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

Doha, October 8 to 10, 1984

REPORT

prepared by the Rapporteur and adopted by the Committee

I. Introduction

1. In pursuance of Resolution 15.1 adopted by the General Conference of Unesco at its twenty-second session and the decision taken by the Governing Bodies of WIPO at the fourteenth series of their meetings in 1983, the Directors General of Unesco and WIPO convened a Regional Committee of Experts on Means of Implementation in the Arab States 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 Qatar, in Doha from October 8 to 10, 1984.

2. The purpose of the meeting was to consider the text of the 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 in Geneva from June 28 to July 2, 1982, and to make suggestions on the means of implementation of the said text in the Arab States.

3. Experts from seven Arab countries (Algeria, Egypt, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia) participated in the meeting. Two intergovernmental organizations, the Arab Educational, Cultural and Scientific Organization (ALECSO) and the Arab Bureau of Education for the Gulf States were represented in an observer capacity.

4. The list of participants is annexed to this report.

II. Opening of the Meeting

5. The meeting was inaugurated by His Excellency Mr. Mohammad Abdul Rahman Al-Kholaifi, Undersecretary in the Ministry for Information of the Government of Qatar and Director General of the Arab Gulf States Folklore Centre. The Undersecretary welcomed the participants and stated that folklore which is a heritage handed down from generation to generation is an indication of the people's spirit and wisdom and their link with the roots of their civilization. He pointed out that Arab folklore is rich in its variety and reflects the originality of its people; that the folklore of this strategic part of the world which was the origin of one of the important civilizations has enriched human heritage. The Undersecretary stressed the importance they attached to this meeting which was a link in the chain for protection of expressions of folklore throughout the world, and felt that it was the duty of the Arab people to consider this matter seriously and help through governmental and private organizations to protect the cultural heritage represented by expressions of folklore. He spoke with considerable appreciation of the dedicated work of Unesco and WIPO in studying this question and also emphasized the links that the Gulf States have with both these Organizations of the United Nations System.

6. The representative of the Director-General of Unesco, Mr. Abdullah Ould Erebih, Unesco's Regional Representative a.i. in the Arab States of the Gulf, and the representative of the Director General of the World Intellectual Property Organization (WIPO), Mr. Shahid Alikhan, Director, Developing Countries Division (Copyright), thanked the Government of Qatar and His Excellency the Minister for Information, Mr. Issa Ghanem Al-Kawari, for their initiative in hosting this meeting and the Undersecretary, Ministry for Information for inaugurating it. They also thanked Mr. Ali Abdullah Khalifa, Head of the Arab Gulf States Folklore Centre for the excellent arrangements made for the conduct of the meeting. Mr. Abderrahmane Amri, Senior Lawyer, Copyright Division, Unesco, also spoke on the occasion.

III. Election of Officers

7. On the proposal of Mr. Haider Mahmoud, the expert from Jordan, supported by Mr. Salah Abada, the expert from Algeria, the Committee unanimously elected Mr. Ali Abdullah Khalifa, expert from Qatar, as its Chairman. Also on the proposal of Mr. Selim Bessiso, the expert from Kuwait supported by Mr. Mussfer Al-Mussfer, the expert from Saudi Arabia, Mr. Haider Mahmoud, the expert from Jordan was elected Rapporteur.

IV. General Discussion

8. In the course of the general debate, the experts gave a brief account of the status of protection of expressions of folklore in their respective countries.

9. The expert from Algeria informed the Committee that his country is interested in safeguarding folklore in all its different forms of expression of this heritage. There are classifications of folklore in all areas of Algeria. A high level Institute of Music was established and consists of a Division staffed by professors, musicians and poets and this Division concentrates on classifying and documenting the musical heritage. There is also a Directorate in the Ministry of Culture and Tourism to identify and classify the national heritage of folklore and make it known through museums and publications. In addition, there is a national foundation for studying, identifying and encouraging the traditional crafts in all their variety. Further there is a National Institute of Popular Art which produces qualified artists and performers of folk art. There is a legal protection for various kinds of folklore expressions. This is included in the copyright law which prevents distortion of folklore and dissemination of such distortion. This law is administered by the Office national du droit d'auteur (ONDA). Income from the use of folklore expressions goes into a cultural fund.

While indicating the steps taken to prevent abuse or distortion of folklore in his country, he felt that although there should be protection against exploitation of folklore, such legal protection should not become an obstacle in the way of its dissemination.

10. The expert from Lebanon mentioned that despite an old tradition of folklore, it was, in his country, protected more by custom since there was no law yet in this connection. He said Lebanon would welcome such a text of the model provisions for protection of expressions of folklore, particularly in the context of the present situation through which Lebanon is passing. It would enable the Lebanese authorities to protect folklore by legal means to ensure that it is not unauthorizably exploited commercially.

11. The expert from Egypt informed the Committee that the task of classification and documentation of folklore had been taken up in his country; that an Institute of Folklore as well as a Faculty in the University of Cairo had been established for studies on folklore. These institutions sift expressions of folklore handed over from generation to generation and try to identify the authentic versions and to classify them. Protection by law is still lacking despite the wealth of folklore, which is being exploited without compensation to the original owners of such expressions. He welcomed the establishing of the model provisions under consideration by the Committee, and felt that through such provisions folkloric heritage could be protected; funds accruing through use of such expressions could be utilized for encouraging folklore.

12. The expert from the Kingdom of Saudi Arabia informed the Committee that there were various types of folklore in different regions of the Kingdom performed by folkloric troupes without any regular material compensation; a number of books have also been written on the expressions of folklore and there is a Society in the Kingdom called the Saudi Arabian Society for Culture and Arts which patronizes the art of folklore in addition to the efforts exerted by the General Department for Youth and the Ministries of Education and Information, but there was no legal protection so far. In their draft of a Copyright Law, provisions have been made for protection of folklore; these provisions would be further augmented, upon his return, to include suggestions on the basis of the model provisions.

13. The expert from Jordan felt that there was a great deal in common in the expression of folklore in the Arab States. He mentioned that in the early 1960s, the Broadcasting Organization of the Hashemite Kingdom of Jordan took care of the protection of folklore. The Ministry of Culture is in charge of this problem through its specialized department, but there is no law to protect folklore. The model provisions are thus useful for his country and he will ensure presenting these to the Government for adoption.

14. The expert from Kuwait informed the Committee that there was considerable interest in his country in folklore but while it was being encouraged, it was regrettable that no legal protection yet existed. A Folklore Centre had been established in 1956 which has gathered a variety of material in a planned manner. Maritime life had been a rich source of such folklore in the past. The Folklore Centre had documented this; it had also followed the popular form of riddles and compiled an anthology of these; it has gathered folk tales, and published popular literature on folklore; it has now undertaken work on preparation of an encyclopaedia of Kuwaiti proverbs. This Folklore Centre has acquired a good name as a result of its considerable endeavors in this field; it is also disseminating information on folklore through the media.

15. The expert from Qatar pointed out that the Government of Qatar had established a number of specialized institutions under the Department of Culture and Arts to collect and study the various aspects of folklore, both religious and material, and a special section is functioning under the Department of Publications to protect copyright. While the Ministry of Information in his country had listed the works and expressions of folklore, there was need not only for legal protection of expressions of folklore but also of those who performed them. A Committee had been appointed by the Gulf Cooperation Council for drafting the text of a subregional Convention on Copyright for the Gulf States. They shall also provide for protection of performers on the basis of the Rome Convention. He confirmed this draft will complement the international conventions in this field as well as the Arab Copyright Convention. In respect of protection of expressions of folklore, the model provisions now under consideration could provide the basis.

16. The delegate from the Arab Gulf States Folklore Centre informed the Committee that, generally speaking, the seven member States of the Folklore Centre have not yet passed a law on the protection of their national folklore heritage. However, all the member States have lately paid attention to the importance of such law for safeguarding the national culture, and have hastened to establish for this purpose, in

1982, a specialized interregional organization entitled "The Arab Gulf States Folklore Centre." Its statute as accepted by the member States lays down that an important aim of the said Centre is to establish a National (Gulf) Law for the Protection of Folklore Heritage.

In the early 1960s, the Republic of Iraq was the first State in the area in saving the Folklore Heritage; then followed by Kuwait. Both countries have founded specialized departments in each of them to collect and study aspects of folklore heritage and have published books on this subject. In general, the States of the Gulf Area were interested to encourage and protect the folk musical groups which perform folk music and dance arts; they also paid attention to some of the traditional crafts and increased its financial support for these. The Republic of Iraq published a specialized scientific magazine concerning folklore heritage and established a developed Artistic Centre for Folk Handicrafts.

The State of Kuwait established a Scientific Centre for Folk Arts.

In the Sultanate of Oman, there is a special Ministry of National Heritage and Culture; the Ministry of Information in Oman had also prepared a survey of Folk Arts.

In the United Arab Emirates, the Ministry of Information and Culture is responsible for folk musical groups and national associations interested in folklore, and the State supports these and undertakes studies on oral folklore which is founded in poetry and "zajal" (or the traditional rendering of poetry).

The Ministry of Information in Bahrain founded lately a Specialized Directorate of Folklore Heritage. In addition, there are departments which study folk literature as well as others that seek to protect national musical groups which perform a variety of aspects of the Folk Arts. The expert from the Arab Gulf States Folklore Centre pointed out further that the Gulf Region had lately paid considerable attention to protection of the folklore heritage in the region and has been studying it in a scientific manner befitting its national value. The Centre also extends support to the protection of such folklore heritage in the region in the same manner.

To enable the Folklore Centre thus to establish a national law for the protection of expressions of folklore, the Centre had approached the State of Qatar, in which it is located, to host this specialized meeting for studying the Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore in the Arab States to pave the way for the Gulf States to establish a national law suitable to the existing systems and specialized departments in each of the concerned countries.

The Centre realizes that the model presented for discussion at this Committee, which had been carefully drafted by experienced personnel, would form the basis and guide for establishing the requisite draft law. Such a draft law will then be presented to each of the following States: Bahrein, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates, requesting them to adopt it as a jointly agreed project to protect the expressions of their folklore.

17. The representative of the Arab Educational, Cultural and Scientific Organization (ALECSO) informed the Committee concerning the Arab Convention on Copyright with particular reference to the provisions on protection of folklore. He also described the provisions of the Convention generally; he explained that, since its adoption in Baghdad in November 1981, it had been adhered to by 13 States; he also explained that a Permanent Committee on Copyright has been provided for under the said Convention for the purpose of following up on the implementation of the Convention and for examining the difficulties, if any, in the application of the Convention. He spoke of the close contacts that his Organization had with Unesco and with WIPO in the field of copyright; he mentioned that a number of Arab States were party to the Berne Convention for the Protection of Literary and Artistic Works, as also party to the Universal Copyright Convention, and that the Arab Convention on Copyright sought to complement, not contradict, the International Copyright Conventions administered by Unesco and WIPO.

18. During the general discussion, the experts said that it was necessary to protect folklore in the Arab States and adopt the required legal measures to ensure this. However, they expressed their anxiety in respect of the danger threatening the protection of folklore heritage of Palestine and felt there was need to pay attention to this.

19. At the end of the general discussion, the experts recommended that Unesco and WIPO should prepare the draft of an international multilateral treaty on the protection of expressions of folklore and work for its adoption and implementation.

V. Discussion of the Text Section by Section

20. The general debate was followed by an examination, section by section, of the Model Provisions and the Commentary thereon, as submitted to the Committee through document UNESCO/WIPO/FOLK/AR/2. There was considerable discussion on this, and the experts made a number of observations in the context of implementation of the said model provisions in the Arab States. These observations and suggestions are summarized below.

Preamble

21. One of the experts suggested that the Preamble should be entitled "General Provisions" and included in an explanatory memorandum to the law as is the custom in some Arab countries in the drafting of such laws. Another expert suggested that the Preamble remain in square brackets because laws in some Arab States do not have such Preamble and the text could be used in an explanatory note. After discussion, it was decided to maintain the Preamble in square brackets so that the text could be used by such national legislations as wished to do so; others may incorporate this in their legislation in suitable articles.

Section 1: Principle of Protection

22. No change.

Section 2: Protected Expressions of Folklore

23. No change.

Section 3: Utilizations Subject to Authorization

24. No change, except addition of the following at the end of subsection (ii): "whether by direct or indirect means."

Section 4: Exceptions

25. No change.

Section 5: Acknowledgment of Source

26. After discussion, some experts suggested deletion of reference to paragraph 1(iii) in subsection 2 of this section, since they felt that acknowledgment of source should be indicated even when borrowing expressions of folklore for creating an original work of an author. The Committee, however, felt that no change was needed.

Section 6: Offences

27. After considerable discussion, the Committee felt that the words "liable to" at the end of subsections 1 and 2 of this section should be replaced by the words "punishable by." In subsection 4, a minor verbal change was suggested in the Arabic text only.

Section 7: Seizure or Other Actions

28. One expert suggested that the wording of this section might be changed as follows:

"Any object which was made in violation of this [Law], and any receipts of the person violating it, should be subject to [Seizure] without prejudice to the sanctions in section 6 and the right to claim damages as in section 8".

Section 8: Civil Remedies

29. No change.

Section 9: Authorities

30. No change.

Section 10: Authorization

31. One expert suggested and the Committee agreed that the words "as the case may be" should be added at the end of subsection 3.

Section 11: Jurisdiction

32. One expert suggested that the word "Court" in subsection 1 should be in square brackets, since in his country such matters are referred to state councils and to courts. Appeals against such decisions would be made to higher authorities.

Section 12: Relation to Other Forms of Protection

33. No change.

Section 13: Interpretation

34. No change.

Section 14: Protection of Expressions of Folklore of Foreign Countries

35. After discussion, the Committee accepted that in the first line of this section the words "used in..." should be included in square brackets, after the words "Expressions of Folklore"; also, that subsection (ii) should read as follows: "on the basis of international treaties or other agreements in force in the countries in which protection is sought."

ANNEX/ANNEXE

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS

I. EXPERTS

- Mr. Salah ABADA, Directeur général, Office national du droit d'auteur (ONDA), Alger, Algeria
- Mr. Selim BESSISSO, Legal Counsel, Ministry for Information, Kuwait
- Mr. Mahmoud LOUTFI, Directeur général, Société des auteurs, compositeurs et éditeurs, Cairo, Egypt
- Mr. Gaider MAHMOUD, Director General, Department of Culture and Arts, Ministry of Education, Amman, Jordan
- H.E Mr. Jean MELHA, Ambassador of Lebanon, Doha, Qatar
- Mr. Mussfer AL MUSSFER, Director General of Publications, Ministry for Information, Riyadh, Saudi Arabia
- Mr. Ali KHALIFA, Head, Arab Gulf States Folklore Centre, Doha, Qatar
- Dr. Tarik FAREED, Chief of Folk Music & Dance Unit, Arab Gulf States Folklore Centre, Doha, Qatar
- Mr. Mohamed AL MUSELMANI, Chief of Audiovision Unit, Arab Gulf States Folklore Centre, Doha, Qatar
- Mrs. Najla AL IZZI, Researcher, Unit of Handicrafts, Arab Gulf States Folklore Centre, Doha, Qatar
- Mr. Ahmed AL ANANI, Director General, Research & Documentation Centre, Doha, Qatar
- Mr. Yousuf DARWISH, Assistant Director General of Press & Publications Department, Ministry for Information, Doha, Qatar
- Mr. Abdullah SADIQ, Director, Press & Publications Department, Ministry for Information, Doha, Qatar
- Mr. Mohamed HENAISH, Legal Adviser, Press & Publications Department, Ministry for Information, Doha, Qatar
- Mr. Atif YOUSUF, Head of Documentation, Qatar National Commission for Education, Culture and Science, Doha, Qatar
- Mr. Moussa ZEINAL, Director of Culture and Arts Department, Ministry for Information, Doha, Qatar.

II. INTERGOVERNMENTAL ORGANIZATIONS

ARAB EDUCATIONAL, CULTURAL & SCIENTIFIC ORGANIZATION (ALECSO)

Mr. Ahmed DERRADJI, Permanent Delegate to Unesco, Paris, France

ARAB BUREAU OF EDUCATION FOR GULF STATES

Mr. Mohamed AL HAWAS, Manager, Director General's office, Riyadh, Saudi Arabia

III. SECRETARIAT

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

Mr. Abderrahmane AMRI, Senior Lawyer, Copyright Division

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPC)/ORGANISATION MONDIALE DE LA PROPRIETE INTELLECTUELLE (OMPI)

Mr. Shahid ALIKHAN, Director, Developing Countries Division (Copyright)