

COMITE EJECUTIVO DE LA  
UNION INTERNACIONAL PARA LA PROTECCION  
DE LAS OBRAS LITERARIAS Y ARTISTICAS  
(UNION DE BERNA)

22a. reunión  
(octava extraordinaria)

COMITE INTERGUBERNAMENTAL DE  
LA CONVENCION UNIVERSAL  
SOBRE DERECHO DE AUTOR

Quinta reunión ordinaria del  
Comité de la Convención de 1971

GINEBRA

(12-16 de diciembre de 1983)

Distribución limitada

B/EC/XXII/15

IGC(1971)/V/15

27 de octubre de 1983

Original francés

Punto II.15.2 del Orden del Día Provisional del Comité Intergubernamental  
de la Convención Universal sobre Derecho de Autor

Punto 13.2 del Orden del Día Provisional del Comité Ejecutivo de la Unión de Berna

PROTECCION DEL FOLKLORE

ESTADO ACTUAL DE LOS TRABAJOS EN CURSO  
EN EL PLANO REGIONAL

1. Como se comunicó al Comité Intergubernamental de la Convención Universal sobre Derecho de Autor y al Comité Ejecutivo de la Unión de Berna en sus reuniones de noviembre-diciembre de 1981, el Grupo de Trabajo sobre los aspectos de la propiedad intelectual en la protección del folklore, reunido en Ginebra del 7 al 9 de enero de 1980, había recomendado que las dos Secretarías procuraran establecer un compendio de las posibilidades de protección del folklore en el plano regional.
2. En cumplimiento de esa recomendación y de conformidad con los Programas y Presupuestos Aprobados de la Unesco y de la OMPI para 1981-1983 y 1982-1983 respectivamente, estas dos Organizaciones convocaron tres Comités de Expertos sobre las modalidades de aplicación, en el plano regional, de las disposiciones tipo de legislación nacional relativas a los aspectos de propiedad intelectual en la protección del folklore.
3. Dichos Comités de Expertos regionales se reunieron en Bogotá (14-16 de octubre de 1981), Nueva Delhi (31 de enero-2 de febrero de 1983) y Dakar (23-25 de febrero de 1983).
4. A reserva de las decisiones que adopten en 1983 la Conferencia General de la Unesco y los órganos rectores de la OMPI, en 1984 se convocará un Comité regional árabe.
5. El Comité de Expertos de Bogotá puso de relieve, en particular, los siguientes puntos: i) Debería prestarse especial interés a la protección del folklore mediante algún tipo de instrumento internacional, además de la adopción de una ley tipo nacional; ii) debería tenerse en cuenta el hecho de que las manifestaciones del folklore no coinciden con las fronteras geográficas de las naciones interesadas.

6. El Comité de Expertos de Nueva Delhi estimó unánimemente que la protección del folklóre contra su explotación ilícita y otros actos perjudiciales debería quedar garantizada por un acuerdo internacional sobre la protección de las expresiones del folklóre.
7. El Comité de Expertos de Dakar destacó también la importancia de elaborar a escala internacional un instrumento que permita proteger las expresiones del folklóre contra su explotación ilícita y otros actos perjudiciales.
8. Estos tres Comités, cuyos informes figuran en el idioma original como Anexos I, II y III al presente documento, formularon además diversas propuestas para la aplicación respectiva, en cada una de las tres regiones consideradas, de las "disposiciones tipo para leyes nacionales sobre la protección de las expresiones del folklóre contra la explotación ilícita y otros actos perjudiciales".

**Organización de las Naciones Unidas  
para la Educación, la Ciencia  
y la Cultura  
Unesco - París**

**Organización Mundial  
de la  
Propiedad Intelectual  
OMPI - Ginebra**

UNESCO/OMPI/FOLK/LAC/3  
Original: español  
Fecha: 16 de octubre de 1981

**COMITE DE EXPERTOS SOBRE LAS MODALIDADES DE APLICACION  
DE DISPOSICIONES TIPO PARA LEYES NACIONALES SOBRE  
LOS ASPECTOS "PROPIEDAD INTELECTUAL" DE LA PROTECCION DE  
LAS EXPRESIONES DEL FOLKLORE Y DE LA CULTURA POPULAR  
TRADICIONAL EN LOS PAISES DE AMERICA LATINA Y DEL CARIBE**

(Bogotá, 14 al 16 de octubre de 1981)

**INFORME**

**Introducción**

1. De conformidad con el plan de trabajo elaborado en cumplimiento de la Resolución 5/01 de la Conferencia General de la Unesco en su 21a. reunión (Belgrado septiembre-octubre de 1980) en su párrafo 5024 y de las deliberaciones del Comité Ejecutivo de la Unión Internacional para la Protección de las Obras Literarias y Artísticas (Unión de Berna) y con arreglo a las decisiones de los respectivos órganos rectores de la Unesco y de la OMPI, la Secretaría de la Unesco y la Oficina Internacional de la OMPI, convocaron un Comité de Expertos sobre las modalidades de aplicación de las disposiciones tipo para leyes nacionales sobre los aspectos "Propiedad Intelectual" de la protección de las expresiones del folklore y de la cultura popular tradicional en los países de América Latina y del Caribe, que se reunió en Bogotá del 14 al 16 de octubre de 1981 para estudiar las modalidades de aplicación de las disposiciones tipo para leyes nacionales sobre la protección de las expresiones del folklore en los países de América Latina y el Caribe. La Secretaría de la Unesco y la Oficina Internacional de la OMPI prepararon los textos pertinentes y convocaron conjuntamente para su examen el grupo de trabajo antes mencionado que estuvo compuesto por expertos de ocho países que participaron en la reunión a título personal. También asistieron como observadores los representantes de dos organizaciones intergubernamentales (OEA y CERNAL) y otras organizaciones internacionales no gubernamentales. La lista de participantes figura en anexo al presente informe.

2. El Comité de Expertos dispuso de los siguientes documentos: "Disposiciones tipo para leyes nacionales sobre la protección de las expresiones del folklore" (documento UNESCO/OMPI/FOLK/LAC/2) y "comentario sobre dichas disposiciones tipo" (UNESCO/WG.I/FOLK 2Add.) preparados por la Secretaría de la Unesco y la Oficina Internacional de la OMPI.

#### Apertura de la Reunión

3. La reunión fué inaugurada a nombre del Gobierno de Colombia por la Dra. Gloria Zea de Uribe, Directora del Instituto Colombiano de Cultura, en nombre del Director General de la Unesco, por el Dr. Vicente Garibaldi Camacho, experto del Programa de Derecho de Autor de la Unesco para América Latina y el Caribe, y en nombre del Director General de la OMPI, por el Señor Claude Masouyé, Director del Departamento de Información y Derecho de Autor, quienes dieron la bienvenida a los participantes.

#### Elección de la Mesa

4. El Comité de Expertos eligió la siguiente Mesa Directiva: Presidente: Dra. Luz Myriam de Lorduy (Colombia); Vice-Presidente, Sr. Braulio do Nascimento (Brasil); Relatora, Sra. Olga Fernández Latour de Botas (Argentina). Se eligió como Presidente Honorario al Dr. Arcadio Plazas (Colombia) y como Vice-Presidente Honorario al Dr. Alfonso Finot (Bolivia).

#### Debate General

5. Cada uno de los expertos hizo una exposición general sobre los problemas de la protección del folklore en su país y a nivel regional. El experto del Programa de Derecho de Autor de la Unesco para América Latina y el Caribe, hizo una detallada relación de la labor cumplida por la Unesco en la promoción y defensa del folklore y de las tareas cumplidas en ese aspecto conjuntamente con la OMPI. Los expertos del Comité felicitaron a las dos Secretarías por la preparación de los documentos de trabajo. Se estimó que las "Disposiciones tipo revisadas para leyes nacionales sobre la protección de las expresiones del folklore" eran de gran calidad y representaban el resultado del buen trabajo desarrollado por los expertos que participaron en la primera y segunda reuniones de trabajo, en relación con una materia que como el folklore es difícil reducir a simples definiciones jurídicas por su gran complejidad de matices y su carácter a la vez tradicional y evolutivo.

6. Los expertos estuvieron de acuerdo en que:

- 6.1. Debería darse especial énfasis a la protección del folklore mediante algún tipo de instrumento internacional en adición a la adopción de una ley tipo nacional.
- 6.2. El preámbulo debe ser optativo pero deben redefinirse algunos términos para hacerlos más precisos.
- 6.3. Los expertos coincidieron en señalar que las manifestaciones del folklore no coincidían con las fronteras geográficas de las naciones y que las Secretarías debían tener en cuenta este hecho.

#### Debate sobre cada artículo de las disposiciones tipo revisadas

7. El debate general fué seguido por un exámen detallado de las disposiciones tipo revisadas, artículo por artículo. Los expertos hicieron diversas observaciones y propusieron modificar el texto presentado e introducir nuevos artículos para precisar mejor algunos aspectos de la materia. En conclusión el Comité de Expertos aprobó en general, con las observaciones y propuestas que se detallan más adelante, las disposiciones tipo para leyes nacionales sobre la protección de las expresiones del folklore qui figuran en anexo a este informe.

8. En los debates los expertos tuvieron en cuenta los comentarios sobre las disposiciones tipo revisadas. En lo que se refiere a las modificaciones de dichas disposiciones, uno o más expertos hicieron las siguientes observaciones.

Al Artículo 1

- 1) Los expertos manifestaron que el término folklóre originario o "las expresiones del folklóre originarias" debían suprimirse al término originarias. Pero al observar el artículo 15 se estableció que la intención era permitir a las legislaciones nacionales aplicar la protección al folklóre originario del país o también al folklóre extranjero por lo que se deja consignada la observación de los expertos en relación con la reserva del uso del término originario como limitativo.

Al Artículo 2

Los expertos discutieron sobre lo inadecuado de la definición de folklóre contenida en el artículo 2 pues consideraron que el alcance de la materia es mucho más amplio que lo expresado en las definiciones. Los expertos preferieron la expresión patrimonio cultural en lugar de artístico. Un experto manifestó su desacuerdo con el uso del término "patrimonio" en el proyecto porque su concepto implica que las expresiones del folklóre son productos acabados no susceptibles de desarrollo cuyo control se atribuye a una burocracia nacional.

Al Artículo 3

La necesidad de sujetar autorización previa de autoridad competente las formas de utilización de expresiones del folklóre con fines lucrativos fuera de su contexto tradicional o habitual ocasionó un largo debate. Algunos expertos (Argentina, Brasil y México) y observadores consideraron peligroso conceder a una autoridad el poder de autorizar o no el uso de las expresiones folklóricas aún para fines lucrativos porque podría prestarse a abusos o favoritismos o complicaciones burocráticas, por lo que sugirieron que será más adecuado un sistema de declaración de uso. Por el contrario, la mayoría de los expertos (Bolivia, Colombia, Costa Rica, Cuba y República Dominicana) y otros observadores consideraron necesario mantener el requisito de la autorización, entendido que su supresión podría desnaturalizar los propósitos del proyecto de ley tipo.

Al Artículo 4

Los expertos recomendaron que en los párrafos 1.ii) y 1.iii) substituir la expresión "buen uso" por la expresión "usos honrados" ya que ésta es la fórmula tradicional del derecho de autor para exceptuar tal uso de una obra protegida.

Al Artículo 5

No hubo observaciones.

Los expertos concordaron con la propuesta de un experto, en el sentido de incluir un artículo entre el 4 y el 5, que prohíba la utilización de expresiones del folklóre en la publicidad comercial que desvirtúen su significado.

Al Artículo 6

Se repitió el debate sobre el requisito de la autorización previa por la autoridad competente. Tampoco hubo consenso sobre éste aspecto, por lo que el artículo quedó como está originalmente. También se dieron sugerencias para que se eliminaran las penas corporales sin que los expertos llegaran a un acuerdo unánime.

Los artículos 7, 8, 9 y 10 permanecieron tal como están en el proyecto, por considerarse que eran muy claros y no merecían mayores comentarios.

Al Artículo 11

También hubo debate sobre el término "autorización para la utilización de expresiones del folklóre". Se repitió el debate sobre la conveniencia o inconveniencia de la autorización de autoridad competente sin que se llegara a ningún acuerdo definitivo.

Al Artículo 12

No hubo observaciones.

Al Artículo 13

Algunos expertos hicieron reparos a la referencia a la legislación que protege a los intérpretes o ejecutantes y productores de fonogramas y organismos de radio-difusión. Fuera de esto el artículo quedó como estaba originalmente.

Al Artículo 14

Los expertos coincidieron en que a éste artículo se le agregará la expresión necesaria para que él indicará que no solo no debía interpretarse la protección otorgada por la ley tipo en ningún caso de manera que obstaculice la utilización de las expresiones del folklore sino que además debía agregar que no puede aplicarse la ley en ninguna forma que produzca un obstáculo a la utilización y desarrollo del folklore.

Al Artículo 15

No hubo observaciones.

Conclusión

9. En conclusión, el Comité de Expertos tomó nota de que las disposiciones tipo adoptadas y el Comentario que sobre las mismas deben redactar las Secretarías, se presentaría para un estudio más detenido en la Reunión de Expertos gubernamentales que la Unesco y la OMPI convocarán en 1982.

Adopción del Informe y Clausura de la Reunión

10. El presente Informe ha sido aprobado por unanimidad.

Después de los agradecimientos habituales, la Presidenta declaró clausurada la reunión.

[Fin del documento]

[Siguen los Anexos]

UNESCO/OMPI/FOLK/LAC/3  
ANEXO I

DISPOSICIONES TIPO PARA LEYES NACIONALES SOBRE  
LA PROTECCION DE LAS EXPRESIONES DEL FOLKLORE

Considerando que el folklore representa una parte esencial del patrimonio cultural viviente de la nación, desarrollado y perpetuado por comunidades en el seno de la nación;

Considerando que la difusión de las diversas expresiones del folklore puede ocasionar la explotación inadecuada del patrimonio cultural de la nación;

Considerando que cualquier abuso de tipo comercial u otro o toda desnaturalización del folklore de una nación es perjudicial para los intereses culturales y económicos de ésta;

Considerando que las expresiones del folklore en cuanto constituyen una manifestación de la creatividad intelectual merecen una protección inspirada en la que se otorga a las obras literarias y artísticas;

Se promulgan las siguientes disposiciones:

ARTICULO PRIMERO

Principio de la protección

Las expresiones del folklore originarias de [nombre del país] estarán protegidas por esta ley contra la explotación ilícita y cualquier otra acción lesiva.

ARTICULO 2

Expresiones del folklore protegidas

1. A los efectos de la presente ley, se entiende por "folklore" la totalidad del patrimonio artístico tradicional desarrollado y perpetuado por una comunidad [nombre del país].

2. A los efectos de la presente ley, se entiende por "expresiones del folklore" las creaciones integradas por elementos característicos del folklore, principalmente:

- i) las expresiones verbales, tales como: los cuentos populares, la poesía popular y los enigmas;
- ii) las expresiones musicales, tales como: las canciones y la música instrumental populares;
- iii) las expresiones corporales, tales como: las danzas y representaciones escénicas populares y formas artísticas de rituales;

sea que estas expresiones estén fijadas o no en un soporte y

- iv) las expresiones materiales tales como:
  - a) las obras de arte popular y tradicional, tales como: dibujos, pinturas, tallas, esculturas, alfarería, terracota, mosaico, ebanistería, forja, joyería, cestería, labores de punto, textiles, tapices, trajes;
  - b) los instrumentos musicales;
  - c) las obras arquitectónicas.

UNESCO/OMPI/FOLK/LAC/3  
ANEXO I, página 2

ARTICULO 3

Utilizaciones sujetas a autorización

Sin perjuicio de las disposiciones del artículo 4, las siguientes formas de utilización de las expresiones del folklore están sujetas a autorización de la autoridad competente que se menciona en el párrafo 1) del artículo 10, cuando se hacen con fines lucrativos fuera de su contexto tradicional o habitual:

- i) toda publicación, reproducción y toda distribución de ejemplares de expresiones del folklore;
- ii) toda recitación, ejecución o interpretación pública, transmisión por radio o por cable y cualquier otra forma de comunicación al público de expresiones del folklore.

ARTICULO 4

Excepciones

1. Las disposiciones del artículo 3 no se aplicarán en los casos siguientes:
  - i) utilización para fines de actividades pedagógicas;
  - ii) utilización para fines de ilustración de la obra original de un autor, siempre que el alcance de tal utilización sea compatible con el buen uso;
  - iii) toma de elementos de expresiones del folklore para fines de creación de una obra original de un autor, siempre que tal utilización sea compatible con el buen uso.
2. Tampoco se aplicarán las disposiciones del artículo 3 cuando la utilización de las expresiones del folklore sea fortuita, lo que comprende, entre otros casos:
  - i) la utilización de cualquier expresión del folklore que pueda ser vista u oída en el transcurso de un acontecimiento para fines de información sobre dicho acontecimiento por medios fotográficos, de radiodifusión, o de grabación sonora o visual, siempre que el alcance de dicha utilización se justifique por los fines de información;
  - ii) utilización de objetos en que se hallen incorporadas las expresiones del folklore que estén situados de manera permanente en un lugar en el que puedan ser vistos por el público, si la utilización consiste en incluir su imagen en una fotografía, en un filme o en una emisión de televisión.

ARTICULO 5

Mención de la fuente

1. En todas las publicaciones impresas, y en relación con cualesquiera comunicaciones al público de una expresión identificable del folklore, deberá indicarse su origen de forma apropiada, mencionando la comunidad y/o el lugar geográfico del que procede la expresión utilizada.

2. El requisito establecido en el párrafo 1) no se aplicará a las utilizaciones mencionadas en los párrafos 1), apartado iii) y 2) del artículo 4.

ARTICULO 6

Infracciones

1. Toda persona que no cumpla el requisito previsto en el artículo 5, incurrirá en una multa de un mínimo de ... y de un máximo de ...



2. Toda persona que, sin la autorización de la autoridad competente mencionada en el párrafo 1) del artículo 10), utilice una expresión del folklore en contravención de las disposiciones del artículo 3, será intimado por la autoridad competente a poner fin a esa utilización. Dicha persona, independiente del pago del monto de las regalías establecido en aplicación del párrafo 4) del artículo 11, incurrirá en una multa de un mínimo de ... y de un máximo de ... Si no aceptare la intimación, incurrirá en una multa de un mínimo de ... y de un máximo de ...

3. Toda persona que intencionalmente engañe a otros respecto del origen de objetos producidos o comercializados por ella, o respecto de recitaciones, representaciones o ejecuciones públicas dadas, organizadas o radiodifundidas o comunicadas al público por ella de otra manera, presentando tales objetos, o el asunto de dicha recitación, representación o ejecución como expresiones del folklore de una determinada comunidad cuando, de hecho, no son originarios de ella, incurrirá en una multa de un mínimo de ... y de un máximo de ... una pena de prisión de ... como máximo una multa de un mínimo de ... y de un máximo de ... y en una pena de prisión de ... como máximo.

4. Toda persona que produzca objetos para distribuirlos al público, los distribuya o comercialice, recite, represente o ejecute públicamente, u organice la recitación, representación o ejecución públicas, o emita por radiodifusión, o comunique al público de otro modo, expresiones del folklore, de manera tal que dichos objetos y recitales, representaciones o ejecuciones desnaturalicen intencionadamente las mencionadas expresiones de una forma lesiva para los intereses culturales de la comunidad, incurrirá en una multa de un mínimo de ... y de un máximo de ... una pena de prisión de ... como máximo una multa de un mínimo de ... y de un máximo de ... y en una pena de prisión de ... como máximo.

#### ARTICULO 7

##### Confiscación u otras sanciones

Todo objeto producido en infracción de lo dispuesto en la presente ley, y los beneficios obtenidos por el infractor de la misma y correspondientes a tales infracciones, así como los medios utilizados, principal o únicamente, para cometer la infracción serán objeto de confiscación de las acciones y medidas previstas por la ley.

#### ARTICULO 8

##### Prescripción

Ninguna acción correspondiente a una infracción en el sentido del artículo 6 podrá entablarse transcurrido un periodo de ... años a contar de la fecha en la cual se hubiere cometido la infracción.

#### ARTICULO 9

##### Recursos civiles

Las sanciones previstas en el artículo 6 en los artículos 6 y 7 podrán aplicarse, sin perjuicio de cualquier otra acción por daños y perjuicios u otros recursos civiles que pudieren corresponder.

#### ARTICULO 10

##### Autoridades

1. A los efectos de la presente ley, se entenderá por "autoridad competente" ...

2. A los efectos de la presente ley, se entenderá por "autoridad supervisora" ...

ARTICULO 11

Autorización

1. La autorización individual o general para cualquier utilización de expresiones del folklore sujetas a autorización en virtud de la presente /ley/ se solicitará /por escrito/ de la autoridad competente.
2. En la solicitud, el solicitante indicará su nombre, actividad profesional y dirección, la especificación y fuente de la expresión del folklore que se proponga utilizar y la manera de utilización prevista. En el caso de que se proponga hacer una reproducción habrá de indicarse asimismo el número de copias que se piense hacer y el territorio de distribución de las mismas. Por lo que respecta a los recitales, representaciones o ejecuciones y demás comunicaciones al público, habrá de especificarse su naturaleza y número así como el territorio que quedará comprendido en la autorización.
3. La decisión de la autoridad competente será comunicada por escrito al solicitante dentro de los /15/30/ días siguientes a la recepción de la solicitud; en toda denegación de autorización deberán exponerse los motivos. Si, en dicho plazo, no recae decisión, se reputará concedida la autorización.
4. Cuando la autoridad competente conceda la autorización, podrá fijar la cuantía de las regalías que habrá de percibir las cuales deberán corresponder a una tarifa /establecida/ /aprobada/ por la autoridad supervisora. Las regalías recaudadas se destinarán a la promoción o a la salvaguardia de /la cultura nacional/ /del folklore nacional/; /a la comunidad que haya dado origen a las expresiones del folklore por cuya utilización se han abonado las regalías se le concederá una participación del ... por ciento de las regalías recaudadas./ /La autoridad competente podrá deducir de las regalías percibidas una parte correspondiente a los gastos que le ocasione la administración de las disposiciones del presente artículo./
5. Serán admisibles los recursos interpuestos por el solicitante de la autorización y por el representante de la comunidad interesada en contra de las decisiones de la autoridad competente.

ARTICULO 12

Jurisdicción

1. De los recursos interpuestos contra las decisiones de la /autoridad competente/ /autoridad supervisora/ entenderá el Tribunal de ...
2. Toda infracción prevista en el artículo 6, será de competencia del Tribunal ...

ARTICULO 13

Relación con otras formas de protección

La presente /ley/ no limitará ni perjudicará en ningún caso a ninguna forma de protección aplicable a las expresiones del folklore en virtud de la legislación sobre derecho de autor, de la legislación que proteja a los intérpretes o ejecutantes, productores de fonogramas y organismos de radiodifusión, de las leyes que protejan la propiedad industrial, o de cualquier otra legislación o acuerdo internacional en el que el país sea parte. Tampoco podrá ir en detrimento de otras formas de protección previstas para la salvaguardia y preservación del folklore.

ARTICULO 14

Interpretación

La protección otorgada por la presente /ley/ no podrá interpretarse en ningún caso de manera que obstaculice la utilización y desarrollo normales de las expresiones del folklore.

ARTICULO 15

Protección de las expresiones del folklore extranjero

Las expresiones del folklore desarrolladas y perpetuadas por una comunidad de un país extranjero serán protegidas por la presente ley,

- i) bajo la reserva de reciprocidad, o
- ii) en base a tratados o convenios internacionales.

[Sigue el Anexo II]

UNESCO/OMPI/FOLK/LAC/3  
ANEXO II

LISTA DE PARTICIPANTES

I. MIEMBROS DEL COMITE DE EXPERTOS

ARGENTINA

Sra. Olga Elena FERNANDEZ LATOUR DE BOTAS, Investigadora de Literatura y Folklore, Instituto Nacional de Antropología, Buenos Aires

BOLIVIA

Sr. Alfonso FINOT LLANOS, Director Ejecutivo, Instituto Boliviano de Cultura, La Paz

BRASIL

Sr. Braulio DO NASCIMENTO, Director do Instituto Nacional do folclore Rio de Janeiro

COLOMBIA

Sra. Luz Myriam MONTAÑEZ DE LORDUY, Directora de Propiedad Intelectual, Ministerio de Gobierno, Bogotá

COSTA RICA

Sr. Efraín PICADO, Abogado, Director General de la Biblioteca Nacional, San José

CUBA

Sr. Francisco Angel GOMEZ Y MARTINEZ DE LAHIDALGA, Abogado, Jefe del Departamento de Asuntos Jurídicos del Centro Nacional de Derecho de Autor (CENDA) de la República de Cuba, Cuba

MEXICO

Sr. Juan Manuel TERAN CONTRERAS, Director General de Derecho de Autor, Ministerio de Educación Pública, México

REPUBLICA DOMINICANA

Sr. Franklin DOMINGUEZ, Director de Bellas Artes, Secretaría de Estado de Educación, Santo Domingo

II. ORGANIZACIONES INTERGUBERNAMENTALES

ORGANIZACION DE LOS ESTADOS AMERICANOS (OEA)

Sra. Inés G. CHAMORRO, Especialista Principal de Folklore y Artesanías Departamento de Asuntos Culturales, Washington D.C.

CENTRO REGIONAL PARA EL FOMENTO DEL LIBRO EN AMERICA LATINA Y EL CARIBE (CERLAL)

Sra. Lucy MARTINEZ DE JIMENEZ, Bogotá

III. ORGANIZACIONES INTERNACIONALES NO GUBERNAMENTALES

ORGANIZACION INTERNACIONAL PARA LA PROTECCION DE LA PROPIEDAD INDUSTRIAL EN COLOMBIA (AIPPI) Y ASOCIACION COLOMBIANA DE LA PROPIEDAD INDUSTRIAL (ACPI)

Sr. Helmer ZULUAGA VARGAS, Representante de la Organización Internacional para la Protección de la Propiedad Industrial, en Colombia (AIPPI) y Presidente de la Asociación Colombiana de la Propiedad Industrial (ACPI) Bogotá

CONSEJO PANAMERICANO DE LA CONFEDERACION INTERNACIONAL DE SOCIEDADES DE AUTORES Y COMPOSITORES (CISAC)

Sr. Hector DELLA COSTA, Presidente de la Comisión Jurídica del Consejo Panamericano de la CISAC y Miembro de la Comisión Jurídica y de Legislación de la CISAC, Buenos Aires

IV. OBSERVADORES E INVITADOS ESPECIALES

COLOMBIA

Sr. Hebert VASQUEZ P. Propiedad Intelectual, Bogotá  
Sr. Orlando PARRA CASTRO, Director Ejecutivo ASINCOL, Bogotá  
Sr. Arcadio PLAZAS SIERRA, Abogado, Bogotá  
Sr. Guillermo ABADIA MORALES, Bogotá  
Sra. María Eugenia ROMERO N., Antropóloga, Bogotá  
Sra. Gladys GALINDO DE JIMENEZ, Subgerencia de Fomento y Artesanías de Colombia, Bogotá

V. SECRETARIA

ORGANIZACION MUNDIAL DE LA PROPIEDAD INTELECTUAL (OMPI)

Sr. Claude MASOUYÉ, Director, Departamento de Información y Derecho de Autor

ORGANIZACION DE LAS NACIONES UNIDAS PARA LA EDUCACION, LA CIENCIA Y LA CULTURA (UNESCO)

Sr. Vicente GARIBALDI CAMACHO, Jurista, Programa de Derecho de Autor de la Unesco para América Latina y el Caribe

[Fin del Anexo II  
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**United Nations  
Educational, Scientific  
and Cultural Organization  
Unesco - Paris**

**World Intellectual  
Property  
Organization  
WIPO - Geneva**

UNESCO/WIPO/FOLK/ASIA/5.  
Original: English  
Date: March 1, 1983

REGIONAL COMMITTEE OF EXPERTS  
ON MEANS OF IMPLEMENTATION IN ASIA OF MODEL PROVISIONS  
ON INTELLECTUAL PROPERTY ASPECTS OF PROTECTION OF  
EXPRESSIONS OF FOLKLORE

New Delhi, January 31 to February 2, 1983

REPORT

prepared by the Secretariat  
and adopted by the Committee

I. Introduction

1. In pursuance of Resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session (Belgrade, September-October 1980) and the decisions taken by the Governing Bodies of WIPO at their November 1981 sessions, the Directors General of Unesco and WIPO convened a Regional Committee of Experts on Means of Implementation in Asia of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (hereinafter referred to as "the Committee") which met, at the invitation of the Government of India, in New Delhi from January 31 to February 2, 1983.
2. The purpose of the meeting was to consider the text of Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit exploitation and other prejudicial actions, adopted by the Committee of Governmental Experts convened by the Directors General of Unesco and WIPO from June 28 to July 2, 1982, at Geneva, and to make suggestions on the possible means of implementation in Asia of the said text.
3. Experts from six countries of Asian and Pacific Region (Australia, India, Indonesia, Pakistan, Philippines and Thailand) participated in the meeting. The invited expert from Fiji regretted that at the last moment he was unable to attend. Four international non-governmental organizations, International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Phonogram and Videogram Producers (IFPI), International Literary and Artistic Association (ALAI), attended the meeting as observers.
4. The list of participants appears in Annex to this Report.

## II. Opening of the Meeting

5. On behalf of the Directors General of WIPO and Unesco, Mr. C. Masouyé, Director, Public Information and Copyright Department, WIPO, and Mr. E. Guerassimov, Legal Officer, Copyright Division, Unesco, respectively, welcomed the participants in the meeting.

## III. Election of the Chairman

6. On the proposal of Dr. Bell, the expert from Australia, supported by Dr. S.D. Quiason, the expert from the Philippines, Dr. K. Vatsyayan, the expert from India, was unanimously elected Chairman of the Committee.

## IV. General Discussion

7. The expert from Australia informed the Committee that the question of protection of Aboriginal folklore in his country had been under discussion since 1973. In December 1982 a Working Party consisting of representatives of a number of Government Departments in Canberra produced a report on the matter which investigates how Aboriginal artists and their work can be protected under Australian and international laws. The Working Party defined Aboriginal folklore as being the traditions, customs and beliefs of Aborigines as expressed in their music, dance, craft, sculpture, painting, theater and literature. The Australian Working Party noted that commercial use of Aboriginal folklore was widespread and in many cases was done without the artist's consent or payment of royalties. It concluded that such use could cause great harm and distress to Aboriginal people particularly where their designs are used in the wrong way (e.g. display of sacred/secret designs). It also deprived the traditional owners of a financial return from the use of their folklore and could also be damaging to their culture and arts forms. The Working Party found that Australian copyright legislation did not adequately protect Aboriginal folklore and concluded that new legislation was required. It suggested that objectives for protection of Aboriginal folklore should be: (a) the provision of safeguards against certain uses of folklore offensive to Aboriginal people and their traditions; (b) encouragement of the use of Aboriginal folklore throughout the community in a way fair to Aboriginal people, including ensuring payment of fair compensation to traditional owners for the reproduction of works of Aboriginal folklore.

A position of Commissioner for Aboriginal folklore would be established by statute and the Commissioner would be chiefly responsible for administering the Scheme. This would include handling claims by traditional owners and assisting Aboriginal owners of copyright. He would have statutory powers and functions and would report regularly to an Aboriginal Folklore Board and the Minister. The Aboriginal Folklore Board would comprise five Aboriginal members desirably possessing a knowledge of Aboriginal customary law and art. The Board's general function would be to advise the Minister on the protection and promotion of Aboriginal folklore. In addition it would advise the Commissioner, on request, whether an item was an item of Aboriginal folklore; whether it was sacred/secret; whether it considered that a proposed use would result in debasement, destruction or mutilation; and who were the traditional owners or customary users of items of Aboriginal folklore.

The Act would regulate "uses" of Aboriginal folklore by banning certain described "uses" except where such a "use" was by a customary "user" exercising his customary rights. It would do so by creating offenses in regard to "uses" where they were offensive to traditional owners and customary "users." Thus, subject to certain defenses, the Scheme would prohibit the "use" of an Aboriginal folklore item which was sacred/secret according to Aboriginal custom. It would also be an offense to "use" an Aboriginal folklore item in a way that debased, destroyed or mutilated it.

An intending "user" could receive a clearance by applying to the Commissioner. If the clearance were granted, the Commissioner would state that in his opinion the proposed "use" would not be an offense and this would be a defense to any subsequent prosecution.

Traditional owners would be entitled to submit a "claim" to the Commissioner regarding any prospective use for commercial purposes of an item of folklore which belonged to them by Aboriginal custom. The Commissioner, in determining claims, would have a wide range of powers including receiving remuneration for "uses" for distribution to owners and seeking injunctions to prevent prohibited "uses."

The Australian Government is considering the Report in developing measures to protect Aboriginal folklore. It is consulting the National Aboriginal Conference and wishes to get as many views as possible of Aboriginal people and others who have special interests in Aboriginal folklore.

8. The expert from Indonesia informed the Committee that in principle protection of folklore is granted under Article 10 of the new (1982) Indonesian Copyright Act but until now no implementation act has been adopted. General opinion in the country is that not all the expressions of folklore can be qualified as protected. But this question will be studied by a special commission. The latter will also consider whether copyright law provides for sufficient protection of the expressions of folklore and whether protection at the international level is desirable.

9. The expert from Thailand informed the Committee that her country is very rich in folklore which serves as a most vital factor in promoting better understanding within the society. Formerly it was used without any supervision and control, academic circles did not pay much attention to it. This situation has changed in recent years and different circles, including government officers, academicians and researchers, assigned increasingly greater importance to its role in the modern society. Preservation and safeguarding of the rich cultural endowment have become an important element of the national policy in the continuing efforts to perpetuate cultural and national identity. The technocrats and academicians in the cultural field became interested in exploring, gathering and synthesizing of information and data on folklore and their classification by the subject. Efforts were made to group all the existing subjects in major orderly headings following the pattern of the regional geographical division (e.g. "compilation of folklore of Southern Thailand," "collection of folklore of Larn Na Thai," etc.). Literature on folklore or the subjects relating to it are being included into the curriculum for high education level, including bachelor and master degrees. In certain major universities, and many provincial colleges in high vocational education level, folklore is the major option for selection by students. Apart from that, administrative efforts have been made towards the enhancement of support and promotion of the safeguarding of folklore. The Fine Arts Department has formulated a plan for preservation and promotion of musical arts and for preservation program for Thai entertainments and games. Currently it is seeking for an opportunity to integrate this plan into the Fifth Five-Year Economic and Social Development Plan. The Fine Arts Department hopes to finalize formality of a project to train ten Thai traditional crafts so that it becomes operational in the near future. Apart from that, Support Foundation with its aim to safeguard and promote the most valuable folk crafts in various parts of Thailand was established by Her Majesty the Queen. With regard to promotion of folklore, the Division of Cultural Relations in the Office for Cultural Affairs of the Ministry of Education has set up a provincial Cultural Center with divisional status within the framework of existing organizations such as Teacher Training Colleges. Its main aims are to collect and collate information and data on the indigenous village culture, to take active role in safeguarding, reviving folklore and tradition. At the provincial level the project also involved the maintenance of 93 provincial centers of which the main objectives were given great emphasis on the indigenous culture including folklore.

In the case there is proven evidence that the indigenous culture has been infiltrated by the influence of foreign or non-indigenous culture thus resulting in the decline of the former, attempts will be made to stimulate or organize a public campaign for the revival or restoration of the vanishing traditional folklore and culture. For instance, should there be any films or advertisements that are deemed to cause a detriment to Thai culture, then protest or report will then have to be submitted to the respective related agencies which are responsible for its rectification and remedy.



Nevertheless, the actual problem faced by Thailand at the moment is the fact that no particular law exists in so far as the protection of folklore is concerned and in effecting the regulation and control over the illicit utilization of folklore or folk works. To put in a simpler term, no folklore legislation is being anticipated at this point in time. It is so far deliberately well taken by all that the right to access to the use of folklore whose creator or inventor and the time of creation cannot be traced back and/or are unknown is free and unlimited. The only way and the practical way that can be thought of and mistakenly put into practice has been the measure for the conservation of folklore that may help enliven it for an everlasting future. However, folklore, the creation of which is within the duration of the protection under the provisions of the Copyright Act of 1978, is protected under this Act.

Looking into the aspect related to the work of WIPO in this regard, the former Director-General of the Fine Arts Department, Mr. Dejo Savanananda, attended the Berne Union Executive Committee meeting in 1977. Upon his return, this related matter was then directed to the Division of Literature and History of the Fine Arts Department to study into the possibility of introducing a folklore protection system into Thailand. At this juncture, the Division of Literature and History recommended that in the protection of folklore care should be taken into consideration not to jeopardize the well established principle for the determination of the legal duration of copyright. Therefore, in paving the way for effective legal enforcement of folklore protection steps should, and must, be taken for the review and amendment of the Copyright Act of 1978 by adding new clauses or articles to effect the required protection of folklore. The other workable option was to proceed to full-scale overhaul and to come up with a new draft for a special law specifically applicable to folklore protection alone.

Apparently, one cannot avoid problems that may arise from adopting both options. The Division of Literature and History for that matter then offered a compromising solution in serving the immediate need by suggesting the advisability to continuing on with the allowance for free utilization of folklore works by citizens of Thai nationality for some time until the objectives of the revised Copyright Act 1978 are fully accomplished. However, suggestion was also made with due compliance to appropriate regulations to ascertain the legitimate usage. In so far as the enforcement and supervision at the international level is concerned, the way out for this matter is to issue the official regulation effecting the control on the usage of Thai folklore works, much similar to the basic approach currently being applied to the case of the control of the cinema making, which requires prior approval from a government body before its dissemination to the public as well as the provision of necessary advice and guidance from the respective government agencies to ensure proper compliance with the related laws and regulations.

10. The expert from Pakistan informed the Committee that in his country folklore is not protected under Copyright Law. National Institute for Preservation and Promotion of Folklore has recently been created. A special committee will be created to consider the question of protection of folklore. It will have to suggest whether Copyright Act should be amended to provide for such protection or a separate Act should be adopted. It will consider also these Model Provisions.

11. The expert from the Philippines informed the Committee that in his country as well folklore is not protected under Copyright Act or the Presidential Decree No. 49. Presently it is being considered whether this Act should be amended to provide for protection of folklore or a special Act should be adopted. Also is being considered creation of an Institute of Folklore which would make research work, hold seminars on folklore, encourage teaching on folklore at the university level, etc.

12. The expert from India gave a comprehensive account of the federal and state legislation for the protection and conservation of cultural property, including architectural buildings, objets d'art, etc. She also gave an account of the national, state and local organizations such as the Anthropological Survey and the Art Academies which are responsible for the nurturing, fostering and promoting of folklore and other indigenous artistic manifestations. She also mentioned that special protection is given to certain communities and tribes in India.

13. In the course of the meeting several experts made available to the participants various documents relating to the subject under consideration.

#### V. Discussion Section by Section

14. The general discussion was followed by examination, section by section, of Model Provisions and the relevant commentary, submitted to the Committee. The experts made a number of observations, and suggestions were made by one or more experts to be reflected in the completed version of the Commentary on these Model Provisions to be finalized by the Secretariat. These observations and suggestions are summarized as follows.

##### Section 1: Principle of protection

15. No comments.

##### Section 2: Protected expressions of folklore

16. The experts suggested that definition of the subject of protection should comprise not only the "community" which develops and maintains the traditional artistic heritage but also "individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity." They noted that reference to such individuals was rightly made in the Report adopted by the Committee of Governmental Experts on the Safeguarding of Folklore convened by the Director-General of Unesco from February 22 to 26, 1982. One expert observed that for practical purposes the definition of the expressions of folklore should be more narrow. Broad definition as given in this Section may cause some difficulties in his country. Another expert was against a uniform definition which would cover as many aspects as possible because of existing plurality of cultures and traditions. In her opinion, the definition should be given only in very general terms so as to allow national interpretation and legislation. Thus, the list of protected items could include all manifestations of oral traditions and other aspects of folklore so as to ensure their continuity and their identity at all levels and amongst diverse ethnic groups. Therefore, she suggested that traditional beliefs, scientific views (traditional cosmogony) or practical skills, which are given in the Commentary to the Model Provisions as examples of non-protected items, should also be accorded protection. This view was supported by some experts.

##### Section 3: Utilization subject to authorization

17. The experts were unanimous in recognizing that this Section should also cover such use as displaying or exhibiting of secret and sacred materials of community. One expert stated that only this latter use should be subject to prior authorization. In his opinion authorization as such is not needed for other uses which should be subject to payment of remuneration only. In such cases simple notification on the intention to use expressions of folklore will be sufficient. Competent authorities should be aware of what is used and that the payments are made but should not be entitled to grant authorization for use. This is to encourage extensive use of the expressions of folklore and their development. Another expert agreed that exploitation of the expressions of folklore should not be restricted too much not to hamper their development. Other experts observed that, although in their countries considerable efforts are made to identify and preserve folklore, no authorization is required for its exploitation. This question is under consideration and it is not excluded that future decisions will be based on the approach established under this Section. But it is up to governmental bodies to decide on that.

##### Section 4: Exceptions

18. Most experts were of the opinion that the provisions of this Section should also apply to the use for philanthropic purposes or for incidental use in legal proceedings. But use of secret and sacred items should be excluded even in incidental cases.

##### Section 5: Acknowledgment of source

19. It was suggested that indication of source of expressions of folklore should also include mention of the country from which the expressions utilized have been derived. This will be of particular importance if international instrument on protection of the expressions of folklore is adopted in future.

Section 6: Offenses

20. It was suggested that only willful offenses established in paragraphs 1 and 2 of this Section should be subject to liability. One expert observed that injunction may be issued in the case provided for under paragraph 1. Three other experts stated that in their countries the liability will include damages. It was also observed that distortive actions mentioned in paragraph 4 of this Section should not include various interpretations, faithful adaptations and similar actions. (In any case the community concerned should be involved in consideration of the distortive action and provide for expert evidence.)

Section 7: Seizure or other actions

21. It was suggested that the community concerned should benefit from any receipts of the person violating the established norms of protection of the expressions of folklore. "Other actions" should include unscrupulous use (such as the distortive use damaging the interests of the community but authorized in order to get profit).

Section 8: Civil remedies

22. The experts suggested that the civil remedies provided for under this Section should include injunction, damages and accounts.

Section 9: Authorities

23. It was underlined that establishment of supervisory or competent authority requires compliance with actual national legal system, administrative structure, etc. The competent authority may be of administrative nature (and the supervisory authority of judicial or quasi-judicial nature. There may be a plurality of such authorities, corresponding to a plurality of communities.

Section 10: Authorization

24. Here again it was commented that the procedure for application for authorization or fixing of corresponding amounts and the purposes of their use should be established in conformity with national legal systems, but the communities concerned should always benefit from the use. Two experts observed that fixation and collection of fees should not be obligatory. Competent authority should be entitled to authorize free use in some cases.

Section 11: Jurisdiction

25. It was suggested that an administrative review of the decisions of the authority in question should also be prior to the matter being brought before a court of law.

Section 12: Relation to other forms of protection

26. The experts observed that in some countries protection of folklore is granted under copyright laws. If two means of protection are established under national laws they would be complementary rather than competitive. The observer from the International Federation of Phonogram and Videogram Producers stated that the Model Provisions are acceptable in principle to her Organization. In her opinion, what is important is the freedom of composers and recording companies to create and produce new works borrowing expressions of folklore. She emphasized the need to distinguish oral transmission of folklore as such and the musical or literary productions inspired by folklore. This distinction is essential for the phonographic industry as much of the recorded repertoire in developing countries takes its inspiration from folklore. She added that the phonographic industry agrees with the requirements to obtain the authorization by the competent authority before recording expressions of folklore; however, the recording itself should be protected as such under the legislation on neighboring rights. Finally, she mentioned the existence of standard agreements between the producers and the authors and performers, these agreements being applied with regard to the payments of fees, and she hoped that similar agreements with communities might be developed in relation to use of expressions of folklore.

Section 13: Interpretation

27. No comments.

Section 14: Protection of expressions of folklore of foreign countries

28. The experts unanimously agreed that the interests of national communities require adoption of an international agreement on protection of expressions of folklore.

VI. Adoption of the Report

29. The Committee unanimously adopted this report.

VII. Closing of the Meeting

30. After the usual thanks, the Chairman declared the meeting closed.

[Annex follows]

LIST OF PARTICIPANTS

I. INVITED EXPERTS

Dr. Robin A.I. BELL, Principal Legal Officer, Intellectual Property Section, Attorney-General's Department, Canberra, Australia

Mrs. Kullasap GESMANKIT, Director, National Library, Department of Fine Arts, Ministry of Education, Bangkok, Thailand

Dr. Serafin D. QUIASON, Director, The National Library of the Philippines, Manila, Philippines

Mr. Abdur RAZZAQ, Registrar of Copyrights, Central Copyright Office, Karachi, Pakistan

Mr. Supjan SURADIMADJA, Director of Patent and Copyright, Department of Justice, Jakarta, Indonesia

Dr. Kapila VATSYAYAN, Additional Secretary, Ministry of Education and Culture, Government of India, New Delhi, India

II. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS AND COMPOSERS (CISAC)

Mr. Denis de FREITAS, Member of Legal Committee of CISAC, London

INTERNATIONAL COPYRIGHT SOCIETY (INTERGU)

Dr. Gaston HALLA, Secretary General, Munich

INTERNATIONAL FEDERATION OF PHONOGRAM AND VIDEOGRAM PRODUCERS (IFPI)

Miss Gillian DAVIES, Associate Director General and Chief Legal Adviser, London

INTERNATIONAL LITERARY AND ARTISTIC ASSOCIATION (ALAI)

Mr. Denis de FREITAS, Member of Legal Committee of CISAC, London

III. SECRETARIAT

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Mr. Claude MASOUYÉ, Director, Public Information and Copyright Department  
Mr. Shahid ALIKHAN, Director, Developing Countries Division (Copyright)

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

Mr. Evqueni GUERASSIMOV, Legal Officer, Copyright Division

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**United Nations**  
**Educational, Scientific**  
**and Cultural Organization**  
**Unesco - Paris**

IGC(1971)/V/15 - B/EC/XXII/15  
ANNEX III/ANNEXE III/ANEXO III

**World Intellectual**  
**Property**  
**Organization**  
**WIPO - Geneva**

UNESCO/WIPO/FOLK/AFR/4  
Original: English/French  
Date: March 7, 1983

**REGIONAL COMMITTEE OF EXPERTS**  
**ON MEANS OF IMPLEMENTATION IN AFRICA OF MODEL PROVISIONS**  
**ON INTELLECTUAL PROPERTY ASPECTS OF PROTECTION OF**  
**EXPRESSIONS OF FOLKLORE**

Dakar, February 23 to 25, 1983

**REPORT**

prepared by the Secretariat  
and adopted by the Committee

**I. Introduction**

1. In pursuance of resolution 5/01 adopted by the General Conference of Unesco at its twenty first session (Belgrade, September-October 1980) and the decisions taken by the Governing Bodies of WIPO at their November 1981 sessions, the Directors General of Unesco and WIPO convened a Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (hereinafter referred as "the Committee"). The Committee met at the Regional Office for Education in Africa in Dakar from February 23 to 25, 1983. The meeting was organized in cooperation with the African Cultural Institute (ACI).

2. The purpose of the meeting was to consider the text of Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit exploitation and other prejudicial actions adopted by the Committee of Governmental Experts convened by the Directors General of Unesco and WIPO from June 28 to July 2, 1982 in Geneva, and to make suggestions on the possible means of implementation in Africa of the said text.

3. Experts from seven countries of the African Region (United Republic of Cameroon, Cape Verde, Ghana, Kenya, Senegal, Tanzania, Zaire) had been invited to participate, in a personal capacity, in the Committee. Three international non-governmental organizations, International Literary and Artistic Association (ALAI), International Confederation of Societies of Authors and Composers (CISAC), Union of National Radio and Television Organizations of Africa (URTNA), attended the meeting as observers.

4. The list of participants appears in Annex to this Report.

## II. Opening of the meeting

5. On behalf of the Directors General of WIPO and Unesco, Mr. C. Masouyé, Director, Public Information and Copyright Department, WIPO and Mr. A. Amri, Copyright Division, Unesco, respectively welcomed the participants at the meeting. Mr. E. Apronti, Deputy Director-General, African Cultural Institute, also welcomed the participants in the name of his organization.

## III. Election of officers

6. On the proposal of Mr. Lungela, the expert from Zaire, Mr. Ndiaye, the expert from Senegal, and Mr. Athiambo, the expert from Kenya, were elected Chairman and Vice-Chairman of the Committee, respectively.

## IV. General Discussion

7. The Secretariat of the meeting introduced document UNESCO/WIPO/FOLK/AFR/2 containing the text of the model provisions, accompanied by a commentary. It recalled the background of the work which led to the adoption of this text. It also gave explanations about the contents and the scope of the said document.

8. The experts expressed their appreciation at the achievement. This document enables the national legislators to have at their disposal a model law intended to protect expressions of folklore. This is particularly important in view of the fact that such a protection at the legal level is not yet fully set up in Africa.

9. It was recalled that the matter has been dealt with by several African legislations (for instance, the laws of Cameroon, Congo, Guinea, Ivory Coast and Senegal), but mainly in a copyright approach. In this connection, it was noted that the system established in Senegal is based on the principle of a declaration (instead of a prior authorization) and that the amounts collected for the use of works of folklore were put into a fund managed by the Senegalese Copyright Office (BSDA) and used for cultural and social purposes in favor of intellectual creators.

10. It was stressed that legislations are insufficient if there is no implementation machinery allowing for a control in the use of expressions of folklore and for the collection of the appropriate fees. Such machineries already exist in certain African countries; it seems, however, highly desirable that they be set up everywhere.

11. The experts also underlined the scope of the use of the various forms of folklore, as with the development of technical means of reproduction and dissemination folklore is more and more fixed on a material support. The multiplicity of languages and dialects, especially in Africa, increased the richness and variety of folklore which is widely used. Furthermore, the experts emphasized that this utilization mostly goes beyond national frontiers and develops at the international level. The impact of a law being in principle limited to national territory, it is essential to search for means of establishing also protection in the international relations.

12. The Secretariat stated that, subject to the approval of competent bodies, Unesco and WIPO have provided in their future activities the study of means of ensuring an international protection of expressions of folklore. On the other hand, the Secretariat recalled that the model provisions do not offer any definition of the notion of folklore, in order to avoid possible conflict with relevant definitions which are or may be contained in other documents or legal instruments. For this purpose, the model provisions simply define the expressions of folklore and set up a system of protection against their illicit exploitation. Other problems, such as identification, conservation and preservation of folklore, call for a global and interdisciplinary study which is undertaken by Unesco.

13. Finally, the Secretariat reminded the experts that the purpose of model provisions was to provide national authorities with a model, not at all compulsory, leaving national legislators free to adopt the type of provisions which according to them is better adapted to the conditions existing in their own country. In this respect, the experts expressed the view that it is essential to see whether the model provisions are compatible with existing legislations, as well as with the Bangui Agreement of 1977 which constitutes at the African level an attempt to a regional solution.

V. Discussion section by section

14. The general discussion was followed by an examination, section by section, of the model provisions and the relevant commentary, submitted to the Committee. The experts made a number of observations and suggestions, which are summarized as follows. Before starting to discuss each provision, the Secretariat introduced the text and its commentary and informed the Committee of the results of the previous regional meetings held in Bogota in October 1981 and in New Delhi in February 1983.

Preamble

15. Some experts stated that it is not in the legal tradition of African countries to have the legislations preceded by preamble; the proposed text may, however, be used to summarize the main reasons of the statutes.

Section 1 : Principle of Protection

16. One expert stressed that the expressions of folklore are not only developed and maintained in a given country but may also be created in that country. Consequently, he proposed that the scope of the protection include also the creation. Other experts noted that the notion of expressions of folklore covers both the expressions created in a community and those originating elsewhere but have been adopted, further developed or maintained through generations by that community. What is essential is the development of the expressions as defined in Section 2, the notion of development covering, as the case may be, the notion of original creation and the legislator remaining free to indicate it, expressly or not.

Section 2 : Protected expressions of folklore

17. The experts preferred that the definition of the term "expression of folklore" be focused on the cultural heritage and not limited to the artistic heritage of the nation. It was underlined that the latter is a narrower notion and does not permit to include into the said definition traditional beliefs, scientific views and substance of legends, which should also be granted protection.

Section 3 : Utilization subject to protection

18. The experts felt that it was not realistic to give to the community concerned the power of granting authorizations and that the African countries unanimously prefer the system of the competent authority.

Section 4 : Exceptions

19. One expert was of the opinion that exceptions should also be provided for public bodies which utilize expressions of folklore, without making profit, for their own needs, for instance in the case of radio or television broadcasts. It was however remarked that there was no reason why broadcasting organizations should not comply with the regulations established for the protection of expressions of folklore. Another expert raised the question as to what would be the situation in which expressions of folklore were used in the form of postage stamps, the user being the State itself. Reference was also made to postcards reproducing expressions of folklore. In a general manner, it was considered abnormal that operations of a commercial nature may not fall under the regulations, which is a prejudice to the communities concerned.

Section 5 : Acknowledgement of source

20. The experts noted that the requirement of the acknowledgement of source was conceivable only in the case of identifiable expressions and that in such a case the country from which the expressions utilized are derived could also be mentioned.



Sections 6 to 8 : Offences, seizure and civil remedies

21. The experts expressed the view that in the case of seizure and damages, all sums collected should be assigned to the competent authority for cultural or social purposes.

Section 9 : Authorities

22. It was unanimously agreed that it was more wise, economical and efficient to use the existing structures in Africa, in particular, the societies of authors, and to entrust them with the responsibilities provided for the competent authority. Some experts, on the other hand, considered that the cumulation of a competent authority with a supervisory authority would turn out to be complicated and could lead to administrative procedures of a cumbersome nature.

Section 10 : Authorization

23. As a general rule, it was recommended that the fees collected should be used by the societies of authors in the most appropriate manner for the purpose of promoting national culture.

Section 11 : Jurisdiction

24. No comments. The question as to which court is, in any given country, to be appointed, largely depends on the existing court system of that country.

Section 12 : Relation to other forms of protection

25. The wish was expressed that if several means of protection are established under national laws they should be complimentary rather than competitive.

Section 13 : Interpretation

26. Some doubts were raised as to the usefulness of inserting this provision into the national legislation.

Section 14 : Protection of Expressions of Folklore of Foreign Countries

27. The experts, referring to the Bangui Agreement adopted under the auspices of the African Intellectual Property Organization (OAPI), expressed the wish that this regulation be extended to the whole African Continent. Furthermore, they stressed the need to elaborate an instrument protecting expressions of folklore at the international level.

Adoption of the report

28. The Committee unanimously adopted this report.

Closing of the meeting

29. After the usual thanks, the Chairman declared the meeting closed.

[Annex follows]

LISTE DES PARTICIPANTS

LIST OF PARTICIPANTS

I. EXPERTS

- Mr. Rautta ATHIAMBO, Senior Assistant Registrar General, Mombasa, Kenya
- Mme Vera Valentina DUARTE, Juriste, Ministère de la Justice, Cabinet d'études, de législation et de documentation, Praia, Cap Vert (absente)
- M. Ndiangani Sibou LUNGELA, Directeur général, Société nationale des éditeurs compositeurs et auteurs SONECA, Kinshasa, Zaïre
- Mr. E.R. MUKEREBE, Cultural Documentation Officer, Ministry of Information and National Culture, Dar-es-Salaam, Tanzania (absent)
- M. Ndéné NDIAYE, Directeur général, Bureau sénégalais du droit d'auteur, (BSDA), Dakar, Sénégal
- M. Samuel NELLE, Directeur, Société camerounaise du droit d'auteur, (SOCADRA), Douala, Cameroun (absent)
- Mr. Joseph H. KWABENA NKETIA, Former Director, Institute of African Studies, University of Ghana, Accra, Ghana (absent)

II. ORGANISATIONS INTERGOUVERNEMENTALES/INTERGOVERNMENTAL ORGANIZATIONS

INSTITUT CULTUREL AFRICAÏN (ICA)/AFRICAN CULTURAL INSTITUTE (ACI)

- Mr. Eric O. APRONTI, Deputy Director General, Dakar

III. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/INTERNATIONAL NON GOVERNMENTAL ORGANIZATIONS

ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE/INTERNATIONAL LITERARY AND ARTISTIC ASSOCIATION (ALAI)

- M. Jean-Alexis ZIEGLER, Secrétaire général de la CISAC, Paris

INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS AND COMPOSERS/CONFÉDÉRATION INTERNATIONALE DES SOCIÉTÉS D'AUTEURS ET COMPOSITEURS (CISAC)

- M. Jean-Alexis ZIEGLER, Secrétaire général, Paris

UNION DES RADIODIFFUSIONS ET TÉLÉVISIONS NATIONALES D'AFRIQUE/UNION OF NATIONAL RADIO AND TELEVISION ORGANIZATIONS OF AFRICA (URDNA)

- M. Sassi NGOM, Chef de section principal, Dakar

IV. SECRETARIAT

ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

- M. Claude MASOUYÉ, Directeur, Département de l'Information et du Droit d'auteur

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA CULTURE/UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

- M. Abderrhamane AMRI, Division du Droit d'auteur