thoughtlessness as well as of the processes of urbanization, industrialization and technological penetration. But even more intolerable is the damage caused to the cultural heritage by colonialism, armed conflict, foreign occupation and the imposition of alien values. All these have the effect of severing a people's links with and obliterating the memory of its past...'

36. The best way to keep traditions alive is certainly to be aware of the importance of folklore and to take the measures necessary to preserve this cultural heritage. This was, indeed, the conclusion of the various regional conferences held in Helsinki in 1972, Yogyakarta in 1973, Accra in 1975, Bogota in 1978 and Baghdad in 1981, at which many aspects of current cultural problems were considered in their different regional contexts. The World Conference on Cultural Policies, for its part, recommended that Member States 'accord the same recognition to hitherto non-recognized aspects of cultural tradition as to historic or artistic goods, and provide technical and financial support for activities aimed at their preservation, promotion and dissemination'².

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1. According to paragraph 23 of the Mexico City Declaration, 'The cultural heritage of a people includes the works of its artists...and also the work of anonymous artists, expressions of the people's spirituality, and the body of values which give meaning to life...'
 2. Recommendation No. 64.

(b) The recording of folklore

37. The first step is to provide for the publication of as many documents as possible on folklore. An example of this approach is the gypsy review which regularly publishes gypsy stories in order to form the basis for a record of the creative genius of a people.
38. Even more important is the centralization of heterogeneous and scattered information which is often difficult to use. The logic of this situation requires that each state create facilities for the study and collection of folklore. The processing of information by means of filing cards, microfilm or computer which is now possible has removed many of the obstacles.
39. In fact substantial progress has already been achieved in this respect. For example, a considerable amount of work has been put into prospection, collection, analysis, indexing, numbering, filing and records management in the field of music and dance. The International Folk Music Council co-ordinates the work of a large number of national institutes for this purpose. In Argentina the National Institute of Musicology, founded in 1931 by Carlos Vega, has made a complete inventory of the folk music of the indigenous inhabitants of all the provinces of Argentina, and of all that of Bolivia, Peru, Chile, Venezuela and Paraguay. The Society of Romanian Author-Composers, founded in 1936, has applied itself to the collection and inventorying of Romanian folklore. In Czechoslovakia, the Institute of Musicology of the Slovak Academy of Sciences in Bratislava has already collected over 120,000 tunes, of which more than 10,000 have already been published. This Institute is devising a system of classification and ordering and a typology of musical folklore.
40. In some fields the trail has thus already been blazed, but more remains to be done to ensure the conservation of folklore, which is one of the prerequisites for its preservation.

(4) The preservation of folklore

41. Conservation and preservation may at first appear to be synonymous as far as folklore is concerned, but in reality this is far from being the case since the idea of preservation implies the existence of a threat, in a way which that of conservation does not.
42. Folklore is a vulnerable cultural asset, open to various forms of attack, mainly from two quarters: time and man.
43. Two different approaches seem to be called for: (i) the preservation of folklore by the adoption of measures to ensure its continued existence and development; and (ii) the preservation of folklore against the risk of distortion.

(a) Measures to ensure the continued existence and development of folklore

44. Various types of action can be taken to ensure the continued existence and development of folklore. The first should be a policy of incentives to promote knowledge of folklore and encourage its forms of expression and its dissemination.
45. The promotion of knowledge means introducing children to folklore at the earliest possible age, i.e. making provision for education to include channels of contact with the oral civilization. School curricula, which now include a wide range of subjects, should allow time for the study of or contact with folklore.

46. The promotion of knowledge of folklore also necessitates means of getting hold of that knowledge. The collecting of folklore phenomena needs to be put on a more solid basis. It would, for example, be possible and indeed advisable to train collectors who would have a clearly defined status.
47. The promotion of knowledge of folklore means, lastly, organizing access to the material collected and allowing study and research. There seems to be a case for integrating folklore sections into the existing or yet to be established structures of institutes of ethnology or musicology. A choice may be made between creating a folklore sector which would cover all forms of expression or creating a folklore unit in each department of an institute.
48. Encouragement of the different forms of expression of folklore could be given at two levels. Firstly, budgetary incentives could be provided: it would indeed be possible to allocate part of the budget of local authorities for the perpetuation of old forms of expression or to encourage the development of new ones. Secondly, tax incentives could be provided: it would also be possible to devise fiscal arrangements to encourage performances devoted entirely or in part, the proportion in question to be determined, to folklore.
49. Encouraging the dissemination of folklore calls for action at both national and international level.
50. Comprehensive action at national level to preserve folklore could form part of a clearly defined national cultural policy. In many Western countries, the preoccupations of the ecologists have brought to light a desire, indeed a determination, to control man's relationship with his natural environment within the context of industrialization. The same problem also arises in connection with the cultural environment, the traditional substrate of which must be maintained.
51. At international level, action to preserve folklore could take the form of bilateral or, even better, multilateral legal instruments. Folklore in fact seems better suited than any other matter to this kind of generalized action, as its geographical origin is clearly apparent, which makes it easier to organize flows between countries.

(b) The preservation of folklore against the risk of distortion

52. In the second place steps must be taken to preserve folklore against the erosion of its authenticity. The dangers of distortion are real, arising from the commercialization of folklore. In its customary setting, folklore undergoes a natural growth which ensures its authenticity, but when it is transplanted from its native soil and used for commercial purposes, it may lead a double life. It is then open to the same risks as other works of the mind: plagiarism, amputation, misappropriation, unlawful reproduction or use, etc. Such distortion must be opposed by strictly applied regulations, which should enable folklore to regain its identity and its authenticity. A certain flexibility is necessary, however, so as not to impede the dissemination of this heritage.
53. With this in mind, it would be advisable to determine precisely the sectors of activity or creation where folklore is involved and where there is a serious possibility of commercial exploitation. From this point of view there is no doubt that the arts lend themselves most readily to exploitation of a commercial nature. Folk music and folk dances, like folk poetry or folk tales, are easy to exploit, as also are certain religious or pagan rites which can be performed before an audience or filmed. Generally speaking, it would be advisable to draw up a list of the different forms of expression of folklore which might be

reproduced in print, on tape, through recordings or films. Actually any reproduction involves potential exploitation of the work or happening reproduced. In this way it will be possible to distinguish forms of expression of folklore for which there is no material medium of transmission from those which can be recorded and the recording of which may be used to make a saleable reproduction. The two extreme examples are, on the one hand, music, which can be directly exploited, and, on the other, beliefs, which cannot be recorded but are only practised, such practices being seldom amenable to commercialization.

54. This being said, the attitude to commercial exploitation should not be wholly negative: although the abuse or fraudulent use of folklore should be prevented, it is a source of income which many countries quite rightly wish to exploit, so long as some prior or retrospective control is exercised.

55. The prior control is of the cultural type, i.e. the use to be made of a particular category of folklore is accurately ascertained by means of selection, canalization, or even authorization. The emergence of folklore on the commercial market should be facilitated by incentives to prevent 'under-the-counter' dealing in folklore as a commodity to be filched from a country. So it would seem that the emphasis should be placed on improving our knowledge of the uses to which folklore might be put; more needs to be known about supply and demand and a better understanding is required of the commercial system for the dissemination of folklore, while the means of obtaining folklore material should be controlled. In this way, action can be taken against the distortion, plagiarization and unlawful or fraudulent use of folklore. This presupposes solidarity between countries, which should try to localize folklore phenomena accurately and exchange information on the ways in which folklore is used.

(5) Utilization of folklore

(a) Existing machinery

56. There are two aspects to the utilization of folklore. In the first place, it is understandable and desirable that a disinterested use of folklore should be developed. Outside of its natural setting, folklore can be a factor in cultural exchanges between countries.

57. The commercial question is a more sensitive issue as it has considerable financial implications. How can commercialization be authorized without prejudice to the nature and the form of the folklore heritage? The question is in fact twofold: how can the social group in which it originated participate in the financial proceeds of a work of folklore? And how, when authorization to use a work has been given, can the use made of it be controlled?

58. The geographical origin of the work concerned might be indicated when it is reproduced or performed, on the basis of full information obtained through the setting up of a commercial network subject to strict professional rules. Some way of associating the community concerned in the financial benefits accruing from the use of the work might then be contemplated. This could be done in various ways. In the first place, it could be done through copyright. Some states have indeed adopted this means of dealing with folklore problems, for instance Tunisia (1967), Bolivia (1968, for musical folklore only), Chile (1970), Morocco (1970), Algeria (1973), Senegal (1973), Kenya (1975), Mali (1977), Burundi (1978), Ivory Coast (1978) and Guinea (1980).

59. At international level, the Berne Convention for the Protection of Literary and Artistic Works contains in its versions adopted at Stockholm in 1967 and in Paris in 1971 a provision which, although not using the word, concerns works of folklore, since Article 15, paragraph 4, provides:

- '(4) (a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.
- (b) Countries of the Union which make such designation under the terms of this provision shall notify the Director-General /of the World Intellectual Property Organization/ by means of a written declaration giving full information concerning the authority thus designated. The Director-General shall at once communicate this declaration to all other countries of the Union'.
60. However, at the time of preparation of this document, the Director-General of WIPO had not yet been notified of any case of designation of a national authority to protect the rights pertaining to works by authors whose identity is unknown.
61. The Universal Copyright Convention contains no provision dealing specifically with works of folklore. Only Article II which states the general principle governing the national treatment of works may provide scope for folklore protection in the measures specified by national legislation.
62. The Pan-American conventions are not particularly effective. By making the publication of a work a precondition for protection, they rule out all works which are transmitted orally.
- (b) The unsuitability of existing instruments for the purposes under consideration
63. It is tempting to seek a solution to the folklore problem in terms of legal protection alone. It may seem that since the situation of literary and artistic works is governed by various international conventions, it should be possible, by a natural process of analogy, to safeguard the folklore heritage by adopting new provisions.
64. But this approach leaves out of account the factors which make folklore unique and which make it impossible to treat works of folklore as if they were identical with their more 'academic' counterparts.
65. For a work of the mind, literary or artistic, to be protected by copyright it must have an author and be original.
66. Folklore is certainly an artistic creation. It is not necessary to stress this point except to observe that works of folklore are not quite the same as works covered by national copyright laws or international copyright conventions in that they are not finished and definitively fixed works. Time plays an important role in their genesis.
67. The second requirement to satisfy is that of originality. To be eligible for protection, an artistic work should be original, but this concept is understood in a relative rather than absolute way. It is difficult to determine whether a work of folklore is absolutely or relatively original since an antecedent always exists. Thus, in most countries, folk melodies are based on a theme or a tune which pre-dates them. As a result, with respect to copyright principles, a given work is considered relatively original. This qualification does not automatically apply but should be assumed in the absence of objective proof to the contrary.

68. The determination of the author of works of folklore is a sensitive issue.

It may without difficulty be admitted that a work of folklore is formed by successive acts of creation. The closer one comes to the present, the more clearly the methods of investigation make it possible to identify the respective proportions of the various contributions. The legal situation of these works should thus be clarified; but tradition, which constitutes an anonymous 'common fund', provides an already developed basis for the present formalization of folklore. This creative multiplicity inherent in folklore which leads to the fragmentation of the notion of author, replaced by a multiplicity of transmitters, is the basic source of difficulty when attempting to devise an unambiguous legal status for works of folklore.

69. It should also be noted that: (i) copyright being essentially individual, the collective character of the works in question tends to exclude them from traditional classifications; (ii) to the discussion of the legal nature of works of folklore is added a conflict of views with respect to the application of copyright in systems which make publication of a work of the mind the criterion for its protection.

70. Finally, while a community might conceivably be invested with a moral right exercised by a representative, it is more difficult to accept the idea of a pecuniary right, which rewards the work of the author, in this case unknown. Yet remuneration in exchange for the use of folklore seems only fair. It might take the form of a financial interest agreed to on the signing of a contract, or a tax levied on the occasion of its use. Something similar to a licensing procedure might also be envisaged. The fact remains, however, that a problem will undoubtedly arise as to the allocation of the financial resources thus generated. It will have to be decided whether these sums should revert to a national, regional or local body, and then to what use they should be put. Should they be used for unspecified general purposes, cultural purposes or for folklore itself? In the latter case, should they be used to finance study and research or dissemination?

71. In this connection it may be noted that a very sophisticated legal procedure already exists in Bolivia. The provisions governing musical folklore are grouped together in the Supreme Decree of 19 June 1968, which sets forth the principles applicable to this subject, and the regulations thereunder of July 1968, which specify the procedure for the application of the Supreme Decree.

72. Supreme Decree No. 08396 declares folk music (anonymous, popular and traditional) of which the author has not been identified and which is performed at the present time in Bolivia by peasant and other folk groups, and the music of Bolivian composers deceased thirty or more years ago to be the property of the state. With respect to the use of folk music, the Supreme Decree requires that any printed or recorded version of folk music mention the name of the collector and/or the Folklore Department of the Ministry of National Education and Culture (Art. 6). A royalty is collected for such uses. Thus, any person who records or publishes folk music must pay into the 'Preservation of Folklore' account at the Bolivian Central Bank a sum equivalent to the royalties which would be collected by a living author for his composition (Art. 3). The proceeds from this royalty are allocated exclusively for the preservation and study of Bolivian folk music (Art. 5). From these sums, the registrar receives 40 per cent (Art. 4). Finally, in order to keep an accurate inventory of folk melodies, the Folklore Department of the Ministry of National Education and Culture and the Public Prosecutor's Office are authorized to investigate the appropriation of melodic themes from folk music by third parties as 'original' compositions prior to the Decree (Art. 7).

73. The regulations of July 1968 specify the uses which may be made of the national folklore, the measures for its registration and the procedure for the restitution to the national community of melodies improperly appropriated by third parties.
74. The utilization of folklore may, then, be summed up in two simple questions:
- (i) Is it possible to control the commercial system which uses folklore? Is it possible to obtain a clear knowledge of this system?
 - (ii) Can the countries of origin of the folklore be given some form of involvement in, and a right of inspection of, the ultimate use made of an expression or work of folklore of which the authenticity might be affected, an association which would include participation in the profits accruing from such use?
75. There is no doubt that the familiar copyright procedures can be combined with new rules and that the use of folklore can be regulated by different means, to be left to the discretion of the states concerned.
76. A study by major economic regions or even by countries seems, then, essential for examining the nature of the commercial systems which use folklore and also the compatibility of the legal rules which are taken from copyright law or commercial, civil or international law. In the last resort it seems essential that any status worked out for folklore should be fitted into a relatively binding legal framework, otherwise the efforts made to identify, conserve and preserve folklore would be in vain because out of touch with the manifest commercial realities.

III. UNESCO'S ACTION

(1) Background

77. It was at the request of the Government of Bolivia, expressed in a communication dated 24 April 1973 (Ref. No. DG 01/1006-79) sent by the Minister of External Relations and Religious Affairs to the Director-General, that the Secretariat began to carry out studies concerning folklore.
78. The aim of the Bolivian Government's request was to add a protocol to the Universal Copyright Convention which would govern 'the conservation, the promotion and the diffusion of folklore...'. This question was submitted to the Intergovernmental Copyright Committee, established under Article XI of the Universal Copyright Convention and the body responsible for dealing with questions concerning the application and operation of the Convention and also making preparations for revisions thereof, and was examined at its session in December 1973. At the conclusion of the discussions on this topic, the Committee decided to entrust the study of this question to the Unesco Secretariat, which was to report on the results of its work to this Committee and also to the Executive Committee of the Berne Union in so far as the protection of folklore might involve copyright.
79. In pursuance of this decision, the Unesco Secretariat submitted to the Intergovernmental Copyright Committee and to the Executive Committee of the Berne Union, at their 1975 sessions, a study on the desirability of providing for the protection of folklore on an international scale. Following discussions of this topic, at which it became clear that the matter was essentially of a cultural nature, going beyond the scope of copyright, and therefore lay outside their fields of competence, the Committees requested Unesco to make an exhaustive study of the problems involved in the protection of folklore.

80. Within the framework of resolution 6.121 adopted by the General Conference at its nineteenth session held in Nairobi in 1976, the Director-General convened a Committee of Experts on the Legal Protection of Folklore, which met in Tunis in July 1977 and considered a preliminary study on this question prepared by the Secretariat. In the course of this meeting it became clear that the problems involved in the protection of folklore comprised defining it, identifying it, conserving it, preserving it and the ways in which it was used.

81. At their meetings held in November-December 1977, the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union decided 'that studies on this subject should be pursued by the Unesco Secretariat on an interdisciplinary basis within the framework of an overall approach, but that /the World Intellectual Property Organization/ WIPO /which also has responsibilities in this field/ should be associated in the examination of any copyright aspects involved...'

82. Since then the work of the Secretariat in this field has been pursued at two levels: firstly, a global study of the protection of folklore which, if it is to be complete, requires the adoption of measures within an integrated framework covering the definition of folklore, its identification, its conservation, its preservation and its utilization and, secondly, a study of the copyright and broader 'intellectual property' aspects involved, which is being carried out jointly with WIPO.

(2) Comprehensive study of the protection of folklore

(a) The survey carried out among Member States

83. Paragraph 5022 of the Work Plan of resolution 5/9.2/1 adopted by the General Conference at its twentieth session stated that studies would be carried out by the Secretariat in order to 'identify ways of providing protection for folklore at the international level'. In pursuance of this provision, the Director-General sent out a questionnaire to Member States regarding the five points that had been singled out by the Tunis Committee of Experts referred to in paragraph 80 above. These five points were the following: the definition, identification, conservation, preservation and exploitation of folklore.

84. By 30 September 1981, the Secretariat had received one or several replies from seventy Member States: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Central African Republic, Chad, Chile, Colombia, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, German Democratic Republic, Federal Republic of Germany, Ghana, Greece, Guinea, Honduras, Hungary, India, Indonesia, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Luxembourg, Malta, Mauritius, Mexico, Monaco, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, San Marino, Singapore, Socialist People's Libyan Arab Jamahiriya, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, United Kingdom, Upper Volta, Venezuela, Yugoslavia, Zaire. On 22 February 1982, the Secretariat received a reply from Gabon as well.

85. Firstly, it seems that all the replies received agree as to the need for a definition of the term folklore, but have differing ideas of the form such a definition should take.

86. In the first place opinion is divided on the question of the origin and sources of folklore and, more specifically, on whether folklore is the result of collective or individual creation or whether it should be an integral part of the 'cultural heritage'.

87. A similar variety of opinions is to be found with regard to the features that entitle a manifestation to be regarded as folklore and several countries considered that the features suggested by the questionnaire were inadequate, these being: the impersonal nature of the elements constituting the manifestation and of their transmission, their anonymity, the traditional nature of these elements and of their transmission, the oral nature of transmission, its empirical nature, the collective and spontaneous participation of the entire audience.
88. Regarding the question whether elements other than those mentioned in the questionnaire are taken into consideration in the definition of folklore thirty-eight countries replied in the affirmative, mentioning such criteria as the regional character of the manifestation, its regional specificity (this element being in some cases associated with its temporal specificity), the collective memory, the manifestation's force of social cohesion, the appeal to the conscience which is reflected in a feeling of belonging to a community, the 'functionalism' of the manifestation, the way the manifestation develops over a period of time while maintaining its identity, the collective nature of the creation, its rural character.
89. In the second place, rules regarding the identification of folklore appear essential for the protection of this heritage.
90. As regards the question of the method or methods applied in the collection and recording of manifestations or expressions of folklore, the replies received show that more or less equal numbers of countries apply the extensive method (consisting in establishing a wide survey network over the whole area under consideration and then proceeding to sort out the information) and the intensive method (survey on specific, scientifically determined points carried out among persons qualified to provide such information: witch-doctors, singers, story-tellers, heads of castes, priests, master craftsmen, patriarchs, heads of family, etc.), while fifty-one countries use a combination of both methods. It appears that forty countries consistently apply the method of drawing up one or several model questionnaires designed for the recording and collection of the contents of folklore, its manifestations and expressions.
91. With regard to the systematization of the elements collected, only twenty-five countries use a standardized procedure for transcription and translation; when such a procedure is used, it provides most often for transcription of the text in the vernacular language (standardized alphabet, African alphabet, etc.), secondly for literary translation, and finally for literal juxtalineral translation in a widely-spoken world language.
92. Thirdly, the need for rules regarding the conservation of folklore has been clearly affirmed.
93. As for the means used to attain this end, it appears that forty countries use an inventory of manifestations and expressions of folklore and thirty a register centralizing information on the different manifestations of folklore.
94. With regard to the storage of manifestations or expressions of folklore, forty-nine countries use index cards, records, tapes, microfiches, films, microfilms, etc. From the replies received it can be seen that only ten countries currently use computers for this purpose.
95. Rules on the preservation of folklore appear to be just as essential, for instance keeping inventories of the groups producing manifestations or expressions of folklore, which is apparently already the case in forty-four Member States.

96. Moreover, fifty-two Member States have structures (specialized institutes, museums, specialized sections in ministries, an arts centre, a national library, etc.) or have adopted measures providing access to the phenomenon of folklore (the curricula of schools, universities or other higher education establishments; the media, exhibitions, festivals, shows; interregional exchanges).
97. In sixty-five countries, cultural policies include measures in support of manifestations of folklore (the organization of seminars, exhibitions, festivals, regional, interregional or national artistic competitions; the training of specialists in folklore; publications; financial support; the creation of museums and groups concerned with folklore, etc.).
98. Finally it appears that restrictions regarding the places in which folklore may be used and the persons entitled to use it exist in certain countries in order to preserve its authenticity and guarantee it against any distortion.
99. Finally, legal measures governing the utilization of folklore appear indispensable.
100. In twenty countries, folklore is already legally protected. On the other hand, in forty-nine countries it is regarded as belonging in the public domain.
101. Where folklore is protected by legislation, the legal principles applicable are those of copyright law, the notion of plagiarism, the notion of unfair competition, and those of a law sui generis.
102. Conditions governing the utilization of works of folklore exist in twenty-five countries (previous authorization, completion of formalities, payment of a royalty). In certain countries the conditions laid down for the utilization of folklore apply to all forms of utilization, whereas in others they relate only to commercial utilization. Likewise, in some countries these conditions are only applicable in the event of utilization by foreigners in the country of origin of the work.
103. When folklore is regarded as belonging in the public domain, its utilization is subject either to the system of 'domaine publique payant' as in nineteen countries or to the payment of a royalty.
104. As regards the use to which royalties from the utilization of works of folklore are put, it should be noted that they are allocated to different cultural or social purposes (national fund for arts, music, literature; welfare services for authors and composers; aid for artistic creation or research; scholarships; support for public holidays; rewards for intellectual creativity; the provision of prizes, etc.).
105. It therefore appears that this survey has made it possible to attain the desired target, which is to obtain precise and detailed information on the current situation with regard to the protection of folklore in the Member States.

(b) The Committee of Governmental Experts of February 1982

106. In pursuance of resolution 5/01 adopted by the General Conference at its twenty-first session, a Committee of Governmental Experts on the Safeguarding of Folklore met from 22 to 26 February 1982.
107. The purpose of the meeting was to analyse on an interdisciplinary basis, within the framework of an overall and integrated approach, various aspects of folklore with a view to defining measures to safeguard the existence, development

and authenticity of folklore and to protect it against the risk of distortion; including the definition of folklore, its identification, its conservation, its preservation and its utilization. The representatives of forty-four Member States participated in the work and experts from six Member States and one non-Member State attended the meeting as observers.

108. After the participants had unanimously emphasized the difficulty, not to say impossibility, of reaching a consensus on the concept of folklore, the Committee confined itself, as far as the definition of folklore was concerned, to distinguishing certain parameters.

109. With regard to the scope of the concept of folklore, the Committee acknowledged that it was a form of expression covering all phases and aspects of human life, as well as all types of cultural behaviour. As a social phenomenon in the broadest sense encompassing all cultural sectors, it could not be broken down into material folklore and intellectual folklore. This gave rise to the suggestion that the more comprehensive expression 'traditional popular culture' should be used instead.

110. The academic aspect of folklore (collection, storage and study) was also stressed as well as the crucial importance of folklore research within the context of the preservation of folklore. In this connection the Committee insisted on the importance of encouraging scientific research in this field, and of making the findings available to researchers and folklore specialists.

111. The importance of the identification of folklore was also noted, and it was suggested that appropriate institutions should be established for the collection and protection of folklore.

112. Several delegations presented folklore as a form of culture possessing an ethical role of social and cultural identification, one which contributed to the suppression of prejudices and the assertion of freedom. These considerations led the delegations in question to emphasize the importance of preserving those elements specific to the cultural identity of a people.

113. The Committee moreover emphasized the need to ensure that folklore retained its dynamic character, in so far as the concept of a process was included in that of folklore. Attention was also drawn to the dangers of using folklore out of its original context, and to the need to ensure the continuation of tradition; it was said that this cultural heritage should not be sacrificed for the sake of commercial gain or exploitation for the benefit of the tourist industry, since harmful effects such as plagiarism, imitation and caricature might ensue.

114. Another aspect emphasized was the need to generate awareness among the intellectual élite and interest among the media and in political circles; it was important to ensure that the element of tradition did not merely assume the guise of a show for public performance.

115. With regard to the protection of folklore, it was pointed out that when the safeguarding of folklore was referred to, it was usually its material aspect that was meant, whereas it was equally important to protect the populations concerned from cultural imperialism and to preserve the moral identity of individuals.

116. Upon concluding its deliberations, the Committee of Governmental Experts adopted a series of recommendations that are listed in the Appendix to this study and relate to the definition, identification, conservation and analysis of folklore as well as its preservation, enhancement and reactivation, and its utilization.

117. It should be noted, on the subject of the utilization of folklore, that the Committee of Governmental Experts, having regard to the work that has been carried out jointly by Unesco and WIPO on the 'intellectual property' aspects of its protection, recommended that the two Organizations continue their study of these aspects.

118. Furthermore, as regards the recommendations aimed at ensuring the preservation, enhancement and reactivation of folklore and among them those addressed to the Member States (Item IV.B recommendations 16 to 23), one delegation stated that while it was in favour of the intentions behind these texts, its government would have administrative difficulties in implementing all of them.

119. Finally, the Committee of Governmental Experts recommended that 'Unesco continue its studies and deliberations aimed at formulating an international recommendation on the preservation and safeguarding of folklore and of traditional popular culture, in accordance with resolution 5/03 adopted by the General Conference of Unesco at its twenty-first session'.

(3) The study of the intellectual property aspects of the protection of expressions of folklore carried out jointly with WIPO

(a) The 1980 and 1981 expert committees

120. In accordance with the decisions of the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union at their 1979 sessions, parallel with the activities carried out by Unesco within the framework of an overall interdisciplinary approach, Unesco and WIPO are examining in detail the question of the intellectual property aspects of the protection of folklore.

121. A working group requested to study a draft of model provisions intended for national legislation as well as international measures for the protection of works of folklore met at the WIPO Headquarters in Geneva from 7 to 9 January 1980. This working group was made up of sixteen experts from different countries invited in a personal capacity by the Directors-General of Unesco and WIPO.

122. The working group agreed that: (i) adequate legal protection of folklore was desirable; (ii) such legal protection could be promoted at the national level by model provisions for legislation; (iii) such model provisions should be so elaborated as to be applicable both in countries where relevant legislation was in force and in countries where existing legislation could be further developed; (iv) the said model provisions should also allow for protection by means of copyright and neighbouring rights where such a form of protection could apply; and (v) the model provisions for national laws should pave the way for subregional, regional, and international protection of creations of folklore.

123. At the conclusion of these deliberations, the working group recommended, in respect of the model provisions for national laws on the protection of creations of folklore, that the Secretariat of Unesco and the International Bureau of WIPO should prepare a revised draft and commentary thereon, taking into consideration the ideas put forward during the course of the debates, and that such a draft with its commentary should be presented for further consideration at a subsequent meeting.

124. Accordingly, the Secretariats prepared a revised draft of model provisions and a commentary thereon which were submitted to the working group convened for a second meeting held at Unesco Headquarters from 9 to 13 February 1981. The working group examined the proposed model provisions and suggested several amendments to them as well as new sections. In conclusion, it adopted what are called 'Model Provisions for National Laws on the Protection of Expressions of Folklore', in order that they might be submitted to a Committee of Governmental Experts for further examination, together with a new commentary which the Secretariat of Unesco and the International Bureau of WIPO were to prepare.

(b) The Committee of Governmental Experts of June 1982

125. In pursuance of resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session and the decision taken by the governing bodies of WIPO at their sessions in November 1981, a Committee of Governmental Experts on the intellectual property aspects of the protection of expressions of folklore was jointly convened by the Directors-General of the two Organizations at the WIPO Headquarters in Geneva from 28 June to 2 July 1982.

126. The Committee agreed that:

- (i) the Model Provisions should more explicitly reflect the fact that protection of expressions of folklore against prejudicial utilization services, ultimately, the purpose of further development and better dissemination of such expressions;
- (ii) the Model Provisions should leave enough room to national legislations for adopting a system of protection best corresponding to the conditions prevailing in a given country;
- (iii) the role of communities, developing and maintaining the expressions of folklore, in controlling the use thereof, should be dealt with in the Model Provisions in greater detail;
- (iv) the maintenance of an appropriate balance between the protection against abuses of expressions of folklore, on the one hand, and the freedom of legitimate development thereof within the community concerned as well as the creation of works inspired by folklore, on the other, should be recognized as a basic purpose to be served by the Model Provisions;
- (v) the relation of the proposed protection sui generis to other kinds of protection of intellectual creativity should be dealt with in the commentary in more detail, with special regard to the protection by means of neighbouring rights;
- (vi) the Model Provisions should be in harmony with relevant findings of the Committee of Governmental Experts on the Safeguarding of Folklore, which met in Paris in February 1982, and the special subject of the Model Provisions should be reflected also in the title thereof, avoiding confusion with other documents which may be established concerning various aspects of the protection of folklore.

127. After making the necessary amendments to the draft of model provisions submitted to it, the Committee of Governmental Experts definitively adopted the 'Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions'. It also requested the Secretariat of Unesco and the International Bureau of WIPO to prepare a final version of the commentary on these model provisions, reflecting the observations and suggestions made during the deliberations.

128. The Committee of Governmental Experts also discussed the advisability of establishing an international regulation concerning the protection of expressions of folklore.
129. The Committee was informed by the representative of the Director-General of Unesco that by resolution 5/03, adopted at its twenty-first session, the General Conference considered it desirable that measures designed to safeguard the existence and development of folklore and to protect it against the risk of distortion should be laid down in international regulations and invited the Director-General to prepare a preliminary study on the technical and legal aspects of this question.
130. With regard to the intellectual property aspects of the protection of folklore, most of the delegations were of the opinion that the Model Provisions should be conceived so as to serve as a basis for the elaboration of any international regulation on the protection of expressions of folklore. Some delegations considered that, while they were in favour of examining the possibility of adopting such regulations, priority should be given to national and regional considerations. One delegation declared that it was not in favour of international measures.

(c) The regional expert committees

131. In accordance with the Work Plan of resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session and in pursuance of the deliberations of the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union, the Secretariat of Unesco and the International Bureau of WIPO convened three expert committees on the means of applying at the regional level model provisions for national laws on the intellectual property aspects of the protection of folklore.
132. These expert committees were held in Bogotá (14-16 October 1981), New Delhi (31 January-2 February 1983), and Dakar (23-25 February 1983).
133. Subject to the decisions that will be taken in 1983 by the General Conference of Unesco and the governing bodies of WIPO, an Arab regional Committee will be convened in 1984.
134. The expert committee of Bogotá underlined in particular the following points: (i) special emphasis should be laid on the protection of folklore by way of some kind of international instrument, in addition to the adoption of a model national law; (ii) the fact that manifestations of folklore did not correspond to the geographical frontiers of nations should be taken into consideration.
135. The expert committee of New Delhi expressed the unanimous opinion that the protection of folklore against illicit exploitation and other prejudicial actions should be ensured by means of a specific international treaty.
136. The expert committee of Dakar also stressed the interest of formulating at international level an instrument for protecting expressions of folklore against illicit exploitation and other prejudicial actions.

IV. PROSPECTIVE SOLUTIONS

137. The work undertaken since 1973 has made people aware of the fact that folklore is in the process of dying out in certain parts of the world, as a result of its gradual deterioration when used outside the community that

produced it. It has also highlighted the urgent need for measures capable of providing an effective response to a steadily worsening situation. It was in this spirit that, with regard to the intellectual property aspects of the protection of folklore, model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions were adopted by the Committee of Governmental Experts of June 1982.

138. Because of the complexity of the subject of folklore, it can be maintained that the legal protection of the 'intellectual property aspects' of this cultural heritage is only one aspect of an overall approach aiming at one and the same time at the identification, conservation and preservation of folklore. In this respect it appears essential, now that the different aspects of folklore have been identified, to agree on a working definition. The Committee of Governmental Experts of February 1982 has suggested such a definition. It will have to be studied in greater depth before any kind of international regulations on the subject are formulated. However it is clear even at this stage that thought will have to be given to the question of which authority (or authorities) would be made responsible for identifying the 'individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity'.

139. Once this point has been settled, the setting up of a programme for the preservation of folklore raises questions as to the requisite infrastructure and the difficulties that are likely to arise.

140. It is obvious that certain states and geographical areas already possess the means for identifying their folklore, or indeed have already done so. Two questions then arise. How are methods of identification to be harmonized? What should be done for states which lack such methods?

141. With regard to the first point, while realism requires that what has already been accomplished be allowed to stand, it should on the other hand be possible in future, in the context of large-scale action for the preservation of folklore, to establish model, universally applicable identification standards based on the current results obtained in certain countries.

142. The second point is more delicate since the establishment of an infrastructure, on however small a scale, entails expenses that cannot be borne by certain states at the present time. It would therefore be advisable to look into the possibility of creating a body at international level empowered to carry out such work in collaboration with local specialists, with the aim of drawing up a world folklore map in the not too distant future.

143. An alternative solution would consist in giving the international bodies already responsible for certain sectors of folklore the means to develop and accelerate the identification of the area of folklore that they are investigating. There are several such bodies already in existence--e.g. the International Folk Music Council (IFMC), which is responsible for all the musical aspects of manifestations of folklore. The speed with which the programme would be implemented, and the efficiency and competence of the bodies in question, are points in favour of this solution.

144. While the problems of methodology and infrastructure were being examined, the question of the establishment of a 'Register of Folk-cultural Properties' within Unesco, as proposed by the Committee of Governmental Experts of February 1982, should be looked into in greater detail at the same time. This register could be modelled on the 'inventory for the protection of /the/ cultural and natural heritage, including items which, without being of outstanding importance, are inseparable from their environment and contribute to its character', referred to in article 29 of the Recommendation concerning the

Protection, at National Level, of the Cultural and Natural Heritage, adopted by the General Conference at its seventeenth session. It could also prove useful to draw up a model registration card. Furthermore, as computer processing is still not used extensively for recording the content of manifestations of folklore, it could be helpful to develop guidelines in this respect.

145. With regard to the legal protection of folklore, it should be noted that over and above the model provisions for national laws adopted by the Committee of Governmental Experts of June 1982, protective measures may also ensue from other laws and from certain international treaties already in existence.

146. The national laws in virtue of which folklore can enjoy legal protection are in particular the following:

- (i) the law on copyright, which can apply when an expression of folklore is also a 'work' as understood in copyright law, for instance in a case where an individual develops an expression of folklore that satisfies the traditional artistic aspirations of the community involved (and is consequently integrated in the expressions of that community's folklore) and at the same time imbues it with a sufficient degree of originality (for it to fulfil the conditions entitling it to protection under the copyright law);
- (ii) the law protecting performers which can apply to performers who perform expressions of the folklore, particularly actors, dancers and musicians playing in plays constituting expressions of folklore, dancing folk dances or singing or playing folk songs or instrumental folk music. It is desirable to link the protection of expressions of folklore to their performance by specifying in any law designed to protect the performers of literary and artistic works that the performance of expressions of folklore must be assimilated to the performance of such works;
- (iii) the law protecting producers of phonograms containing for instance recordings of performances of recitals of folk tales, folk poetry, folk songs, instrumental folk music or folk plays;
- (iv) the law protecting broadcasting organizations that broadcast expressions of folklore;
- (v) the law protecting industrial property which can apply for instance if an expression of folklore is used in an industrial design, in a mark or an appellation of origin, or when the use of an expression of folklore is the object of unfair competition;
- (vi) the law protecting the cultural heritage, which can apply to the protection of expressions of folklore of an architectural nature, such as groups of edifices taken in isolation or together, which in view of their architecture, their unity or the way they integrate into the landscape, have an exceptional universal value from the historical, artistic or scientific point of view;
- (vii) certain laws aimed at ensuring the conservation of moving images, which might apply for instance to the protection of cinematographic television or videographic productions of expressions of folklore; this form of protection supplements that afforded by copyright legislation.

147. At the international level folklore does, or as the case may be, could also enjoy a certain amount of protection by virtue of the following Conventions or Recommendations: (i) the Universal Copyright Convention, in pursuance of article II which lays down the principle of national treatment and to the extent that national copyright law applies to works of folklore; (ii) the Berne Convention and in particular article 15 (4) which covers the protection of 'unpublished works where the identity of the author is unknown'; (iii) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; (iv) the Convention for the protection of producers of phonograms against unauthorized duplication of their phonograms; (v) the Convention concerning the distribution of programme-carrying signals transmitted by satellite; (vi) the Paris Convention for the Protection of Industrial Property; (vii) the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods; (viii) the various special agreements concluded under the aegis of the Paris Union; (ix) the Convention for the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of Unesco in 1972, which recognizes that the duty of ensuring the protection of the cultural and natural heritage belongs primarily to the state and recommends the states to take the appropriate measures to this end; (x) the Recommendation for the Safeguarding and Preservation of Moving Images, adopted by the General Conference of Unesco in 1980, which considers that moving images are an expression of the cultural identity of peoples and form an integral part of a nation's cultural heritage and invites the states to take all the requisite measures for the effective safeguarding and preservation of this heritage.

148. Notwithstanding these possibilities of recourse to existing texts, the studies carried out jointly with WIPO on the 'intellectual property aspects' of the protection of folklore have shown that in order to promote this cultural heritage legal solutions of the sui generis type should be found to ensure its protection at the international level with regard to the common practice of deriving profit from its commercial exploitation outside the communities that engendered it.

V. CONCLUSIONS

149. The various reports etc. reflected in the present study converge towards the conclusion that it is not only desirable but urgent that measures be adopted at the international level to preserve folklore.

150. This having been said, two approaches emerge from the work undertaken concerning the method to be selected for establishing regulations on folklore.

151. According to the first approach, the preservation of folklore could take place within the framework of instruments of a specialized nature such as for instance the adoption of international regulations on the 'intellectual property' aspects of the protection of folklore, as called for by the expert committees of Bogotá, New Delhi and Dakar. This would be one of a series of specific projects designed to develop the safeguarding of folklore step by step.

152. The second approach considers that, since the different constituents of the preservation of folklore are closely interlinked, it is only in the framework of a consistent body of precepts and rules encompassing all the disciplines that folklore is liable to draw on that the preservation of this cultural heritage can be ensured.

153. At the present stage of work on the question it does not appear that the different constituents of the preservation of folklore--definition, identification, conservation, preservation, utilization--have been made sufficiently explicit for the General Conference to be able to consider adopting general regulations as things stand. However, as it seems certain that a satisfactory solution is conditional upon the integration and synthesis, within the framework of an overall and interdisciplinary approach, of all the elements required to ensure the preservation of folklore, the studies being carried out at this level should be pursued.

154. Furthermore, taking into account the relatively urgent consideration that should be given to the adoption of specific international regulations on the intellectual property aspects of the preservation of folklore, inasmuch as this heritage suffers serious damage when used outside the communities that produced it, the necessary steps to formulate such regulations could be taken at the same time as work continued on the lines indicated above. As questions of intellectual property also fall within the fields of competence of the World Intellectual Property Organization, all activities in this direction should be carried out jointly with the latter organization.

155. Consequently the Executive Board could decide, in accordance with Article 4, subparagraph 2, of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution, to instruct a Committee of Experts to carry out during the coming biennium a thorough study of the possible range and scope of general regulations on the preservation of folklore. It could also recommend to the General Conference that the requisite measures for developing specific regulations on the intellectual property aspects of the protection of folklore should be taken jointly by Unesco and WIPO.

156. In the event of this happening, the Executive Board would submit a report to the twenty-second session of the General Conference on its decisions and their implication, which would be to postpone the submission of the preliminary study of the technical and legal aspects of this question which the Director-General was to have submitted to the General Conference at the above-mentioned session, in conformity with resolution 21 C/5/03.

157. The Director-General would therefore like to suggest to the Board that it adopt the following decision:

'The Executive Board,

1. Taking into account Articles 2, 3 and 4 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
2. Having examined the report and preliminary study contained in document 116 EX/26,
3. Invites the Director-General to pursue, bearing in mind the observations and opinions expressed during the examination of this matter by the Executive Board, the preliminary study on the technical, legal and administrative aspects of general regulations concerning the preservation of folklore;

4. Decides to this end, in accordance with Article 4 (2) of the above-mentioned Rules of Procedure, that a Committee of Experts should carry out during the 1984-1985 biennium a thorough study of the possible range and scope of such regulations;
5. Endorsing the conclusions of the Director-General with regard to the urgent consideration that should be given to the possible adoption of specific international regulations regarding the 'intellectual property' aspects of the preservation of folklore,
6. Noting that questions of intellectual property also fall within the fields of competence of the World Intellectual Property Organization (WIPO),
7. Recommends the General Conference to invite the Director-General to take, jointly with the Director-General of WIPO, the requisite measures for formulating specific regulations of this kind;
8. Requests the Director-General to submit to it a report on all these matters at its first session in 1985.

APPENDIX

COMMITTEE OF GOVERNMENTAL EXPERTS
ON THE SAFEGUARDING OF FOLKLORE

(Unesco House, 22-26 February 1982)

RECOMMENDATIONS

I. PREAMBLE

Folklore is integral to the cultural heritage of mankind. Hence it is a living, changing and developing phenomenon. Its manifestations include the various kinds of popular, ethnic, regional and national often syncretic traditions which, to the common understanding of the range of social and cultural research disciplines, must be properly maintained, collected, stored or archived, published, studied, and utilized under special protection by nationally and internationally acknowledged means. Protection against neglect, distortion, and abuse covers the rights of tradition bearers, folklore specialists, and the users of folklore data, as well as the needs of archives, museums, and research institutions.

II. DEFINITION OF FOLKLORE

Folklore (in a broader sense, traditional culture) is a group-oriented and tradition-based creation of groups or individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity; the standards and values are transmitted orally, by imitation or by other means.

III. RECOMMENDATIONS CONCERNING THE IDENTIFICATION OF FOLKLORE

Folklore, as intellectual property must be safeguarded by and for the group (familial, occupational, national, regional, religious, ethnic, etc.) whose identity it expresses. Its forms include: language, literature, music, dance, games, mythology, rituals, beliefs, customs, handicrafts, architecture, and other arts. The identification of each traditional form requires appropriate research methodology.

It is therefore recommended that:

1. an international register of folk-cultural properties be established at Unesco and that a model card index system be designed and placed at the disposal of Member States;
2. Unesco provide intellectual and technical assistance to the developing countries to enable them to obtain the recording materials (tape recorders, cassettes, video equipment) necessary for collecting the manifestations or expressions of folklore;
3. Unesco promote the training of specialized personnel in the fields of research, collection, transcription and storage of folklore elements and

consider as part of the aid provided to the countries that are least developed technologically, the possibility of organizing training programmes in environments that resemble as closely as possible the conditions under which the researcher will have to work in the field rather than those familiar to the trainer;

4. Member States design identification and registration systems so as to provide classified records of folklore data;
5. Member States systematize and standardize methods of collecting, transcribing and classifying relevant data;
6. Member States prepare inventories, which should be as comprehensive as possible, of the manifestations or expressions of folklore.

IV. RECOMMENDATIONS CONCERNING THE CONSERVATION AND ANALYSIS OF FOLKLORE AND ITS PRESERVATION, ENHANCEMENT AND REACTIVATION

Conservation and analysis are concerned with documentation regarding folklore traditions and their object is, in the event of non-utilization or development of such traditions, to give researchers and tradition-bearers access to data enabling them to understand the process of evolution and modification of tradition.

Preservation is concerned with protection of folk traditions, having regard to the fact that the people have a right to their own culture and that their belief in that culture is often eroded by the impact of centrally produced, industrialized culture purveyed by the mass media. While high culture and industrialized culture have their own means of economic sustenance, measures must be taken to guarantee the status of and economic support for folk traditions both in the communities which produce them and beyond.

A. With a view to ensuring the conservation and analysis of folklore, it is recommended that:

1. Unesco help developing countries to establish centres for the teaching and conservation of folklore and popular tradition;
2. Unesco assist developing countries in defining the equipment and supply requirements and concerning the funds for the purchase thereof;
3. Unesco draw up an inventory of archival facilities in the field of traditional culture at present existing in Member States;
4. Unesco compile a list of existing university departments, academic institutions, research centres, tradition archives, museums, etc., interested in conservation and analysis of traditional culture and distribute this list to interested parties, preferably in the form of regular newsletters or similar serial communications;
5. international co-operation in the field of folklore studies and traditional popular culture be furthered considerably through the establishment of one basic working classification for data and another for the performance style in which the data were collected. Ultimately, the content of archives of folklore and traditional popular culture should be co-ordinated nationally

through a data centre which in turn should be co-ordinated through international data centres. As a first step Unesco should initiate this work in co-operation with other similar efforts (N.A.T.I.S.) begun nationally and continued regionally as in the Nordic countries, for example, and leading to continental information services;

6. Unesco continue its work of collecting and producing audio-visual materials on the folklore of Member States;
7. Unesco promote contacts among researchers by means of methodological seminars at which they can exchange the results of their work and compare their experiences;
8. Member States collaborate with research institutes in publishing and disseminating works on past and present national or regional folklore and carry out exchanges among various groups and countries in this field;
9. Member States organize training courses for those interested in the conservation and analysis of folklore.

B. With a view to ensuring the preservation, enhancement and reactivation of folklore, it is recommended that:

10. Unesco encourage the organization at regional, national and international level of folklore events such as festivals, fêtes, exhibitions, films, seminars, symposia, congresses and so forth;
11. in view of the growing importance of urban popular cultures as a concomitant of increasing urbanization in the world, Unesco consider the holding of a meeting to study this phenomenon and promote a better understanding of it in order to give satisfaction to those engaged in creating urban popular cultures in the world today.
12. in their publications, Unesco and Member States link the concerns of conservation and analysis, on the one hand, with those of preservation, on the other. They provide a means for the universal availability and increased understanding and respect for folklore traditions.
13. Unesco and Member States encourage institutions, organizations and spontaneously formed groups to initiate or to support folklore festivals, exhibitions, programmes, etc.;
14. Unesco make available expert help for the above-mentioned purposes, through all feasible means;
15. Unesco formulate criteria to ensure that the use of folklore outside its original environment does not lead to its distortion or debasement;
16. Member States establish inventories of structures and measures providing assistance to people interested in folk traditions (their own or otherwise) and distribute them nationally in all necessary languages;
17. Member States include the systematic teaching of traditional culture in educational curricula at all levels;

18. existing archives or similar establishments in Member States make available copies of all materials collected in a community or region, or that such archives or establishments be set up for this purpose;
19. Member States take steps to encourage the competent authorities in the fields of folklore, popular tradition and tourism to co-ordinate their efforts with a view to safeguarding the authenticity of folklore events and the integrity of traditions;
20. Member States, in the context of action to preserve folklore, set up national committees on an interdisciplinary basis, made up of folklorists, ethnologists, sociologists, historians, musicologists, writers, artists, etc.;
21. Member States recognize and promote the right of groups that create traditional popular culture to remain in control of their traditional knowledge and skills and of their customs;
22. Member States formulate cultural policies aimed at reviving folklore in communities that so desire;
23. Member States ensure that action to preserve folklore is extended to include indigenous or aboriginal cultures since both types, folklore and indigenous cultures, are an integral part of the world's traditional popular cultures.

V. UTILIZATION OF FOLKLORE

Having regard to the work currently being conducted by Unesco jointly with WIPO on the intellectual property aspects of folklore protection, it is recommended that these two organizations continue their studies of these aspects, consulting experts in folklore research and taking into consideration all the factors relating to intellectual property.

VI. CONCLUSIONS

1. The Committee of Governmental Experts recommended that, in order to facilitate the programming of the implementation of the above recommendations, Unesco set up a task force of experts in documentation, archives and classification of material relating to traditional culture.
2. The Committee also recommended that Unesco continue its studies and deliberations aimed at formulating an international recommendation on the preservation and safeguarding of folklore and of traditional popular culture, in accordance with resolution 5/03 adopted by the General Conference of Unesco at its twenty-first session.