

UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATION

SECOND COMMITTEE OF GOVERNMENTAL EXPERTS
ON THE SAFEGUARDING OF FOLKLORE

(Unesco House, 14-18 January 1985)

STUDY OF THE POSSIBLE RANGE AND SCOPE OF GENERAL REGULATIONS
CONCERNING THE SAFEGUARDING OF FOLKLORE(1)

1. SUMMARY OF PREVIOUS WORK ON THIS SUBJECT

1. Introduction

1. Activities for the safeguarding of folklore were included in Unesco's programme in 1973 as the result of a communication addressed to the Director-General by the Government of Bolivia, asking that consideration might be given to the possibility of drawing up a new annexed Protocol to the Universal Copyright Convention which would govern 'the conservation, the promotion and the diffusion of folklore'.

2. This matter having been referred to it at its December 1973 session, the Intergovernmental Copyright Committee, which is the body responsible for dealing with questions concerning the application and operation of the Universal Copyright Convention and for preparing for any revisions of that instrument, asked the Unesco Secretariat to carry out a study on this subject and to report to it and to the Executive Committee of the Berne Union at their 1975 sessions, in so far as the protection of folklore might involve copyright.

3. In the light of the studies thus undertaken, and following the deliberations of the Committee of Experts on the Legal Protection of Folklore, which met in Tunis in July 1977 pursuant to resolution 6.121 adopted by the General Conference at its nineteenth session, it emerged that a system of protection for folklore required not only the examination in depth of the actual concept of folklore, but also rules for identifying the elements constituting each of the categories of expression forming part of this cultural heritage, and for its conservation, its preservation and its protection against misuse.

4. At this stage in the proceedings, the Committees of the Copyright Conventions recommended that studies on this subject should be pursued by Unesco on an interdisciplinary basis within the framework of an overall approach, and that the World Intellectual Property Organization (WIPO) should be associated in the examination of any copyright aspects involved in the legal protection of folklore.

(1) Some parts of this document were prepared by Mr Lauri Honko, Director of the Nordic Institute of Folklore, Turku, Finland, and others by Mr Hanna Saba, former Assistant Director-General of Unesco for International Standards and Legal Affairs.

5. The General Conference, at its twentieth session, having noted the work plan for resolution 5/9.2/1 (1) which gave effect to the aforementioned recommendations of the Committees of the Copyright Conventions, the Secretariat has since then carried out its studies at two levels: firstly, a comprehensive study of the protection of folklore which, if it is to be complete, requires an interdisciplinary approach and the adoption of measures within an integrated framework and, secondly, a study of the 'intellectual property' aspects involved, which is being carried out jointly with WIPO.

2. Comprehensive study of the protection of folklore

(a) The survey carried out among Member States

6. Paragraph 5022 of the work plan for resolution 5/9.2/1 adopted by the General Conference at its twentieth session provided that studies should be carried out by the Secretariat 'to identify ways of providing protection for folklore at the international level'. In pursuance of this provision, the Director-General sent out a questionnaire to Member States regarding the five points that had been singled out by the Tunis Committee of Experts referred to in paragraph 3 above. These five points were the following: the definition, identification, conservation, preservation and exploitation of folklore.

7. The survey thus carried out, to which 71 Member States replied, achieved the objective of obtaining accurate and detailed information about the present situation with regard to the protection of folklore in those Member States.(2)

8. In fact, the preservation of folklore presents considerable difficulties, as the traditional cultural heritage, besides being protected as intellectual property, needs to be protected for its own sake, or even against itself, for it is unstable, vulnerable, exposed to attack by time and by people, and in danger of withering away or becoming distorted.

9. Regarded from this point of view, the preservation of folklore certainly depends on law, but also on folklore as a science and, accessorially, on sociology, ethnology, museology, etc.

(b) The Committee of Governmental Experts of February 1982

10. In accordance with the Work Plan relating to resolution 5/03 adopted by the General Conference of Unesco at its twenty-first session, a Committee of Governmental Experts met at Unesco House from 22 to 26 February 1982. The purpose of this meeting was to analyse various aspects of folklore on an interdisciplinary basis, in an endeavour to cover all aspects of the problem, with a view to defining measures to safeguard the existence, development and authenticity of folklore and to protect it against the risks of distortion, including the definition of folklore, its identification, its conservation, its preservation and its utilization.

11. After the participants had unanimously emphasized the difficulty, not to say impossibility, of reaching a consensus on the concept of folklore, the Committee confined itself, as far as the definition of folklore was concerned, to distinguishing certain parameters. The importance of the identification of folklore was also noted, and it was suggested that appropriate institutions should be established for the collection and protection of folklore. In addition, since folklore was recognized to be a form of culture with ethical

(2) The results of this survey and an analysis of them appear in documents UNESCO/CPY/TPC/I/3 and 3 Annex which can be consulted on request.

implications, playing a part in social identification, which contributed to the overcoming of prejudices and the assertion of freedom, emphasis was placed on its conservation. The Committee further emphasized the need to ensure that folklore retained its dynamic character, in so far as the concept of a process was included in that of folklore. Attention was accordingly drawn to the dangers of using folklore out of its original context, and to the need to ensure the continuation of tradition and to avoid sacrificing the cultural heritage it represented for the sake of commercial gain or exploitation for the benefit of the tourist industry, since harmful effects such as plagiarism, imitation and caricature might ensue.

12. Upon concluding its deliberations, the Committee of Governmental Experts adopted a series of recommendations concerning (i) the definition, (ii) the identification, (iii) the conservation and analysis of folklore, (iv) its preservation, enhancement and reactivation and (v) its utilization. Furthermore, on account of the complexity of the various problems to be solved, this Committee recommended that Unesco should continue 'its studies and deliberations aimed at formulating an international recommendation ... in accordance with resolution 5/03 adopted by the General Conference ... at its twenty-first session'.(3)

3. Study of the 'intellectual property' aspects of the protection of folklore

(a) The model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions

13. In accordance with the decisions of the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union at their 1979 sessions, parallel with the activities carried out by Unesco within the framework of an overall interdisciplinary approach, Unesco and WIPO went more deeply into the question of the 'intellectual property' aspects of the protection of folklore.

14. A working group to study this question met at WIPO Headquarters in Geneva from 7 to 9 January 1980. This working group agreed that adequate legal protection of folklore was desirable and that such protection could be promoted at the national level by model provisions for legislation.

15. At the conclusion of its deliberations, the working group recommended that the Unesco Secretariat and the International Bureau of WIPO should prepare a revised draft of the model provisions for national laws and a commentary thereon, taking into consideration the ideas put forward during the debates, and that the draft and commentary should be presented for further consideration at a subsequent meeting of the working group. This meeting was held at Unesco's Headquarters from 9 to 13 February 1981 and adopted 'Model Provisions for National Laws on the Protection of Expressions of Folklore' so that they might be submitted to a Committee of Governmental Experts for further examination.

16. In accordance with the Work Plan for the above-mentioned 21 C/Resolution 5/03, and in pursuance of the decision taken by the governing bodies of WIPO at their sessions in November 1981, a Committee of Governmental Experts

(3) The recommendations of the Committee of Experts are annexed to document UNESCO/CPY/TPC/I/4 which can be consulted on request.

on the intellectual property aspects of the protection of expressions of folklore was jointly convened by the Directors-General of the two organizations at the WIPO Headquarters in Geneva from 28 June to 2 July 1982. After making certain amendments to the draft of model provisions submitted to it, this Committee finally adopted the 'Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions'.(4)

(b) Regional implementation of the Model Provisions and question of the international protection of expressions of folklore by intellectual property

17. In accordance with the Work Plan for resolutions 5/03 and 15.1 adopted by the General Conference of Unesco at its twenty-first and twenty-second sessions respectively, and in pursuance of the deliberations of the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union, Unesco and WIPO convened expert committees in Bogota (October 1981), New Delhi (January-February 1983), Dakar (February 1983) and Doha (October 1984) on the means of applying, at the regional level, the model provisions for national laws on the 'intellectual property' aspects of the protection of folklore.

18. The expert committee of Bogota underlined in particular the following points: (i) special emphasis should be laid on the protection of folklore by way of some kind of international instrument, in addition to the adoption of a model national law; (ii) the fact that manifestations of folklore did not correspond to the geographical frontiers of nations should be taken into consideration; the expert committee of New Delhi expressed the unanimous opinion that the protection of folklore against illicit exploitation and other prejudicial actions should be ensured by means of a specific international treaty; the expert committee of Dakar also stressed the interest of formulating at international level an instrument for protecting expressions of folklore against illicit exploitation and other prejudicial actions. The findings of the Doha committee were not known when the present document was being prepared and will be communicated at a later date to the Committee of Governmental Experts.

19. Like the regional committees of experts, the Committee of Governmental Experts of June 1982 discussed the advisability of preparing international regulations on the 'intellectual property' aspects of the protection of folklore.

20. The Committee was informed by the representative of Unesco that, in 21 C/Resolution 5/03 referred to above, the General Conference considered it desirable that measures designed to safeguard the existence and development of folklore and to protect it against the risk of distortion should be laid down in international regulations of general scope and that a preliminary study on the technical and legal aspects of this question should be submitted to the Executive Board of Unesco at its 116th session (May-June 1983).

II. THE DECISIONS OF THE EXECUTIVE BOARD AND GENERAL CONFERENCE OF UNESCO

21. In the light of the work already carried out and in pursuance of 21 C/Resolution 5/03, the Secretariat drew up a preliminary study on the technical and legal aspects of the safeguarding of folklore.

(4) The Model Provisions and the commentary on them are reproduced in document IGC(1971)/V/14 - B/EC/XXII/14 which can be consulted on request.

22. It emerges from this study that all the work so far done leads to the conclusion that it is not only desirable but a matter of urgency that measures be taken at the international level to preserve folklore.

23. According to this study, 'two approaches emerge from the work undertaken concerning the method to be selected for establishing regulations on folklore. According to the first approach, the preservation of folklore could take place within the framework of instruments of a specialized nature such as, for instance, the adoption of international regulations on the 'intellectual property' aspects of the protection of folklore, as called for by the expert committees of Bogota, New Delhi and Dakar.(5) This would be one of a series of specific projects designed to develop the safeguarding of folklore step by step. The second approach considers that, since the different constituents of the preservation of folklore are closely interlinked, it is only in the framework of a consistent body of precepts and rules encompassing all the disciplines that folklore is liable to draw on that the preservation of this cultural heritage can be ensured'.

24. The preliminary study also stated that: 'at the present stage of work on the question, it does not appear that the different constituents of the preservation of folklore - definition, identification, conservation, preservation, utilization - have been made sufficiently explicit for the General Conference to be able to consider adopting general regulations as things stand. However, as it seems certain that a satisfactory solution is conditional upon the integration and synthesis, within the framework of an overall and interdisciplinary approach, of all the elements required to ensure the preservation of folklore, the studies being carried out at this level should be pursued. Furthermore, taking into account the relatively urgent consideration that should be given to the adoption of specific international regulations on the intellectual property aspects of the preservation of folklore, inasmuch as this heritage suffers serious damage when used outside the communities that produced it, the necessary steps to formulate such regulations could be taken at the same time as work continued on the lines indicated above. As questions of intellectual property also fall within the fields of competence of the World Intellectual Property Organization, all activities in this direction should be carried out jointly with the latter organization'.

25. At the conclusion of these deliberations, the Executive Board adopted 116 EX/Decision 5.6.2 of which the Conference took note at its twenty-second session (October-November 1983). The decision is in two parts and includes the following paragraphs:

in Part A

- '3. Invites the Director-General to pursue, bearing in mind the observations and opinions expressed during the examination of this matter by the Executive Board, the preliminary study on the technical, legal and administrative aspects of general regulations concerning the preservation of folklore;
4. Decides to this end, in accordance with Article 4 (2) of the above-mentioned Rules of Procedure, that a Committee of Experts should carry out during the 1984-1985 biennium a thorough study of the possible range and scope of such regulations;'

(5) The findings of the expert committee of Doha were not known when the present document was being prepared.

in Part B

- '5. Endorsing the conclusions of the Director-General with regard to the urgent consideration that should be given to the possible adoption of specific international regulations regarding the "intellectual property" aspects of the preservation of folklore;
.....
7. Recommends the General Conference to invite the Director-General to take, jointly with the Director-General of WIPO, the requisite measures to look into the need for specific regulations of this kind and to prepare such regulations;
8. Requests the Director-General to submit to it a report on all these matters at its 121st session.'

26. The present Committee is meeting to give effect to Part A of the above-mentioned decision. So far as Part B is concerned, a group of experts to be convened under the joint auspices of Unesco and WIPO from 10 to 14 December 1984 is required under its terms of referenc to consider the need for a specific international regulation on the protection of expressions of folklore by intellectual property and the contents of an appropriate draft. When the present document was being prepared, the findings of that meeting were not yet known and will be communicated to the Committee of Experts at a later date.

III. THE VARIOUS ASPECTS INVOLVED IN THE SAFEGUARDING OF FOLKLORE

27. This part of the present document should try to identify and analyse those possible aspects of traditional folk culture for which safeguarding is essential and which may lend themselves to the eventual adoption of international recommendations concerning their protection, without harming spontaneous creativity. It should also describe those aspects that would not be suitable for concerted protective measures and the reasons therefor.

28. The inclusion of 'the intellectual property angle' makes it necessary to compare the results of the meeting in Paris from 22 to 26 February 1982 with the results of another meeting organized jointly by Unesco and WIPO in the same year, viz. the Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore, which was convened in Geneva from 28 June to 2 July 1982. It was, perhaps, not an accident that the Paris meeting did little more than touch on the 'use' and 'utilization' of folklore, which were the closest corresponding terms to the 'intellectual property aspect' of folklore on which the Geneva meeting concentrated almost exclusively. The author, who had the opportunity to attend both meetings, gained the vivid impression that there were at least two different concepts of safeguarding folklore. The approach in Paris was comprehensive; if a bit chaotic, it was scholarly, informative, ideological, and in its final recommendations it produced a wealth of ideas and methods for the safeguarding of folklore. It may be worth citing the preamble to the recommendations:

29. 'Folklore is integral to the cultural heritage of mankind. Hence it is a living, changing and developing phenomenon. Its manifestations include the various kinds of popular, ethnic, regional and national, often syncretic traditions which, to the common understanding of the range of social and cultural research disciplines, must be properly maintained, collected, stored or

archived, published, studied and utilized under special protection by nationally and internationally acknowledged means. Protection against neglect, distortion and abuse covers the rights of tradition bearers, folklore specialists, and the users of folklore data, as well as the needs of archives, museums, and research institutions.'(6)

30. This preamble reflects one of the main concerns of the Paris meeting, which was to emphasize the importance of the institutional infrastructure in the safeguarding of folklore. It seemed that even if the survival of folklore around the world did not necessarily depend on the existence of various institutions and associations working for its conservation and preservation, the designing and implementation of any plan to safeguard folklore would have to take place with the consent and co-operation of the expertise to be found within existing folklore institutions. The development of the folkloric infrastructure thus needed support, both nationally and internationally, not only in the developing countries most of which had already detected the cultural value of folklore but which were only beginning to develop the folkloric infrastructure, but also in many industrialized countries where folklore tended to become underestimated and neglected. The general nature of the Paris recommendations, which concerned the identification of folklore, the conservation and analysis of folklore and its preservation, enhancement and reactivation as well as the utilization of folklore, was optimistic and positive: through the methods suggested it would be possible to enhance the status of folklore in world culture. For lack of a better term, the Paris meeting may be said to have created a 'positive' concept of folklore protection.

31. The Geneva meeting, by contrast, sought the protection of folklore in specific terms. The purpose of the meeting was to draw up model provisions for national laws on the protection of expressions of folklore according to principles similar to those of intellectual property law, taking into account the results of discussions at a series of earlier meetings. The analysis of key terms and the technical problems of implementation of the provisions as law took up most of the time and led to some modifications of the text under scrutiny. The preamble to the model provision states that 'Folklore represents an important part of the living cultural heritage of the nation, developed and maintained by the communities within the nation, or by individuals reflecting the expectations of those communities', but that 'the dissemination of various expressions of folklore may lead to improper exploitation of the cultural heritage of the nation' and that 'any abuse of commercial or other nature or any distortion of expressions of folklore is prejudicial to the cultural and economic interests of the nation', therefore, the 'expressions of folklore constituting manifestations of intellectual creativity deserve to be protected in a manner inspired by the protection provided for intellectual productions'; 'such a protection of expressions of folklore has become indispensable as a means of promoting further development, maintenance and dissemination of those expressions, both within and outside the country, without prejudice to related legitimate interests'.(7)

32. The model provisions make the utilizations of folklore subject to authorization in an effort to impose prohibitions or restrictions on cultural distortions and economic exploitation of folklore materials. 'Distortion' is taken to mean any misrepresentation or derogatory use of an expression of

(6) Report of the Committee of Governmental Experts on the Safeguarding of Folklore, Unesco, Paris, 22-26 February 1982, document UNESCO/CPY/TPC/I/4.

(7) Document IGC(1971)/V/14 - B/EC/XXII/14 mentioned above (footnote 4).

folklore which is detrimental to the community from which the expression in question originates. Such use of folklore will be prohibited or punished. Authorization will be sought and granted for utilizations of folklore which are not distortive but made with gainful intent and outside their traditional or customary context. There is a fee attached to the authorization: its amount is fixed and collected either by the community concerned, corresponding to the author in copyright law, or by a competent authority, usually nominated by the State. The fees collected are used to promote or safeguard national culture or folklore or both.

33. It is between these two concepts of safeguarding, the comprehensive and the specific one, that the philosophy of work initiated and carried out by Unesco alone or by Unesco and WIPO has oscillated during the past decade. Of decisive importance as regards the former was the letter dated 3 August 1979 sent by the Director-General of Unesco to Member States and the appended questionnaire on the protection of folklore in Member States. Seventy Member States replied giving valuable information which was analysed in the document 'Study of the Measures for Preserving Folklore and Traditional Popular Culture'.⁽⁸⁾ The recommendations of the meeting in Paris, 1982, may be seen as a response to this study upon which the meeting was invited to comment. Although these two concepts of safeguarding folklore are interrelated, they do not seem to be very well integrated in the work carried out jointly by Unesco and WIPO. One reason for this may be that the comprehensive approach is relatively new and in need of precision, whereas the specific approach is already nearing its logical end. It is, however, obvious, that a better integration of the key concepts and terms in folklore protection is desirable, if and when decisions are taken concerning international regulations in the field of safeguarding folklore. Some discrepancies will be dealt with in this paper in an attempt to evaluate and reconsider the basic premises and suppositions in the current discussion on the definition, identification, conservation, preservation and utilization of folklore.

1. The definition of folklore: the battle of limitations and extensions

34. The urgency of and need to make an acceptable definition of folklore has been stressed from the very beginning, but despite all the informative and clever speeches that have been made, complete unanimity has not yet been reached. On the contrary, it begins to seem that the definition must not be made a matter for dispute if the work is to progress. Logically this does not appear very satisfactory, for how can it be possible to safeguard something that cannot even be defined? The debate on the subject has, however, gone so deep into the phenomena of folklore that it may be assumed that anyone involved for any length of time would gain a fairly good concept of what folklore is and how it functions. The debate has also brought out the differences between different countries and different cultural regions in attitudes to the folklore domain and its historical and cultural policy status in general culture. Furthermore the debate has been going on for so long - ten years now - that concepts of folklore have had time to develop and change. Changes are taking place at many levels: in the phenomena of folklore itself, in the way of thinking of the people studying them, and in the attitudes of the people influencing the position of folklore in cultural policy.

35. The definitions put forward may be placed in one of three categories: criterion, list and sentence definitions. Criteria for folklore products are, for example, that they are anonymous (they must have an author, but he is not

⁽⁸⁾ Document UNESCO/CPY/TPC/I/3 and 3 Annex mentioned above (footnote 2).

known), patterned (expressions observe given models and rules), group-oriented (there exists a group maintaining and recognizing them), popular (they do not originate from literary sources, or at least not directly) and oral (they are transmitted in face-to-face situations without any written support). All products satisfying the criteria listed are, according to this definition, folklore. List definitions are usually longer: they usually present a fair number of representative folklore genres and/or domains. Examples are given in a list that is never fully exhaustive but which may give a sufficiently good picture of the object for definition while leaving the reader to decide what features the phenomena listed have in common. The sentence definition combines factors from different levels, such as content, function and significance. It tries to direct the attention at the essential, aims at an apt form but does not attempt to be exhaustive.

36. The first definitions of folklore proposed during debate within Unesco were based on such criteria as 'anonymous authorship, traditionality and popular origin'(9) and 'impersonal, oral and traditional artistic creation'(10). It has not always been certain whether the words of definitions mean the same thing: in the latter example 'impersonal' could well be replaced by 'collective', 'traditional' by 'patterned'. It was at that stage deplored that the word 'folklore' meant both folk tradition and the study of it; this has been put right by the introduction of the term 'folkloristics' instead of the earlier 'science of folklore'.

37. In the mid-1970s the theory of the impersonal, collective creation of folklore had a clever advocate;(11) this outlook certainly made it easier to draw the line against copyright based on personal authorship, on which it was not considered possible to found the safeguarding of folklore. Among the professional folklorists collective creation was widely branded as the legacy of romantic folklore pursuits; now was the time for a performance-oriented paradigm that inevitably led to an emphasis on the role of known folk performers at the expense of the hypothetical original authors. But a counter-reaction came from the developing countries: it was demanded at the 1977 meeting in Tunis that the criterion 'impersonal' be replaced by 'anonymous', because 'in Africa the personality of the artist is an important part of folkloric expression and the use made of it is at least as important as the material itself'.(12) It was pointed out that in the same context that 'it was absolutely vital to come to an agreement on the meaning of the terms selected, the semantics of which vary from country to country'. If the problem could be

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- (9) Proposal for international instrument for the protection of folklore. Intergovernmental Copyright Committee, Twelfth Session, Paris, 5-11 December 1973. Document IGC/XII/12.
- (10) Consideration of the possibility of establishing an international instrument for the protection of folklore. Intergovernmental Copyright Committee, First Extraordinary Session of the Committee of the 1971 Convention and Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) (Third Extraordinary Session). Geneva, 10-16 December 1975. Document IGC/XR.1(1971)/15 - B/EC/IX/11.
- (11) Intergovernmental Copyright Committee, Second Session of the Committee of the 1971 Convention and Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union), Twelfth Session (Fourth Extraordinary Session). Paris, 28 November-6 December 1977. Document IGC(1971)/II/17 - B/EC/XII/13.
- (12) Report of the Committee of Experts on the Legal Protection of Folklore - Tunis, 11-15 July 1977. Document UNESCO/FOLK/I/4.

solved by putting it to the vote, individual creation would, according to an inquiry conducted by Unesco in 1979, probably receive far more votes than collective (admittedly the presentation of the results of the inquiry to some extent complicates the drawing of conclusions).(13)

38. The problem cannot, however, be solved at such a general level. We need a more organized picture of folklore made up of widely differing genres, that is partly common property on everyone's lips and partly knowledge in the possession of specialists in tradition. In the case of certain genres the performer plays a decisive part: it is not enough for him simply to know and remember the motif contents, stylistic norms and language of a given genre; he must also be able to select the elements suitable for a given performing situation and audience and create, as it were, a new entity out of these traditional elements. In other words, there are folklore genres in which the role of the individual is emphasized in the production and performance of tradition. Examples are many genres of folk narratives, ritual poems (e.g. laments following the mood of a funeral), incantations, lyrical songs, etc., coupled together to form broader entities. There is true re-creation when, for example, a myth explaining the origin of disease is adapted to, say, the birth of a bear: a new idea is expressed by drawing on elements of an existing myth poem, an existing structural scheme and style. But it only becomes folklore if it is in keeping with the world view of the community and gains the acceptance of the group surrounding the performer.

39. On the other hand there are some genres that are at home almost anywhere and do not bear any individual mark whatsoever. Such genres are proverbs, which are repeated again and again and always in exactly the same words. In this case the creativeness of the performer is manifest in a different way: the decisive point is now his ability to grasp the situation, to select the right saying and to direct it so that it takes on actual significance, which it may not necessarily have in a different performing situation. Variation in folklore is generally a sign of creative activity, but the absence of variation does not yet signify the disappearance of creativity, for even then the context of folklore varies. This example illustrates the difficulty of applying a criterion. Sometimes it applies, sometimes it does not. The impersonality or collectivity of folklore expressions can be defended in cases where the variation of folklore is minimal and the personal imprint is lacking. Another possible argument would be that we may not know much of the first hypothetical performer, the first creator of an item of folklore, whereas we know that folklore is repeatedly adopted by new performers and adapted to new situations. These new performers and several adaptations contribute much to the development of an item of folklore. The creator of an ingenious adaptation may still remain anonymous thus, but he is much closer to us in time than the first hypothetical creator. In fieldwork situations we may come across adaptations the author of which we can identify. But since he or she is the last link in the chain of adaptations, we may hesitate to call him or her the author. Earlier performers may have made considerable contributions to the form and content of a product of folklore, but we are not able to assess the scope and nature of these contributions. Thus the slightly absurd concept of multiple authorship remains with us, but does not bereave us of the individuality of folklore expressions nor of the creativity of their producer-performers.

(13) Study of the measures for preserving folklore and traditional popular culture. Committee of Governmental Experts on the Safeguarding of Folklore, 22-26 February 1982. Document UNESCO/CPY/TPC/I/3, para. 16.

40. Another argument that has occasionally been used in defence of the impersonal nature of folklore has been that folklore performers are much more restricted to the conventions and norms of the surrounding community and the prevailing situation than writers of literary pieces in the Western sense of the word. In other words, folklore performances are social, whereas writing is individual. This may be true, but only partly so. A solitary writer is also subject to the restrictions and conventions of his culture, perhaps even more so in times of keen competition on the book market. On the other hand, studies of a larger number of ballad singers or other performers have shown that there may, for example, be three or four distinct personality types among them which are reflected in the folklore they produce: one reproduces the ballad in exactly the same words time after time, the second is capable of short cuts or extensions without changing the plot, the third loves to remould the entire ballad by resorting to elements derived from other ballads, and so on. Thus it is not only the nature of the genre but also the type of performer that sets the limits for the variation of folklore. The reason why folklore does not change more than it does is again that much of the variation is functional, situational and temporary: this so-called small variation is so to say rolled back after the performance, the next performance begins from the premises of another situation and does not carry the adaptations caused by the previous one.

41. There are also some stereotypes that have to be scotched in the application of such widely circulated criteria as 'traditional' and 'oral'. Instead of doing this, let us consider another factor in the process of defining folklore which has had and will have far wider consequences in the planning of international regulation for the safeguarding of folklore: the tendency to extend the field of folklore. We know that the recommendation by one expert regarding the restriction of the initial legal protection of folklore to dance, music, song and oral narratives⁽¹⁴⁾ was rejected. It was already suggested in Tunis in 1977 that folklore should not be conceived of as being merely oral and immaterial. Instead of orality the rather mystifying criterion of 'empirical transmission' was introduced and has lingered ever since. Basically the experts wanted to extend the field of folklore to cover physical objects in painting, sculpture and crafts.⁽¹⁵⁾ The list of items belonging to folklore thus began to expand to take in 'different types of folklore: (i) folklore concerning the field of knowledge, e.g. medicine, botany, philosophy, etc.; and (ii) folklore in the field of the arts: music (including folk song, instruments), dance, plastic art, visual art, verbal art (including folktales, proverbs, verse, etc.)'.⁽¹⁶⁾ These tendencies to expand were based at least in part on the attempt to understand culture as an entity and to see the significance of folklore as a factor always present in culture. Although a holistic approach is essential to the understanding of culture and folklore, for example in scientific research into them, expanding the concept meant that folklore came to apply to almost all culture, at least in countries where folklore is conceived of as a dominant element of culture and not merely as a substrate, inherited from bygone times and/or restricted to certain social classes only. From then onwards folklore and 'traditional culture' began to function as synonyms. Countries in which indigenous written culture, drama and other arts were inducted in the concept of traditional culture were prepared to go even further: the representatives from these countries wanted to abandon the term folklore altogether.

⁽¹⁴⁾ Study of the international regulation of the intellectual property aspects of folklore protection. Working Group on the Intellectual Property Aspects of Folklore Protection. Geneva, 7-9 January 1980. Document UNESCO/WIPO/WG.1/FOLK.3, para. 31.

⁽¹⁵⁾ Document UNESCO/FOLK/I/4 mentioned above (footnote 12), para. 15.

⁽¹⁶⁾ Document UNESCO/FOLK/I/4 mentioned above (footnote 12), para. 23.

42. Although extensions of the concept of folklore were possibly well motivated from the point of view of the countries proposing them, they also had adverse effects. Paradoxically they at the same time reinforced the importance of protecting folklore and acted as a brake on its speedy implementation, for the files of the phenomena and mechanisms to be mastered began to be almost too complicated. Partly for this reason one expert proposed that folklore continue to be defined as impersonal, traditional and oral, but that 'any folklore-type phenomenon in any material form belongs to folk art not to folklore in the strict sense of the term, so that costumes, drawings, rugs, altars, masks and generally speaking all three-dimensional forms fall into a neighbouring but not identical category'.(17)

43. Against this background it is possible to understand the list definition of folklore applied in the 'model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions', which in its most recent form says:

'For the purposes of this [law], 'expressions of folklore' means productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of [name of the country] or by individuals reflecting the traditional artistic expectations of such a community, in particular:

- (i) verbal expressions, such as folk tales, folk poetry and riddles;
- (ii) musical expressions, such as folk songs and instrumental music;
- (iii) expressions by action, such as folk dances, plays and artistic forms or rituals;

whether or not reduced to a material form; and

- (iv) tangible expressions, such as:
 - (a) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes;
 - (b) musical instruments;
 - [(c) architectural forms]'.(18)

44. There is a clear demarkation line between group (iv) tangible expressions, and the rest. In this group expressions are tangible in their primary form, i.e. they are created as objects. In the first three groups the expressions are primarily immaterial but may be produced in a material form, that is to say, the tales can be written down, the music may be notated and the bodily action may be filmed or, as is the case with dance, for example, transformed into a written choreographic notation. In the first three groups the protection would ideally cover three things: (1) the folklore product as an idea or theme in the mind of its creator or performer; (2) the empirical

(17) Document IGC(1971)/II/17 - B/EC/XII/13 mentioned above (footnote 11, para. 37), para. 17.

(18) Document IGC(1971)/V/14 - B/EC/XXII/14 mentioned above (footnote 4, para. 16), Annex, p. 6.

manifestation of that idea or theme in actual performance, i.e. the observable folklore, or folklore in action; and (3) the documentation derived from the actual performances of folklore, i.e. folklore as it is preserved in different types of documentation, placed in archive collections, publications, etc., i.e. folklore in documentation. We will be returning to the problems of protection in these three cases and to the different nature of protection in the case of material products of folklore, here defined as tangible expressions.

45. The concept of folklore seems to be easy to expand and difficult to limit. An example of this is the criterion 'artistic' in the above definition. It was originally introduced to delimit the field of protected expressions of folklore into a controllable magnitude. It well served the purpose of creating a parallel provisions for a law which would constitute an independent parallel to the copyright law, based on 'community-authorship' instead of individual authorship as in the copyright law. In constructing the parallel the word 'work', which is so central in the copyright law was avoided by speaking of 'creation', which was soon further neutralized into 'expression'. 'Artistic' came to correspond to 'original' and community replaced the author of the work. The community 'maintains', if not creates, expressions of folklore which lack originality in the sense of the copyright but which are 'characteristic elements of the traditional artistic heritage'. The adjectives 'characteristic' and 'artistic' retain something of the idea of the copyright law and make the analogy possible. 'Artistic' has, however, caused some controversy. At the meeting in Geneva in 1982 the question was raised as to whose concept of art was to be applied. Could the aesthetics of one culture be forcibly applied to products of completely different cultures? Was it expedient to apply a system of art forms developed within a literary high culture to folklore? Or was it the aim to unearth folklore's own concept of art? The answer reads as follows:

'The fact that only "artistic" heritage is being considered, means that, among other things, traditional beliefs, scientific views (e.g. traditional cosmogony), substance of legends (e.g. commonly known course of life of traditional heroes like King Arthur and his knights) or merely practical traditions as such, separated from possible traditional artistic forms of their expressions, do not fall within the scope of the proposed definition of "expressions of folklore". On the other hand, "artistic" heritage is understood in the widest sense of the term and covers any traditional heritage appealing to the aesthetic sense of man. Verbal expressions, which would qualify as literature if created individually by an author, musical expressions, expressions by action and tangible expressions may all consist of characteristic elements of the traditional artistic heritage and qualify as protected expressions of folklore'.(19)

46. It is unclear whose concept of art will be applied, but the assumption seems to be that there exists a universal 'aesthetic sense of man'. The negative aspect, i.e. what is not going to be included under the 'artistic' heritage-occasioned immediate criticism of the limitation at the regional

(19) Document IGC(1971)/V/14 - B/EC/XXII/14 mentioned above (footnote 4, para. 16), Annex, p. 11.

meetings for Asia(20) and Africa(21). The experts were in favour of broader protection than was suggested in the model provisions.

47. The notion of 'characteristic element' may also cause confusion, if not interpreted correctly. The latest commentary to the model provisions explains:

"Characteristic elements" of the traditional artistic heritage, of which the production must consist in order to qualify as the protected "expression of folklore", means in the given context that the element must be generally recognized as representing a distinct traditional heritage of a community. As regards the question of what has to be considered as belonging to the folklore of a "community", one or two members of the Working Group suggested that the answer required a "consensus" of the community which would certify the 'authenticity' of the expression of folklore. The proposed definition does not refer to such 'consensus' of the community since making the application of the law subject in each case to the thinking of the community, would render it necessary to make further provisions on how such consensus would have to be verified and at what point in time it must exist. The same would apply to the requirement of "authenticity", which would also need further interpretation. On the other hand, both the requirement of the "consensus" and "authenticity" are implicit in the requirement that the elements must be "characteristic" that is, showing the traditional cultural heritage: elements which become generally recognized as characteristic are, as a rule, authentic expressions of folklore, recognized as such by the tacit consensus of the community concerned'.(22)

48. If the community concerned is not asked anything, as seems to be the case, it is unclear what methods will be used to establish that a particular expression of folklore is a characteristic element of the traditional artistic heritage of the community in question. The matter is further complicated by the fact that the content of the expression as such may not be very unique, that is to say, there may be other communities which possess the same expression and could theoretically claim at least partial ownership. Folkloristic studies on what actually is characteristic or typical of a particular community have shown that unique motifs are rare in folklore and not necessarily very important to the community. What is typical or characteristic is the way in which inherited and borrowed material is moulded and developed into ecotypical formations not to be found elsewhere as well as the place of these formations in the wider system of traditions. For the consensus of the community, if this were taken into account, this tradition-ecological proof will hardly be available; consensus normally arises from a reflection based on central values and the social and cultural identity of the community.

49. Unlike the list definition formulated in Geneva in 1982 for the model provisions discussed above, the definition proposed by the Committee of Governmental Experts on the Safeguarding of Folklore in Paris in 1982 is a sentence definition:

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- (20) Report of the 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, 31 January to 2 February 1983. Document UNESCO/WIPO/FOLK/ASIA/5, para. 16.
- (21) Report of the Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore, Dakar, 23 to 25 February 1983. Document UNESCO/WIPO/FOLK/AFR/4, para. 17.
- (22) Document IGC(1971)/V/14 - B/EC/XXII/4 mentioned above (footnote 4, para. 16), Annex, para. 36.

'Folklore (in a broader sense, traditional culture) is a group-oriented and tradition-based creation of groups or individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity; the standards and values are transmitted orally, by imitation or by other means'.(23)

50. This definition places the weight of the argument on cultural and social identity. This may be sound in so far as the people may not be interested in folklore for its own sake, but they are most likely to be concerned with the protection of those creations and products of their folklore or traditional culture which function as symbols of their cultural and social identity. They are also likely to be more interested in the norms and values expressed and transmitted by folklore than in the folklore products as such. This definition stresses the elements and mechanisms in folklore which give it meaning, i.e. the communication of tradition and the value-oriented messages transmitted through folklore. The basic unit for folklore communication is the social group. The individual may belong to several social groups but at the moment of his or her folklore performance he or she has to make a choice regarding the group whose identity he or she is going to represent in the performance situation. Communicated values are inherent in the item of folklore itself, partly in the actual performance, but not necessarily in the individual at large, unless he or she becomes the symbol, an idol of the group. Therefore it is normally the folklore product as performed which is regarded as an adequate expression of the cultural and social identity of the community.

51. The Geneva meeting had the Paris definition before it. For the sake of clarity it may be appropriate to point out that when the Geneva meeting speaks of 'individuals reflecting the traditional artistic expectations of such a community', it is only the individual as the performer of a particular item of folklore that is thought of here. It may also be noted that the Paris definition does not use the word 'artistic' which persists in the Geneva definition.

52. Definitions of folklore are probably less important than the basic assumptions about folklore latent within them. It is possible to deal with folklore without a generally accepted definition, but the attitudes towards and assumptions about folklore which guide the designing of international recommendations for the safeguarding of folklore may not be reversed as easily as some definitions.

2. The identification of folklore: is an international register of folk-cultural properties feasible?

53. The Committee of Governmental Experts meeting in Paris in 1982 gave the following outline for the identification of folklore:

'Folklore, as intellectual property must be safeguarded by and for the group (familial, occupational, national, regional, religious, ethnic, etc.) whose identity it expresses. Its forms include: language, literature, music, dance, games, mythology, rituals, beliefs, customs, handicrafts, architecture and other arts. The identification of each traditional form requires appropriate research methodology'.(24)

(23) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6, para. 29), Annex I, p. 1.

(24) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6, para. 29), Annex I, p. 1.

54. Folklore materials of the world are here viewed as consisting of the intellectual and material culture, i.e. folk-culture in its multifaceted forms. Recognizing these forms is the primary task and requires appropriate research methodology. The materials should be organized according to the social groups maintaining and developing them. This line of thought logically leads to an international instrument which would enable people and institutions in the various countries of the world to obtain information about existing folklore as it has been documented. The instrument would help Unesco and other international organizations in planning measures to be taken for the safeguarding of folklore. According to the experts' recommendation 'an international register of folk-cultural properties' should be established and placed at Unesco. As well as compiling an international register, the unit at Unesco would disseminate guidance in collecting, archiving, transcribing and indexing material on a national or regional basis; it would also be involved in training personnel and would provide at least some of the equipment.

55. Is it feasible to think of establishing an international register of folk-cultural properties? The task is breathtakingly large, if one looks at the sheer number of items to be registered. A single folklore archive in Helsinki contains three million items in languages and dialects which are not accessible to the international reader. This material represents only intellectual folklore. The decision to include material culture in the project means that the collections of the museum network would have to be registered as well. The volume and complexity of the materials to be taken into account and available in the institutions of only one city is impressive. Leaving all local and minor institutions aside, there are 24 institutions in Finland and 95 institutions in the Nordic countries (Denmark, Finland, Iceland, Norway, Sweden) which would have to be placed on the list. This is the infrastructure that at present holds the knowledge about folk-culture and to a large extent the documented materials on folk-culture in one region, the Nordic countries. It is a heterogeneous group of folklore archives, ethnological museums, university departments, manuscript collections, special archives (for folk music, workers' culture, dialects, maritime culture, etc.), libraries, broadcasting companies, etc., but it is capable of co-operating at both national and regional levels and also has fairly good channels for the latter.

56. In view of the volume of folk-cultural materials that even a relatively small regional infrastructure may contain, it is questionable whether it is feasible to bring everything into one register. This could in theory be done by abandoning registration by item and transferring to the documentation of broader corpora of material. For example, the 100,000 items in the ethnomedicine section of a given archive would not be registered item-by-item, not even by individual disease, cure or certain group of diseases. Instead the collection would be said to contain material on ethnomedicine, mentioning the volume of material and stating the main principle on which it is organized. With this degree of detail archives could relatively quickly produce a brief first report on their materials. Time and concrete needs would show what materials required greater precision, and by what technique. The archives in relatively developed areas will probably be transferring to computerized indexing, which may in time open up new potential for central archive-type data processing, which the possible Unesco unit would carry out. It could never collect primary material, but it could contain information on existing primary material and as far as possible supplement this material, providing greater depth and precision. By keeping in regular contact with the vast field of folk-culture institutions in different countries, this unit could steadily develop its plans of action, which would presumably differ slightly from one area to another.

57. The example analysed here is from a developed area. Obviously areas with few or no functioning institutions need a different methodology, in which the emphasis is on training. Every country does, however, have some network of officials responsible for folk-culture that could, with even meagre resources, assist with the basic charting of folk-culture phenomena. The first step towards implementing such plans would be to make a survey of the institutions engaged with full-culture and folklore, as was indicated in the recommendations of the Paris meeting. (25) This would be neither particularly expensive nor time-consuming. In the Nordic countries, for example, this has been done and the outcome is 160 printed pages (A Guide to Nordic Tradition Archives, NIF Publications No. 7, Turku, 1978). A brief account is given of the 95 institutions mentioned, providing a picture of the size of each unit, its plan of operations, the nature of its collections and its potential for handling requests for material. An infrastructure survey such as this, by country and area, could develop into an instrument by which Unesco really could influence the safeguarding of folklore.

58. The next step would be to adopt a global classification of folklore and folk-culture. There is extensive but uneven coverage of folk-cultural phenomena in the form of various type indices and catalogues. Various genres such as folktales and ballads, have been thoroughly classified in a standard way in a large number of countries, and the results of classification have been published in Folklore Fellows' Communications (since 1910) and other folkloristic series. Some fields of material culture have been catalogued fairly systematically. In other words, the classification does not have to start from zero: using a cumulative computerized system to bring together existing registers of folk-culture in a fairly large number of countries, it would in certain fields of folklore be possible to achieve a very satisfactory level of identification. For those domains of folklore and folk-culture which lack a unified system of classification, the system could be created at the level of abstraction and itemization best serving the international co-ordination of identification. Member States of Unesco and various institutions in them could be encouraged, as recommended by the Paris meeting, to design and develop identification and registration systems. Ideally data systematization thinking would have to be introduced at all levels of the archiving process: fieldwork and collection, transcription, and indexation. The way could be paved for international co-ordination of the work by recommending certain methods and means of standardization of folklore collecting and archiving. The possible unit at Unesco could produce handbooks and leaflets in different languages for this purpose.

59. In answer to the question posed at the beginning, a single, detailed register of folk-cultural properties is at this point not realistic at global level. On the other hand, identification has been carried out in many countries over the past 100-150 years, and the results of this work in fact invite some international unit at Unesco or elsewhere to assume the responsibility of co-ordinating, or recommending the co-ordination of existing registers. The systems of classification would simultaneously develop in a unified manner and they could be placed at the disposal of countries which do not yet possess a well-developed infrastructure and which may thus be able to take certain short-cuts to modern collecting and archiving. The cleft between developed and developing systems of work in the field of traditional culture could partly be eliminated in the process of co-ordination and unification.

(25) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6, para. 29), Annex I, p. 2, Recommendation IV.A.4.

60. The first, not very costly project would be to map not folklore itself but the infrastructure through which knowledge about folklore is obtainable.

3. The conservation of folklore: activating the infrastructure to international co-operation and protection of folklore

61. 'Conservation and analysis are concerned with documentation regarding folklore traditions and their object is, in the event of non-utilization or development of such traditions, to give researchers and tradition-bearers access to data enabling them to understand the process of evolution and modification of tradition.'(26)

62. The ultimate legitimation of the existence of an infrastructure of archiving and research institutions was well expressed in this formulation of the Paris meeting in 1982. Times change and so do folk-cultures; what was once important falls into oblivion. To preserve a picture of the past as it was is perhaps the prime task of the institutional scholarly network dealing with folk-cultural properties. By documenting certain traditions this system encapsulates and puts aside parts of folklore for later reviewing.

63. What is the relation between notes, tapes, films, etc. amassed in the archives and living folklore? It could be argued that they are only graveyards of folk-cultural properties. How can a silent record ever replace a folktale which is constantly being renewed in the minds of storytellers and audiences? Intellectual folklore does not have a stable 'master form' that can be stored and alleged to represent all its possible manifestations. When an item of folklore is documented, it attains a permanent form and is raised from the dynamic folkloric process of communication of which it was a part. It is dead, because it does not change any more, and nor does it participate in the communication of tradition in a natural context. Notes and tapes are not folklore, they are 'works derived from folklore', as one expert once put it.

64. Most archived data remains silent for long periods of time. The only way to resurrect it is to review it. This 'second life' of folk-cultural properties is characterized by a motive of use which may be scholarly curiosity, a quest for information about one's social and cultural identity, a plan for commercial publication, an educational need, etc. This motive of use affects the selection, editing and presentation of the material. It is at precisely this point that the question of the control and safeguarding of folklore is actualized. It may be said that only documented folklore, 'works derived from folklore', can be effectively protected. Living folklore, the ideas and themes in the mind of a tradition-bearer which manifest themselves in a variety of ways in his performances, cannot be protected directly, because it lives, changes and dies within individual and social life in a way that cannot be regulated from outside. Attempts may be made to preserve the individual and his folkloric capacity, to maintain his traditional milieu and the particular context in which these folklore performances are situated. In the modern world, however, there are very few cultures that can be completely insulated against changes that will, among other things, cause folklore to change and even die. Thus the attempt to conserve living folklore in its natural state seems to be doomed at the very outset. It is not the folklore performance but the record of that performance that can be either abused or properly stored and protected. The idea of conservation and protection may easily turn against folklore, against its creators and legitimate users, if pushed too far.

(26) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6, para. 29), Annex I, p. 2.

65. This means, among other things, that the infrastructure described above assumes greater responsibility than has been generally realized or admitted in the Unesco process for safeguarding folklore.

66. The status of material folk-culture may seem a little bit different from what has been said above mainly having intellectual folk-culture, i.e. folklore proper, in mind. Material folk-culture consists of objects which range from fish-hooks to buildings, and these objects we tend to conceive as entities independent from their creators. It could perhaps be argued that similarly as in the case of intellectual folklore it is the idea of a fish-hook or building and not only its occasional concrete manifestations that would have to be taken into account and protected. But that would be stretching the comparison too far, because as property the folk-cultural objects in their natural state and use need not be in any close relationship to their producers, even if the person and skill of their creator or producer may add to their value. Items of material folk-culture, and this includes also creations of material folk-art, have their own definable market-value, they can be bought and sold. Separate thinking and separate strategies of protection will be necessary for the two main domains: intellectual folklore and material folk-culture. Also the infrastructures taking care of both domains are separate. The objects of material folk-culture normally go to the collections of some museum, either a special ethnographic museum or some local, historical or art museum. Also the people engaged in the work with objects of material folk-culture belong to the network of museums. An example of the problems occasioned by the protection of culturally valued objects is that of their restitution back to their countries of origin which has been examined by Unesco since 1974, partly in co-operation with the International Council of Museums (ICOM). Recommendations 51 to 56 adopted by the World Conference on Cultural Policies, held in Mexico from 26 July to 6 August 1982, deal, in particular, with this question.

67. The problem with the archives for intellectual folklore is that they are so dissimilar, have grown individually, do not belong to one system of institutions and have poor contacts with each other. If we compare them with the network of historical or public archives or with the system of museums, which have their own international organizations and contacts, we see the tasks of co-operation and co-ordination that await here. Folklore archives are invisible in the activities of the International Council of Archives (ICA) which is the main international link between historical and public archives. It would certainly be of great help for folklore protection if a network of archives, comparable to the historical archives, could be established.

68. From the pragmatic point of view it is therefore necessary to adopt a liberal attitude towards the question: what constitutes the infrastructure for intellectual folk tradition? Any official, any institution, any society and why not a private person can all qualify, if they have the obligation and resources to deal with matters of intellectual folklore and its archiving. In other words, the concept of infrastructure need not be taken too solemnly.

69. It is clear that if networks of what here can summarily be called folklore archives could be created both nationally and internationally, i.e. if the existing units could be brought into contact with each other, they would also be within the reach of Unesco and provide the best thinkable channel for implementing the ideas of safeguarding folklore. Only if the principles of folklore protection begin to be discussed and taken into consideration in the

planning of various activities and services towards the public, only then folklore protection will take shape as a positive action and not as a fringe occurrence of legal controversy.

70. What could be done to activate the probably already existing but uncharted network of folkloric infrastructure? First of all, the Unesco unit in charge of activities should start compiling a mailing list of all institutions and individuals contacted so far in the Unesco process of safeguarding folklore. This would include the answers to the questionnaire sent by Unesco in 1979 and be completed, if need be, with the addresses of the institutions behind the answers including leading staff and consultative experts connected with them. Contacts should be taken to most important international associations in the field: International Society for Folk-Narrative Research, International Folk Music Council, International Association for Anthropological and Ethnological Sciences, etc. Their membership lists should be included into the Unesco list and their assistance should be requested in the charting project of the folklore infrastructure of the world. The next step could be a regularly appearing bulletin of folklore protection edited at Unesco and creating a link between all institutions and individuals within the reach of Unesco likely to be interested in the project. Because the institutions are mostly small and fairly isolated the psychological situation is such that they are likely to be happy to be recognized by Unesco and will respond.

71. As to the following possible step of activation it may be stated that folklore protection activities would urgently need an outline of folklore and folk-cultural properties. This would have to be created on a global basis with the help of best available classifications. One could start with the Human Relations Area Files (HRAF) and see, whether its 'outline of culture' could be applied. There are many other folklore classifications but they are usually more specialized and concern various fields of folklore (cf. the type-indices published in Folklore Fellows' Communications and other series). There are certainly also better general outlines than the one to which the documents compiled at Unesco constantly refer.(27) The purpose of the work would be an Outline of Folklore and it could proceed through the following stages: (1) preparatory work at Unesco and selected international organizations in the field of folklore; (2) a seminar organized by Unesco where experts could finalize the model outline; and (3) a committee of governmental experts which would be convened to decide upon the outline and other measures to be taken for the safeguarding of folklore. The result of the work would be distributed to the Member States and the recipients of the possible Unesco Bulletin for Folklore Protection.

72. The outline would then constitute a necessary system and basis for references. It would be good to have also for another reason. Despite resource limitations and lack of appropriate training the tradition archives are planning to move towards computerized indexing of folk-cultural material. This will be a long process of putting all existing individual catalogization systems under the umbrella of a common indexation language. The idea here is that of a cumulative index which tolerates various classification systems. Thus the archives and similar institutions would not have to change their basic cataloguing system but they would adapt it to the international indexation language and develop it along the lines recommended. This project does not actually exist in any international form yet, but the work has begun, for example, on a regional basis (cf. the recent publication by the Nordic Institute of Folklore on the co-ordination of indexing of folklore in the Nordic countries, NIF Publications No. 14).

(27) Preliminary Study on the Technical and Legal Aspects of the Safeguarding of Folklore, Unesco Executive Board, 116th session. Document 116 EX/26.

73. This trend is based on the recent advances in data technology and has direct bearing on the safeguarding of folklore. The dawn of the age of computerized flow of information has begun and in due course much of the materials of the folklore archives, now effectively buried behind specialized retrieval systems, will be read on the display screens of home computers. This development will undoubtedly help students, teachers and scholars to utilize folklore in educational and scholarly work. But there are reasons to believe that problems of illegitimate use of folklore materials will also arise. That is why the development should proceed under the control of some national and international mechanisms. One possibility is to attach to the development of an indexing language for the archiving and computerized retrieval of folklore data also the planning of protection of these data against illicit use. Publication of folklore materials is another field where positive recommendations(28) and some guidelines for the publication of archive materials would not be out of place already today.

4. The preservation of folklore: can folklore be made to flourish in the modern world?

74. The definition of the concept of preservation as formulated in the Paris meeting 1982 is the following:

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

75. The idea is that folklore can under certain circumstances help to eliminate those asymmetries and imbalances which are created by the overwhelming dominance of certain cultural forms such as Western industrialized culture, high cultures in general and the mass media culture. These hegemonies tend to erode the feeling of self-esteem, self-reliance and tradition-oriented social or cultural identity. The nearest available and most 'own' culture may seem in comparison with hegemonic cultural forms impotent, old-fashioned and trivial. Even educational work which is not well adjusted to various culture-ecological milieux may disseminate similar ideas and emotions. This leads to rootlessness and hollow imitation of idols created partly by profit-hungry entertainment industries. To counterbalance this development does not mean that all folklore, whether good or bad, should be preserved, used and, if necessary, revitalized at any price or that best achievements of human culture should be opposed only because they have become part of an international high culture. A good balance is at best delicate to create and should be planned separately for each nation and subculture. Here the impact of the infrastructure discussed above cannot become decisive, because it is the task of the identity groups themselves to become emancipated and speak out for themselves. The folklore expert, if he is not born in and does not live in the identity group, can only make his expertise and advice available; he may, for example, inform the people interested in using folklore in a special way about the authenticity and applicability of various traditions. Dynamic and vital folklore hardly needs regulation, its hallmark is free growth and good

(28) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6) Annex I, p. 3, Recommendation IV.A.8.

integration into the social world. But special folklore projects, such as 'festivals, fêtes, exhibitions, films, seminars, symposia, congresses and so forth', to quote a recommendation from Paris(29) may be a different thing. There a well-placed word of advice may protect folklore from becoming a caricature of itself, a distortion of what it actually is.

76. The recommendations of the meeting in Paris contain several important angles of safeguarding folklore. One is that of educational curricula where the systematic teaching of traditional culture should be introduced at all levels.(30) Secondly, urban popular cultures in the world today are rapidly substituting rural milieux as the actual scene of folkloric creativity,(31) a circumstance to which the institutional infrastructure of folklore work has been slow to adapt. Thirdly, the existing archives are expected to make available copies of all materials collected in a particular community or region and local folklore archives should be established for this purpose.(32) Although the question may arise as to who will be entitled to the original and who will have to use the copy, the idea is neither too costly nor militant in the age of computerized data retrieval and the emancipation of regional and social identity groups. Fourthly, it is recommended to the Member States that they recognize and protect the rights of tradition-oriented groups in general and quite especially the rights of indigenous or aboriginal cultures,(33) and that they design appropriate cultural policies for this purpose. Fifthly, Member States are asked to 'set up national committees on an interdisciplinary basis, made up of folklorists, ethnologists, sociologists, historians, musicologists, writers, artists, etc.',(34) that is to say, a kind of National Council of Folklore. The Australian model speaks of an 'Aboriginal Folklore Board' the five members of which would represent aboriginal cultures and possess 'a knowledge of Aboriginal customary law and art'. The board would advise the 'Commissioner', an official established by statute and responsible for administering the legal protection of aboriginal folklore by 'the handling of claims by traditional owners and assisting aboriginal owners of copyright'.(35)

77. An ombudsman of folklore and by his side a National Council of Folklore which represents various interest groups, including traditional groups, might constitute a workable structure for folklore protection. It would be separate from but work in co-operation with the folkloric infrastructure discussed above. It would also disseminate the principles of safeguarding folklore and assume certain tasks in the implementation of accepted principles. It is not realistic, however, to postpone the activation of the existing infrastructure until Member States have established their national committees, because the model may not become accepted in all countries.

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- (29) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6) Annex I, p. 3, Recommendation IV.B.10.
- (30) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6) Annex I, p. 3, Recommendation IV.B.17.
- (31) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6) Annex I, p. 3, Recommendation IV.B.11.
- (32) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6) Annex I, p. 3, Recommendation IV.B.18.
- (33) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6) Annex I, p. 3, Recommendation IV.B.21 to 23.
- (34) Document UNESCO/CPY/TPC/I/4 mentioned above (footnote 6) Annex I, p. 3, Recommendation IV.B.20.
- (35) Report on the Working Party on the Protection of Aboriginal Folklore, Department of Home Affairs and Environment, Canberra, 4 December 1981, p. 50.

78. It is not necessary here to repeat all that Unesco could do according to the recommendations by the experts of the Paris meeting. The suggestions are many but additional ideas can be generated. One way of supporting the preservation of folklore is to give recognition of the highest international status to some well-selected genres and products of folklore. Unesco could be the place where a list of remarkable creations of folklore could be compiled giving thus recognition to those items of folklore which meet high, internationally acceptable standards and/or have played an important role in the construction of the social and/or cultural identity of a nation, group or region. It would be interesting to see what parts of folklore would be selected by Member States and their cultural subgroups for this recognition. It is to be expected that these creations of folklore would also be those which have attained almost sacred character in their own cultural milieux and which are consequently most apt to require careful protection also in the international context.

79. Emancipation of tradition-based groups and revitalization of identity-oriented folklore are important developments of our time, important to study and understand, before action can be taken for or against the emerging folkloric phenomena and usages. Overacting may be as dangerous as indifference, and the judgement passed by folklore scholars and representatives of traditional groups may at times diverge radically. It is in the interest of folklore preservation that both parties stay on speaking terms and are willing to learn from each other. Well-balanced folklore policies cannot be designed without hearing both.

5. Utilization of folklore

80. Folklore plays a very important role as an element in identifying membership in an ethnic group or in a national community and as the dominant factor in a cultural heritage which, with its roots in the distant past, is one of the most valuable possessions of a living popular culture. This role of folklore was emphasized by the World Conference on Cultural Policies which Unesco convened in Mexico City from 26 July to 6 August 1982. Recommendation No. 64 adopted by that Conference thus recognizes 'that the preservation and development of a people's traditional culture unquestionably constitute an essential part of any programmes aimed at affirming its cultural identity'. Similarly, Recommendation No. 65 stresses 'that traditional folk arts reflect both the specificity of a cultural entity and the universality of cultures and are thereby able, owing to their mutual enrichment and their enhancement of shared values, to help increase contacts between cultures and individuals'.

81. This heritage is also continuing to develop, as was further noted by the Mexico City Conference, which stated in Recommendation No. 63 'that the heritage of a culture is not limited to its artistic heritage alone, but comprises the whole of its past expressions, including folk arts and folklore, oral traditions and cultural practices' and 'that this heritage continues to be enriched at the present time by creative contributions of all kinds'.

82. However, the increasingly varied uses of folklore that are resulting from developments in dissemination techniques, particularly sound and visual recordings, broadcasting, cable television and film, may be a source of danger to the cultural heritage unless precise rules are laid down.

83. In fact, both nationally and internationally there are two aspects to the utilization of folklore.

84. In the first place, it is understandable and desirable that a disinterested use of folklore should be developed. Outside of its natural setting, folklore can be a factor in cultural exchanges between countries. The commercial question is a more sensitive issue as it has considerable financial implications. How can commercialization be authorized without prejudice to the nature and form of the folklore heritage? There are in fact two questions here - how can the social group in which it originated participate in the financial proceeds of a work of folklore? And how can the use made of folklore be controlled so as to guarantee its authenticity and protect it against illicit exploitation and any other prejudicial action?

85. The geographical origin of the work concerned might be indicated when it is reproduced or performed, on the basis of full information obtained through the setting up of a commercial network subject to strict professional rules. Some way of associating the community in question with the financial benefits accruing from the use of the work might then be contemplated. This could be done in various ways. In the first place, it could be done through copyright. Some States have indeed adopted this means of dealing with folklore problems, for instance Tunisia (1967), Bolivia (1968, for musical folklore only), Chile (1970), Morocco (1970), Algeria (1973), Senegal (1973), Kenya (1975), Mali (1977), Burundi (1978), Ivory Coast (1978), Guinea (1980) and Burkina-Faso (1983). In addition, as has already been mentioned (cf. para. 16 above), Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions, with a commentary, were adopted in 1982 by a Committee of Governmental Experts convened jointly by the Directors-General of Unesco and WIPO.(36) It seemed relevant to provide States with regulations by which they could, if they so desired, be guided when drawing up the relevant national laws or revising the laws in force.

86. Besides the intellectual property aspects of the protection of expressions of folklore there are at least four types of rights which are already protected and should be protected also in the future at the folklore documentation centres and archives.

87. The first of these concerns the protection of the intimacy of the informant: an informant often tells matters which could be detrimental to him if circulated in the community mentioned in the interview on folkloric phenomena. It is sometimes necessary to protect the informant as a tradition-bearer against his own group. The collector and the informant in a way step out of the confines of their cultures, one out of the academic culture, for example, the other out of the traditional culture. Together they create a deeply marginal field of communication and mutual trust. Written agreements and permissions are very rare when it comes to delicate matters in the collection of folklore. It becomes the task of the collector, and later on the task of the archives where the collection is kept, to protect such materials from being negligently or intentionally abused. The same applies to the scholar who utilizes the collection in his research.

88. Secondly, there is the right of first use. This is normally something that belongs to the collector who intends to make an investigation on the basis of the material and perhaps publishes an article or book on it. It would be unethical to let the information be utilized in a similar manner, before

(36) The Model Provisions and the commentary on them are reproduced in document IGC(1971)/V/14 - B/EC/XXII/14 which can be consulted on request.

the collector has, within a reasonable span of time, had the chance to fulfil his plan. A researcher who utilizes materials collected by others, i.e. persons who probably do not intend to use them for investigation, will have to check this and inform those living collectors whose materials constitute a vital part of his study.

89. Thirdly, there is the right of the collector to expect that the material he places into archives will be kept properly, in good condition (special storage for tapes and films, extra copies for use and borrowing, etc.); he also has the right to expect that the availability of his materials will be improved by competent indexing and systematization.

90. Fourthly, there is the right or rather obligation of the archives to control the use and users of its materials. It must be able to decide, to whom, for what purpose and under which conditions the material will be made available, in other words, functioning archives must have their service codes. In the application of that code the users of folklore materials will be informed about the intellectual property aspect as it applies to his intended use.

91. These examples show that there are dimensions of rights which are not fully developed in the model provisions for the legal protection of folklore. There exists a danger that the focus on traditional communities which dominates the model provisions, will be found narrow in countries where much work has been done over decades or even centuries to save folklore from falling into oblivion. Such countries would hardly adopt statutes which would limit nationally or locally accepted forms of folklore work.

Conclusions regarding various aspects of the safeguarding of folklore

92. Folklore in its natural state, as a well-integrated living phenomenon of social life, hardly needs or tolerates any protection. Its life cannot be perpetuated endlessly without distorting it. No one can prevent a human group from abandoning some forms of its folklore and developing new forms. That is why the documentation of folklore becomes so important. It may be the only way to preserve at least part of that reality which will never be saved or preserved in its totality.

93. The documentation centres should not, however, become graveyards of past cultural forms. Their materials must be recycled in the society in an appropriate manner. This is the only way to let people reflect upon their own cosmos and learn to understand it in the mirror of folklore. Today numerous previously passive cultures have been activated and emancipated: man of the street uses the terms 'tradition' and 'identity' as eloquently as the scholar who investigates the phenomena behind these concepts. In this respect the situation is more symmetric than ever before in the history of folklore. The time may be near, when the responsibility for documentation may be placed in the hands of the identity groups themselves.

94. It is not so much the first, natural life of folklore but the second life, the documentation and especially the recycling of folklore that creates the need of folklore protection. In this process the unwritten folklore constantly seeks to become literature or other forms of art, thus finding for itself a place in the totality of national or local culture. Because this is the only chance of folklore to become something more than the property of an insulated community, the chance to make a contribution to the world culture

and even to counterbalance cultural hegemonies of our time, the process cannot be stopped. Only certain ground rules may be designed for it.

IV. SOLUTIONS IN PROSPECT

95. In this part of the document, an attempt will be made to highlight a number of aspects which seem to be essential and could therefore be included in general international regulations on the safeguarding of folklore, if the General Conference were to decide to establish such regulations.

96. Account will be taken here not only of all the work done so far on this subject, but also of Unesco's experience and practice in respect of international regulations and, in particular, the recommendations and conventions already adopted by the Organization for the protection of cultural property.

97. The question of the adoption of specific regulations regarding the 'intellectual property' aspects of the protection of expressions of folklore is the subject of a study jointly prepared by Unesco and WIPO. It will therefore be referred to only incidentally in this document.

98. The need to identify and conserve folklore, which forms an integral part of the cultural heritage and indeed identity of the various peoples, and to protect it against the danger of oblivion, distortion, debasement, caricature and plagiarism has been unanimously recognized.

99. However, as was pointed out in Part III of this document, during the discussions of the various committees convened by Unesco, differences of opinion were expressed, particularly with regard to the actual definition of folklore, the forms it assumes and the fields in which it is expressed.

100. It also emerged that many developing countries attached particular importance to the safeguarding of their folklore since in their view it constituted an essential part of their national identity and because it had been and continued to be exposed to serious attacks as a result of colonial domination and its legacy.

101. Lastly, because of the considerable differences existing between the resources and facilities of the industrialized countries and those of the developing countries, there must be a variety of methods for identifying folklore and establishing and maintaining the documentation needed for its conservation. International regulations should take these various circumstances into account and show considerable flexibility.

102. The Committee of Governmental Experts on the Safeguarding of Folklore, meeting in Paris from 22 to 26 February 1982, concluded its work by drawing up a series of recommendations concerning:

the definition of folklore;

its identification;

its conservation, analysis and preservation;

its enhancement, reactivation and utilization.

103. A large number of these recommendations are addressed to Unesco and should normally be reflected in measures to be introduced in the Organization's future programmes.

104. Other recommendations are addressed to Member States and could, if the General Conference of Unesco were so to decide, be included in an international instrument, preferably a regulatory recommendation, as this is the only category of instrument that is sufficiently flexible to take into account the considerable differences existing between Member States regarding the safeguarding of their folklore.

105. This part of the document will be devoted to the various measures suggested to Member States by the Paris Committee of Governmental Experts. It will also consider, with reference to certain national laws and to instruments already adopted by Unesco for the protection of cultural property, whether, in addition to and irrespective of the measures advocated by the Paris Committee, other measures could not be recommended to Member States for the safeguarding of their folklore.

106. The following suggestions are modelled on the recommendations to Member States adopted by Unesco.

A. Preamble

107. Emphasis should be placed first on the importance of folklore in cultural life and for the national identity of peoples and the need to conserve it by affording protection against the many dangers threatening it.

B. Definitions of folklore

108. The differences of opinion expressed on this subject during earlier discussions may be partly due to the fact that a distinction was not always clearly enough made between folklore proper and its material expression, that is to say, between a manifestation of folklore which necessarily assumes a material character and the source from which it springs, which has not assumed material form.

109. This would explain why some experts objected to the inclusion of the adjective 'impersonal' in the definition of folklore.

110. They felt that the artist's or performer's contribution to a manifestation of folklore should be fully recognized.

111. It is interesting to note in this connection that the Japanese law of 30 May 1950 on the protection of cultural property (amended on 1 July 1975) contains two separate sections, the first of which is concerned with intangible cultural property and the second with folk-cultural property.

112. In accordance with the Japanese Law of 1950, intangible cultural properties are constituted by 'art and skill employed in drama, music and applied arts and other intangible cultural products, which possess a high historical and/or artistic value in and for this country'.

113. This definition could apply to highly important aspects of the folklore of several countries. No theatre in Japan, the Italian Commedia dell'Arte, the Sicilian marionettes, Javanese or Thai dances, Arab music and Spanish flamenco, to cite only a few examples, are clearly forms of creative

expression based on a national tradition embodying a national identity, resulting from an art and skill specific to the countries in question and possessing high historical and artistic value for them.

114. These creative forms are often embodied in works whose composition and performance assume an individual character. However, in that they fulfil the expectations of the relevant national communities as an expression of their cultural identity, they are covered by the definition of folklore given by the Paris Committee.

115. The Japanese law also defines folk-cultural properties as follows: 'manners and customs related to food, clothing and housing, occupations, religious faiths, festivals, etc., to folk-entertainments and clothes, implements, houses and other objects used therefor, which are indispensable for the understanding of changes in our people's modes of life'.

116. This definition thus applies to two separate categories of cultural property since it covers both the manners and customs that shape the everyday life of the Japanese people, i.e. non-material cultural values, and the objects in which these values assume physical form: food, clothes, and so on, and other objects used in everyday life.

117. The preservation of non-material cultural values calls for measures and methods entirely different from those used for the protection of other movable or immovable parts of the cultural heritage. The Japanese law thus stipulates that the natural or legal persons who, by reason of their qualifications, are the most representative in regard to an art, a skill or any important intangible treasure will be recognized as the holders responsible for that treasure. The relevant authorities may where necessary reappropriate that responsibility. They may also take any suitable measures to preserve an important intangible cultural treasure and, in particular, grant subsidies, arrange for recordings, organize the training of persons capable of succeeding the present holders of an art or skill and allow the public to have access to recordings.

118. Protection of the same kind is provided for intangible folk-cultural properties, the relevant authority being empowered to take any appropriate measures for their preservation and, in particular, to grant subsidies, arrange for recordings and allow the public to have access to recordings.

119. However, the protection of tangible folk-cultural properties is the same as that stipulated for other categories of cultural properties. Custody, maintenance and change of location of those properties declared to be important by the relevant authority are subject to the control of that authority, which may give appropriate orders or advice to their owners or custodians. Their exportation is, in principle, prohibited. In addition, the Minister of Education may designate the conservation techniques and traditional craftsmanship which are indispensable for the conservation of cultural properties. In so doing, he recognizes the holder or holders (natural or legal person) who represent the highest standard of such techniques.

120. It would appear, in view of the foregoing considerations, that three separate definitions of folklore should be given, viz.:

- (1) folklore proper, for which regulations were proposed by the Paris Committee, but whose non-material character should perhaps be more clearly brought out;

- (ii) expressions of folklore, the definition of which should be based on the one appearing in the Model Provisions for National Laws adopted by the Geneva Committee. It is to be noted, however, that, in referring to elements of folklore, which is described as the traditional artistic heritage, the Model Provisions adopt a terminology which is considered in some quarters to be restrictive and is somewhat at variance with the definition opted for by the Paris Committee. It would be desirable to standardize terminology in any international instrument that might be adopted;
- (iii) lastly, material folk-cultural properties, the definition of which could be based on the generic definitions of movable and immovable property of cultural importance contained in the recommendations of Unesco, it being made clear, as in the Japanese law, that the properties in question are those that form part of national manners and customs and are vital for understanding the way of life of a people and its development.

121. The definitions to be adopted should be couched in general terms and be sufficiently flexible to take account of the differences existing between the conceptions of the various countries concerned and the divergences of opinion expressed, particularly in regard to the range and scope of the actual concept of folklore. Perhaps it should be regarded as enough, as was noted by the Paris Committee, 'to distinguish certain parameters on which consensus might be reached', it being understood that, within the limits of those parameters, it would be for the legislation of each country to give a more precise and more comprehensive definition of national folklore.

C. General principles

122. Most of Unesco's regulatory recommendations relating to cultural property include a special section entitled 'General principles' which highlights the aims pursued and their ethical justification, the importance of the cultural values to be safeguarded, the nature and seriousness of the dangers threatening them and, where appropriate, the particular standards specific to the question to be regulated.

123. Were the General Conference to decide to adopt general international regulations on the safeguarding of folklore, it would be desirable to introduce such a section and to include it in a short statement of the principles underlying those regulations and of the ethical, cultural and political reasons for it being necessary to protect folklore. It should also include a summary of the measures to be taken to protect folklore data, manifestations and expressions and material folk-cultural properties of great importance against the specific dangers to which they are exposed. These measures would, of course, be more comprehensively described in the separate provisions relating to the protection of folklore data, manifestations and expressions, the maintenance of folklore archives and audio-visual documentation, the collection of suitable materials, the making available to research workers of the relevant archives and documentation and, lastly, the protection of material folk-cultural properties of great importance.

D. Identification and inventory

124. Most of the international instruments adopted by Unesco for the protection of cultural property advocate that the Member States concerned should identify and establish inventories of the property to be safeguarded.

125. The conclusions of the Paris Committee include in this connection four recommendations to Member States, which should be retained in a suitable form. They concern:

- (i) the development of identification and registration systems for folklore data;
- (ii) the systematization and standardization of methods of collecting and classifying relevant data;
- (iii) the preparation of inventories of manifestations and expressions of folklore;
- (iv) the establishment of archives in order to collect suitable materials and make them available to research workers and persons interested in folk traditions.

126. These conclusions should be taken up and Member States should be requested to identify and inventory (i) data pertaining to their national folklore, and (ii) expressions and manifestations of that folklore. Copies of these inventories should be sent to other Member States and to Unesco.

127. Lastly, each Member State should be requested to identify and inventory its material folk-cultural properties of great importance and to transmit copies of those inventories to other Member States and to Unesco.

128. The Paris Committee also expressed the wish that 'an international register of folk-cultural properties be established at Unesco and that a model card index system be designed and placed at the disposal of Member States'.

129. For full effect to be given to the latter suggestion, considerable financial resources would be necessary. An idea of the magnitude of the effort required can be formed merely by referring to some of the figures quoted in Part III of this document. The archives of the Helsinki folklore centre alone contain three million items in languages and dialects which are not accessible to the international researcher. The archives' ethnomedicine section by itself contains a hundred thousand items.

130. In any case, the question of Unesco's maintaining a register of the folk-cultural properties of all Member States goes beyond the usual scope of the Organization's regulatory recommendations, which are addressed essentially to Member States. It should be considered by the General Conference in the context of its programme and budget and preferably be incorporated in a separate special resolution, even if general international regulations were to contain a reference to a register maintained by Unesco. It seems likely that, in view of the magnitude of the task and the expense entailed by the maintenance of a general register 'in which all the features of the different countries' folklore might be listed, the items entered in it would be limited, at least initially, to folk-cultural properties of very great importance. It is similarly likely that the General Conference would have to limit the fields (tales, legends, music, dance, religious or pagan ceremonies, etc., for instance) to which the folklore that might be entered in the register should belong.

131. The General Conference resolution should also stipulate the information to be included under each entry in the register (nature, origin, brief description, etc.) and the question will arise whether, in certain fields such

as music or dance, an audio-visual recording should not supplement the written details.

132. The General Conference resolution should, in addition, define the procedures for maintaining the register.

133. Lastly, it would be advisable to stipulate the methods to be employed for settling disputes concerning the origin of a particular item of folklore that might be claimed by several countries.

134. Furthermore, if, as may seem preferable in the first instance, entries in the folklore register were limited to items of very great importance, the question would arise as to which authority would be responsible for deciding whether the requisite importance attaches to an item of folklore whose inclusion in the register has been requested.

135. To solve the problems arising in this connection, use might be made in either of the methods followed for entries in the Register of Cultural Property under Special Protection, established by the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, or of the methods followed for the establishment of the World Heritage List provided for by the 1972 Convention for the Protection of the World Cultural and Natural Heritage.

136. Under the terms of the Regulations for the Execution of the 1954 Convention of the Hague, only properties fulfilling certain specific conditions can be entered in the Register of Property under Special Protection maintained by the Director-General of Unesco. The Director-General communicates to all the States Parties to the Convention the applications for registration he receives. Any State Party to the Convention may lodge an objection to the registration on the grounds either that the application for registration does not concern a cultural property or that the property does not comply with the necessary conditions. An arbitration procedure is provided for in the event of the objection being maintained.

137. The World Heritage List provided for by the 1972 Convention is limited to cultural or natural property of outstanding universal value. This list is established by the World Heritage Committee which, on the basis of the Member States' inventories of the cultural and natural property situated in their territories, itself determines which of them possess the outstanding value required.

E. Measures of protection and conservation

138. The Paris Committee distinguished in its conclusions between the preservation of folklore, i.e. the protection of folk traditions against the many dangers that threaten them, and the conservation of folklore data, i.e. their collection and the establishment of appropriate documentation which should be made available to researchers and enable the process of evolution and modification of tradition to be understood.

139. Folklore is threatened by oblivion and distortion, which are the natural consequences of the changes in the way people live, the industrialization of societies and the role of the mass media in shaping attitudes.

140. The newly independent countries consider it all the more important to combat these dangers because their traditional culture was long exposed to the lifestyles and ways of thinking of the colonisers, and their peoples' allegiance to their own traditions and folklore may have been affected.

141. A further danger here lies in the deliberate distortion of folklore data and expressions, whether for reasons of profit and commercialization or through caricature with malevolent intent.

142. For if it is true that, as was noted by the Paris Committee, folklore is a living and developing phenomenon, and that, as has been stressed by many experts, its dynamism must not be impaired, then it follows that the authenticity and integrity of folklore data, which are essential components of the cultural and indeed national identity of peoples, must be preserved.

143. It is a difficult task to reconcile the compelling duty of preserving folklore data as they have been bequeathed to us and as we have collected them, with a concern not to impede the free expression of folklore and to encourage developments that reflect changes in ways of life and pattern of thought. This is a task not only for governmental authorities and the recognized persons or institutions having special responsibilities for exercising control in this regard, but also for all those who participate, as authors, performers, artists, distributors, etc., in the creation or dissemination of expressions and manifestations of folklore.

144. With a view to the achievement of these various objectives, the Paris Committee drew up a series of recommendations which are addressed either to Unesco or to its Member States. Only those addressed to Member States could be singled out for inclusion in a general international instrument, and the Committee's conclusions concerning the action requested of Unesco would have to be covered by special provisions in the Organization's programme.

145. Given the conclusions of the Paris Committee, the procedures followed by Unesco in respect of international regulations and its experience in the protection of cultural property, the proposed regulations concerning the conservation and preservation of folklore could be developed along the following lines:

1. Authorities responsible for protection and conservation and their auxiliaries

146. Member States should designate the governmental and, if need be, provincial and local authorities responsible for protecting folklore and implementing the legislation adopted for that purpose.

147. By virtue of their position in the communities or social milieux in which folklore has taken and continues to take root, their knowledge of folklore data and expressions and their action in regard to the collection, analysis and conservation of such data and expressions, there are a large number of natural and legal persons who in addition to the relevant governmental authorities, should play an important role in the protection and conservation of folklore.

148. Member States should recognize among these natural or legal persons those who would be fully qualified to contribute effectively to the protection and conservation of folklore and give them their material and moral support. They should define the rights and obligations resulting from such recognition.

149. Member States should encourage or even provide training for specialists in the protection and conservation of folklore.

150. Member States should make a survey of the arrangements and measures existing for providing assistance to persons interested in folk traditions (of their own group or of a different group) and make them known in their territory in all the necessary languages. Each Member State should send copies of their survey to other Member States and to Unesco.

2. Collection

151. The collection of folklore material (data and expressions) is the first step in the process of protection. It makes it possible to fix and conserve material that is in danger of being forgotten and disappearing for ever as a result of the passage of time and changes in ways of life. In addition, the material, once collected, defined and fixed in a tangible form, will provide a reference by which to judge the developments that will unfailingly occur and the possible distortion or debasement against which it is important to protect folklore.

152. Member States should be urged to ensure the systematic collection and recording of folklore material.

153. This collection should be the responsibility of the relevant governmental, provincial or local authorities and of the natural or legal persons recognized in the capacity mentioned above.

154. Any systematic collection undertaken by a person other than those mentioned above would be subject to the prior authorization and control of the relevant authority.

155. The materials collected and, where appropriate, the recording of those materials should be communicated to the relevant governmental authority which should transmit them, after verification, to the appropriate archives and/or documentation centres. The relevant governmental authority and the archives and/or documentation centre to which the collected material and the recording have been transmitted should refrain from communicating them for study or reproduction for a period of five years. During that period the collector would enjoy scientific rights in the material collected and the exclusive right to publish the results of his work, as is guaranteed for excavators by the 1956 recommendation on archaeological excavations.

3. Conservation and study of folklore and access by researchers to folklore archives and recordings

156. Collection, which is the first step in the process of conserving folklore, should be immediately followed by a study of the information collected, the filing of that information and, lastly, the conservation in archives and in conservation centres of the transcription of the information collected and of the recordings made. The facilities and equipment available to Member States for this purpose vary considerably. Some already have a very large number of archives and data conservation services, and abundant facilities with the most advanced recording, indexing and filing technology. The sheer scale of their conservation systems, the diversity of their constituent parts - e.g. museums, universities, archives, documentation centres specializing in particular aspects of folklore, private collections, mass media archives, etc. - and the vast quantity of information already collected and often classified in a variety of ways make it desirable and advisable to co-ordinate efforts, standardize methods and ensure co-operation nationally even before taking action regionally and internationally.

157. Data centres or central archives with streamlined indexing systems must be set up and a comprehensive general classification system adopted, as envisaged by Professor Lauri Honko. A first step would be to survey and make an inventory of the various bodies concerned with folklore data, as was recommended by the Paris Committee, which also advocated the establishment of one basic working classification for data and another for the performance style in which the data were collected.

158. General international regulations should take up these recommendations and conclusions in a suitable form.

159. Most of the developing countries are disadvantaged when it comes to facilities, equipment and personnel, and for them, the most immediate problems concern the training of archivists and documentalists, the establishment or improvement of documentation facilities and the acquisition of adequate equipment. They should receive substantial international aid in this connection and the Committee asked Unesco to provide assistance in these areas. In addition, Member States having considerable experience with and resources for the study and conservation of folklore data and expressions should be called upon to provide assistance to less favoured countries.

160. Lastly, Member States should be urged to make arrangements for the consultation of the material collected and conserved so that it can be studied and in order to foster research. Access by researchers and other persons interested in folk traditions should none the less be subject to supervision and control so as to ensure the fullest possible extent that the information thus made available is not misused in ways which would distort folk traditions.

4. Preservation of folklore

(a) Promotion of knowledge of folklore - Dissemination of expressions of folklore - Organization of teaching of folklore

161. The main recommendations of the Paris Committee should be taken up in this section.

- (i) Member States should collaborate with research institutes in publishing and disseminating works on past and present national or regional folklore and should carry out exchanges among various groups and countries in this field;
- (ii) Member States should encourage the organization of folklore festivals, exhibitions, programmes, etc.;
- (iii) Member States should include the systematic teaching of traditional culture in educational curricula at all levels;
- (iv) Member States should formulate cultural policies aimed at reviving folklore in communities that so desire;
- (v) Member States should ensure that action to preserve folklore is extended to include indigenous or aboriginal cultures, since both folklore and indigenous cultures are an integral part of the world's traditional popular cultures.

(b) Protection of folklore against distortion

162. Here too the conclusions of the Paris Committee should be taken up but in a somewhat amplified form.

163. Member States should recognize and promote the right of groups that create traditional popular culture to remain in control of their traditional knowledge and skills and of their customs.

164. They should take steps to encourage the authorities concerned with folklore, popular tradition and tourism to co-ordinate their efforts in order to safeguard the authenticity of folklore events and the integrity of traditions.

165. Member States should lay down criteria in their national laws by which the relevant administrative and judicial authorities could decide whether the changes made in an item or expression of folklore corresponded to the natural development of the customs of the community to which that item belonged or whether they amounted to distortion and debasement.

166. Any circulation or use of a distorted or debased version of an item or expression of folklore should be prohibited within national boundaries and Member States should co-operate with one another in preventing the circulation and use in their respective territories of such versions of foreign folklore.

(c) Protection of expressions of folklore against illicit exploitation and other prejudicial actions

167. A community's folklore forms an integral part of its cultural heritage. It therefore seemed natural to confer upon each community the economic and moral rights enjoyed by the authors of literary, scientific or artistic works.

168. To achieve this at the national level, the Geneva Committee prepared model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions.

169. These provisions, which assign to each Member State responsibility for designating the authority representing the community concerned, make the utilization of any expression of folklore whatsoever subject to authorization and supervision when it is both with gainful intent and outside its traditional or customary context.

170. They prohibit and punish not only the unauthorized utilization of an expression of folklore but also the misrepresentation of its source and the wilful distortion of that expression in a way prejudicial to the interests of the community concerned.

171. Lastly, they provide, subject to reciprocity, for the extension of this protection to expressions of folklore developed and maintained in a foreign country.

172. The general international regulations whose preparation is envisaged should recommend that Member States adopt legislation based on these model provisions.

173. At the international level, studies are currently being carried out by Unesco in conjunction with WIPO on the need for a specific international regulation concerning the international protection of expressions of folklore by intellectual property, and on what an appropriate draft should contain.

174. A group of experts is to meet for this purpose from 10 to 14 December 1984. When this document was being prepared, the outcome of this meeting was not yet known but will be communicated to the Committee of Experts at a later date.

175. General international regulations should take account of the results of the work thus carried out.

(d) Protection of material folk-cultural properties of great importance

176. Only a very small number of national laws define material folk-cultural properties as cultural properties to be protected. The definitions of cultural property given by the Unesco Conventions and Recommendations for the protection of such property say nothing about this question either.

177. These definitions are all based on the criterion of the value or importance of the property from the point of view of the history of art or science.

178. No doubt this criterion could be applied in many cases by extending its scope to afford the desired protection to certain material folk-cultural properties.

179. However, this extended interpretation could be disputed and, in any case, it would not provide protection for all material folk-cultural properties.

180. Be that as it may, if trade in ordinary folk-cultural properties produced by national craftsmen is to be freely allowed or even encouraged, it now seems necessary to subject to the protection of the law and to the restrictions it imposes the conservation, maintenance, restoration, removal, destruction and exportation of material folk-cultural properties of very great importance, which would be the subject of a special declaration by the relevant national authorities.

F. International co-operation

181. Member States should be urged, lastly, to co-operate concerning the knowledge, dissemination and protection of folklore, in particular through exchanges of information of every kind, exchanges of scientific and technical publications, the training of specialists, the award of travel grants, the sending of scientific and technical personnel and equipment, the organization of meetings between specialists, of study courses and of working groups on particular subjects, especially on the classifying and indexing of folklore data and expressions.

182. Member States should, in addition, co-operate closely so as to ensure internationally that the various interested parties (community or natural or legal persons) enjoy the economic, moral and so-called neighbouring rights resulting from the creation, composition, performance, recording and/or dissemination of expressions and manifestations of folklore.