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Copyright
Committee**

Twelfth Session
Paris, December 1973

**Comité
intergouvernemental
du droit d'auteur**

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**Comité
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**PROPOSAL FOR INTERNATIONAL INSTRUMENT FOR THE
PROTECTION OF FOLKLORE**

1. On 22 May 1973 the Director-General of Unesco received from the Ministry of Foreign Affairs and Religion of the Republic of Bolivia a communication (No. D.G.O.I.1006-79 dated 24 April 1973), accompanied by a supporting memorandum proposing that consideration be given at the international level to a special instrument for the protection of the folk arts and cultural heritage of the various nations of the world. The communication and accompanying memorandum are attached as Annex A.
2. Proposals that national cultural heritage of "folklore" be recognized as a form of intellectual property and accorded protection under copyright principles have engaged the attention of various bodies since the early 1960s. The question has been discussed at the various regional meetings to prepare model laws on copyright for developing countries (see document IOC/XII/6). It was considered in detail at the 1967 Stockholm Conference for Revision of the International Convention for the Protection of Literary and Artistic Works (the Berne Convention). The 1967 (Stockholm) and 1971 (Paris) texts of the Berne Convention deal with the matter in Article 15(4), and the subject is discussed in paragraphs 249-253 of the Stockholm report.
3. The Intergovernmental Copyright Committee is invited to review this matter in the light not only of the proposals embodied in the annexed communication from the Government of Bolivia, but also of the results of the Committee of Experts Charged with Drafting a Model Law on Copyright for Developing Countries in Africa (document IOC/XII/6).

ANNEX A

Republic of Bolivia
Ministry of Foreign Affairs and Religion

Ref. No. D.G.O.I.1006-79

La Paz, 24 April 1973

My Ministry has made a careful survey of existing documentation on the international protection of the cultural heritage of mankind, including the Universal Copyright Convention, signed in Geneva in 1952; the Inter-American Copyright Convention, Washington 1946; and, in particular, the Recommendation on the protection of property of artistic, historical or archaeological value, (sic)* approved by Unesco in 1964. All these instruments, as also other Unesco conventions, are aimed at the protection of tangible objects, and not of forms of expression such as music and dance, which are at present undergoing the most intensive clandestine commercialization and export, in a process of commercially oriented transculturation destructive of the traditional cultures, which do not even have the benefit of statements of provenance.

Bolivian legislation on the heritage of folk arts effectively fills this blank observable in the international legislation and it is for this reason that my Government has decided to submit a formal inquiry of a technical order on the feasibility of including, in the instruments for the protection of national cultural heritages, certain measures which if they enlist sufficient support to be adopted by the General Conference, could supplement the existing instruments and reinforce the commendable efforts of those who are endeavouring to defend this category of cultural property against all kinds of depredations which are not only destructive of the traditional artistic culture of the peoples but also affect possible sources of legitimate economic gain. Hence the endeavour to have folk art forms removed from the public domain and reclassified as property of the concerned States.

The purpose of my inquiry is to seek your advice on the form for incorporating in the international legislation on the protection of national cultural heritages some principles found in the laws of Bolivia. I think that the first step would be to include on the agenda of the next meeting devoted to this subject a draft resolution incorporating the following points:

1. Addition to the Geneva Convention of a new protocol declaring all rights in cultural expressions of collective or anonymous origin which have been elaborated or acquired traditional character in the territory of particular Member States to be the property of such States.
2. Signature of a Convention to regulate the aspects of folklore preservation, promotion and diffusion and establishment of an "International Register of Folkloristic Cultural Property on the lines of the Recommendation of 1964.

* The two 1964 Recommendations adopted by the General Conference were (1) a means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property, (2) an international standardization of statistics on book production and periodicals.

3. Extension of the field of competence of the Intergovernmental Committee envisaged by Article XI of the Geneva Convention to include the study of the problems which might arise in connexion with the proposed protocol such as the research-based assignation of paternity between two or more States in respect of common forms of expression.

As is clear from the above outline resolution the aim is to secure the right instrument for the protection of folk arts and this consideration moves me to seek your support and collaboration, for the pursuit of the aim stated in the form you consider most appropriate. I for my part shall endeavour to co-ordinate action with certain friendly governments undoubtedly affected by the lack of effective protection for this type of property, so that we may unite our efforts with a view to obtaining approval of the requisite instrument.

Republic of Bolivia
Ministry of Foreign Affairs and Religion

MEMORANDUM

Ref: Protection of Cultural Heritage

1. Background

1.1 The Bolivian State, through the intermediary of its special service, the National Directorate of Anthropology, Department of Ethno-musicology and Folklore, has verified the urgent necessity of submitting for consideration by the Executive Board of Unesco the present request for the adoption of regulations for the protection of the people's folklore.

Folklore, viewed as the cultural substratum of human groups with expressions characterized by anonymous authorship, traditionality and popular origin (International Congress of Folk Arts held in Buenos Aires), constitutes part of the cultural heritage of the peoples and so far has not rated specific attention either by the international organizations or by the majority of States.

1.2 The current revalorization of folk arts to their notable invasion of the consumer market is currently giving rise to the de facto situation of which the following examples afford a rundown:

1.2.1 In the musical sphere, there are instances of melodies being wrongfully appropriated by persons unconnected with their creation who register them as their own compositions to secure to themselves the benefits conceded by the copyright regulations. This leads, amongst other things, to the debasement of the folkishness of the piece which, losing its anonymous or collective character, will no longer be regarded as "folk music" but as the "creation" of the person who appropriated and registered under his own name an artistic property belonging, by tradition and right, to a certain folk group.

Existing international legislation on copyright makes no provision for cases such as the above, folk arts being accordingly relegated implicitly to the public domain. We consider that this notion of public domain should apply to folk music - as to all other forms of folk arts - exclusively in respect of its diffusion, conferring no right of appropriation in respect of a work's actual paternity, which is the situation arising additionally at present.

1.2.2. In the sphere of the dance, folk dances, deemed as collective creations, historically localized in specific geographical zones, to belong to groups of people who, traditionally, hold them in usufruct - are thanks mainly to the commercial aspect already mentioned and the mobility of the folk groups touring programmes which include these dances - being appropriated by other countries wholly unconnected with their genesis to be passed off by them, even in international competitions, as folk dances of their own. In the particular case of Bolivia which, owing to its geographical situation, suffers greatly from depredations of this kind, certain organizations from neighbouring countries go so far as to send here complete sets of costumes for the main Bolivian folk dances, and engage "embroiderers", "mask makers" and even choreographers (of peasant "folk" origin) to organize this switching or deliberate

non-spontaneous transculturation process which amounts to the filching and clandestine transfer of another people's culture. In this way the creator peoples gradually lose their folk art assets, while others, with better financial facilities, present as their own what was never a part of their tradition. The themes may, in some cases, be similar, but the décor and choreography are usurped.

It should be noted that spontaneous acculturation and cultural diffusion is a different question. The latter may very well be complemented by an indication of origin in such a form as to make folk art a means for unity and understanding between the peoples and not an element of discord, which is at present due to the justified reactions of the peoples injured by the filching process described.

1.2.3. In the realm of popular art, which likewise forms part of national folklore and which has, at present, a large consumer market, there are similar filchings, as in the case of countries which reach the point of industrializing themes and techniques from the traditional patterns of the cultures of particular population groups and offering them at cut prices on the international markets with no statement of origin - a process which, in addition to lowering the quality of the objects, means the "submarginalization" of large population groups who often depend for their livelihood on this paying work.

2. Cultural and juridical situation of folk arts

As its folk arts belong to the traditional culture of each people, they are part of the cultural heritage of mankind and, as such, should be the subject of protective measures, both internationally and within every State.

As regards the international instruments established by Unesco for the protection of the cultural heritage of mankind nothing concrete is found about folk arts. Although in the definition of cultural property the recommendation stipulates the protection of cultural, historical or archaeological property, ethnological documents etc., actual primacy is given to the archaeological and plastic art aspects, and nothing explicit is said about the important folk art element in the culture of peoples which - particularly in the case of music, dance and folk art - has been revalorized, and has swiftly gained a place in consumer markets.

The Universal Copyright Convention, signed at Geneva in 1962, protects the creative work of individuals but, so far, no steps have been taken to provide for the protection of works of collective or anonymous authorship as would be the case with current folkloric creation actually proceeding.

The international conventions drawn up by Unesco now provide protection for anonymous works in the domains alike of archaeology and of the plastic arts, but it has only been thought fit to do this in respect of tangible objects, and not of forms of artistic expression transitory in time and space, such as music and dance, but nonetheless, works of art which are, today, subject to the most intense clandestine commercialization and export, despite the fact that they form part of States' cultural heritage.

It is to be noted that in the Treaty of Washington on Copyright (1947) concluded by the American States, there are special dispositions on collectors or compilers which, if complied with, would benefit folk music which would retain

its anonymous character. In practice, however, only a small percentage of people comply with this provision, and the whole range of folk music themes is freely mixed with all the characteristics of improper appropriation when the pseudo composers register these anonymous compositions under their own names with the organs responsible for keeping the Register of Intellectual Property and Copyright. This is patently contrary to Unesco's Recommendation (1964) on "the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property".

3. Measures adopted by the Bolivian Government.

In accordance with the Recommendation of 1964, which urges Member States to fulfil their obligations of ensuring the protection of the property constituting their cultural heritage, the Bolivian Government, by Supreme Decree No. 08396 of 19 June 1968, has proclaimed State ownership of the folk music (anonymous, popular and traditional) of its territory, of the music currently being produced by unidentified composers in peasant and general folk groups and of the music of Bolivian composers deceased 30 or more years ago.

Legislation extending the application of these measures to Folk Dance, Popular Art and Traditional Literature is in process of enactment.

The Government of Bolivia, in informing the Director-General of Unesco of these decisions taken in the exercise of its legitimate authority and of its ownership of expressions of folk art, ancient or modern, which have grown up or become traditional on its territory, of anonymous works at present performed by ethnic or folk groups, and of works by composers deceased 30 or more years ago, would indicate that the national registers of these forms of cultural property are scientifically checked by specialist researchers.

4. Request from the Government of Bolivia to Unesco

Having regard to the foregoing explanatory memorandum and to the internal legislation adopted by the Government of Bolivia, the following action is requested:

1. Addition to the Geneva Convention of a new Protocol, declaring cultural expressions of collective or anonymous origin which have been elaborated or become traditional in the territory of a Member State to be the property of such State.

2. Signature of a Convention for the regulation of the conservation, promotion and diffusion of folk art, and establishment of an "International Register of Folkloristic Cultural Property" on the lines of the 1964 Recommendation.

3. Extension of the powers of the Intergovernmental Committee provided for by Article XI of the Geneva Convention to include the study of the problems which might arise in connexion with the proposed protocol, such, for instance, as the research-based attribution of paternity in respect of forms of a cultural expression common to both or all to two or more States.

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Ministry of Education and Culture,
Bolivia

MEMORANDUM

Ref: Protection of Folk Arts

FOR PRESENTATION TO INTERNATIONAL BODIES
COMPETENT IN THE MATTER OF NATIONS' CULTURAL HERITAGE

Explanatory Memorandum

1. Background

(same text as for previous memorandum.)