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UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATION

SPECIAL COMMITTEE OF TECHNICAL AND LEGAL EXPERTS
ON THE SAFEGUARDING OF FOLKLORE

(Unesco House, 1-5 June 1987)

DRAFT REPORT

presented by Dr Daithí O'hogain
Rapporteur-General

27 JUL. 1987

I. INTRODUCTION AND PARTICIPATION

1. The Special Committee of Technical and Legal Experts on the Safeguarding of Folklore (hereinafter referred to as 'the Committee') met at Unesco Headquarters, Paris, from 1 to 5 June 1987.
2. The Committee was convened by the Director-General in pursuance of resolution 15.3 adopted by the General Conference of Unesco at its twenty-third session (Sofia, October-November 1985).
3. In the above-mentioned resolution, the General Conference decided that 'the question of the safeguarding of folklore could be the subject of an international instrument in the form of a recommendation to Member States', and desired that the Director-General submit a report on this matter to the next session of the General Conference on the basis of the results of a special committee, to be convened by him, to examine the question.
4. Accordingly, the task before the Committee was to consider the solutions to the problems raised by the safeguarding of folklore in the light of the two studies on the subject prepared respectively by Mr Pierre Sammy Mackfoy and Professor Lauri Honko as well as of the conclusions of the Second Committee of Governmental Experts on the Safeguarding of Folklore (Unesco, 14-18 January 1985).
5. Also in pursuance of the same resolution, the conclusions of the Committee will be submitted to the next (twenty-fourth) session of the General Conference of Unesco (October-November 1987) to enable it to decide definitively the desirability of adopting an international regulation for the safeguarding of folklore.
6. Experts representing the following 33 Member States of Unesco participated in the work of the Committee: Angola, Australia, Bangladesh, Bolivia, Brazil, Bulgaria, Burundi, Chile, China, Ecuador, Finland, France, German Democratic Republic, Greece, India, Ireland, Italy, Madagascar, Malaysia, Mali, Norway, Philippines, Saudi Arabia, Spain, Sri Lanka, Swaziland, Thailand, Togo, Turkey, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay and Yemen.

7. Experts from one Member State of Unesco (Netherlands) and from one non-Member States (Holy See) attended the meeting as observers.

8. The Palestine Liberation Organization also sent its representative to attend the meeting as observer.

9. Observers were also sent by two intergovernmental organizations (World Intellectual Property Organization (WIPO), Arab Educational, Cultural and Scientific Organization (ALECSO)) and four international non-governmental organizations, namely, International Federation of Translators (FIT), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Phonogram and Videogram Producers (IFPI) and International Council of Cinema, Television and Audiovisual Communication (CICT).

10. The list of participants will appear as Annex II to the final report.

II. OPENING OF THE MEETING

11. On behalf of the Director-General of Unesco, Mr Hassouna Ben Amor, Director, Division of Statistics, welcomed the participants and the observers to the Committee. In his address, Mr Ben Amor briefly traced the historical background of the search for a solution to the problem of the safeguarding of folklore and summarized the various activities undertaken by Unesco at different levels and forums since the Bolivian Government had requested the Director-General to carry out the studies on folklore in 1973.

III. ELECTION OF THE CHAIRMAN

12. On the proposal of the delegation of Italy, supported by the delegation of Finland, Dr Keith McKenry, the head of the delegation of Australia, was unanimously elected Chairman.

IV. ADOPTION OF THE RULES OF PROCEDURE AND ELECTION OF OTHER OFFICERS

13. The Committee adopted the Rules of Procedure contained in document UNESCO/PRS/CLT/TPC/SPL/2 (prov.), and decided to elect four Vice-Chairmen. Accordingly, at the proposal of the delegation of Italy, seconded by the delegation of France, the heads of the delegations of Bolivia, Madagascar, Philippines and Saudi Arabia were elected Vice-Chairmen. Dr Daithi O'hOgain (Ireland) was elected Rapporteur.

V. ADOPTION OF THE AGENDA

14. The provisional agenda of the meeting of the Committee, as contained in document UNESCO/PRS/CLT/TPC/SPL/1 (prov.) was adopted.

VI. PRESENTATION OF THE DOCUMENT

15. The members of the Committee had at their disposal three documents, UNESCO/PRS/CLT/TPC/SPL/3, 4 and 5, which were presented by a member of the Secretariat, who briefly touched upon the salient features of the contents of those documents. He also pointed out that the conclusions of the present meeting would serve as the basis of the report which the Director-General would submit to the next (twenty-fourth) session of the General Conference of Unesco for its decision on the matter as mentioned in paragraph 4 above.

VII. GENERAL DISCUSSION

16. The introduction of the three working papers was followed by a number of general comments.

17. The importance and value of the work on the safeguarding of folklore was emphasized from the outset by all delegations. All speakers stressed the importance of this type of activity for safeguarding folklore as an integral part of the cultural heritage of mankind. Several delegations referred to aspects of folklore which were in danger, particularly from the new technologies which might gradually lead to the disappearance of popular traditions. One delegation stressed that certain communities were in danger of losing their cultural roots.

18. In view of this threat to folklore, most delegations emphasized the urgent need to take appropriate measures both nationally and internationally. Most delegations were even in favour of the General Conference adopting a recommendation on that subject at its next session. One delegation spoke of the need to establish records and archives of folklore at the earliest possible date.

19. The Secretariat explained the reasons why it was not possible for the General Conference to adopt a recommendation at its next session. The Secretariat recalled that in accordance with Article 9 of the Rules of Procedure concerning recommendations to Member States and international conventions, the General Conference shall not vote on the adoption of a draft convention or recommendation before the ordinary session following that at which it has decided whether the question dealt with in the proposal should be regulated at the international level and, if so, determined to what extent the question can be regulated. It followed that in the present case, whatever the circumstances, the General Conference would not be able to adopt an international regulation at its 1987 session. The only decision which the General Conference could take next October would be to decide whether the question should be the subject of a recommendation, and to instruct the Director-General, in accordance with Article 10, paragraph 1, of the above-mentioned Rules of Procedure, to prepare a report accompanied by a preliminary draft recommendation. Those documents would be submitted to Member States for their comments. A final report containing a revised draft would then be drawn up on the basis of Member States' comments and observations, and submitted to the General Conference at its twenty-fifth session in 1989, for examination and possible adoption.

20. A number of delegations then commented on the content of a possible international regulation. Several of them felt that it was not necessary to aim at a detailed and exhaustive definition of folklore, that it was sufficient to have some idea of what was meant by folklore, that Member States should be left free to decide on the folklore to be safeguarded and that a certain amount of flexibility in this matter would be appropriate. One delegation felt, moreover, that flexibility was necessary in all the provisions of any eventual regulations, so as not to paralyse folklore, in view of the fact that its vitality lay in its changing nature and that it had many and varied facets.

21. A universal typology was mentioned several times as a necessity, so as to form a basis for future typologies, thus limiting discrepancies and differences between typologies established separately. One delegation stressed the need to set up collection centres in each country for identification and conservation, and to centralize the work of these centres at national level.

22. Several delegations stressed particularly that it was essential to carry out training activities in this field. One delegation thought that a project to collect folklore could only be successful if carried out by qualified staff, yet in that delegation's country there were many gaps to be filled in this respect.

23. One delegation felt that an international instrument should include provisions to assess its effective implementation in the different States, and that provision should be made for reports on implementation.

24. In the view of one delegation, supported by others, the main aim of work on the safeguarding of folklore was not the legal protection of folklore. It was above all to create the appropriate infrastructures for safeguarding folklore by establishing, for example, a universal typology, by encouraging the establishment of centres and training activities, by promoting international co-operation and concluding bilateral agreements. One delegation said that a clear distinction should be drawn between action for the safeguarding of folklore and work relating to intellectual property rights carried out jointly with the World Intellectual Property Organization (WIPO).

25. International co-operation and the role which Unesco could play were mentioned frequently as being one of the major lines of emphasis of a possible international instrument and one of the keys to its success. International co-operation was often evoked in relation to the preparation of a universal typology and to the co-ordination of activities in this field, which were widely reflected in the conclusions of the experts at this meeting. Several delegations regretted the lack of international machinery in this area, which exists in other fields, for example, for the physical heritage.

26. With reference to the basic principle of establishing a recommendation addressed to Member States by the General Conference of Unesco, one delegation pointed out that the legal form of an international recommendation was the best, and that it would be appropriate if such an instrument were prepared. The delegations which spoke stressed the need for this form of regulation. One delegation noted the final comment in the report (para. 51) of the meeting of the Committee of Governmental Experts on the Preservation of Folklore (Paris, January 1985) to the effect that there was unanimous agreement that a possible international regulation should take the form of a recommendation, this being a flexible instrument whereby the General Conference formulates principles that it invites Member States to adopt in the form of a national law or in some other way.

27. Concluding the general discussion, it was decided that the Committee should collect material justifying studies on folklore and the establishment of an international regulation in this field under the auspices of Unesco. It was also indicated that the Committee should list the questions to be covered by such a regulation. The Committee set up a subcommittee to prepare a draft preamble which would appear as an introduction to its 'conclusions', set out in Annex I.

VIII. DETAILED EXAMINATION OF PRINCIPLES

28. The members of the Committee made a section by section examination of the principles proposed in document UNESCO/PRS/CLT/TPC/SPL/4, which in the main resumed in a different and amplified form the principles contained in the conclusions adopted by the Second Committee of Governmental Experts which met in January 1985. These principles, with numerous amendments, were adopted and are contained in Annex I of this report.

29. The discussions that led to the adoption of these texts dealt mainly with nuances and clarifications which need not be included in this report, since the texts that were unanimously adopted contain the modifications that were accepted. Mention should nevertheless be made of the question of the protection of expressions of folklore as intellectual property, which was discussed at length.

30. This question gave rise to a great many observations. While the principle of introducing a reference to intellectual property in the conclusions, particularly an allusion to the work carried out by Unesco and WIPO, was almost immediately accepted, the scope of such a reference was the subject of lengthy discussion.

31. Several delegations considered that the question of the protection of expressions of folklore as intellectual property was of secondary importance in a recommendation on the safeguarding of folklore, and that a simple reference to the work of Unesco and WIPO in this field would suffice. One delegation said that it was inadvisable to create rights that might privatize folklore, encourage spurious collectors and make it necessary to conclude contracts for the transfer of exploitation rights. According to that delegation, the only rights to be taken into account were those relating to informants and collectors. Another delegation noted that protection as intellectual property did not apply to all the work involved in safeguarding, and that questions of intellectual property were extremely complex. This delegation pointed out that, in its view, there were few instances of illicit use. Another delegation considered that folklore was a part of the public heritage which needed to be safeguarded and that misrepresentation was an erroneous idea, since folklore was misrepresented from the moment it lost its function and was separated from its origin. Another delegation stressed that it was necessary to promote the recording and collection of folklore and to establish archives that would enable it to be passed on.

32. Conversely, several other delegations, the observer of one intergovernmental organization and the observer of an international non-governmental organization stressed the advisability of envisaging a principle relating to the protection of expressions of folklore through intellectual property. It was pointed out that folklore could be distorted, that it could be used for financial ends, and could be the object of piracy and unauthorized dissemination. One delegation stressed that it was necessary to protect folklore and envisage sanctions while taking account of its specific character. The representative of one international non-governmental organization noted that for folklore to develop it had to be used and disseminated. He also made the point that acts of misrepresentation were often committed in countries other than the country of origin, and that this should be prevented; also that an international regulation on the safeguarding of folklore would be incomplete without provisions relating to protection through intellectual property.

33. At the end of this discussion, it was agreed to draw the attention of States to the work of Unesco and WIPO in intellectual property in the field of folklore without entering into details regarding its content, so as not to exclude either work in progress or future activities.

34. One delegation expressed its disagreement in that it wished an explicit reference to be made to the 'Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions' adopted by the Committee of Governmental Experts which met in June to July 1982 under the auspices of Unesco and WIPO.

35. On the question of international co-operation, mention should be made of the Committee's wish to see a World Folklore Committee or Council established. One delegation hoped that such a body would operate under the auspices of Unesco.

IX. FINAL OBSERVATIONS

36. At the conclusion of its deliberations, the Committee thought it necessary to draw the attention of the Director-General of Unesco to the urgent need for an international instrument, which might take the form of a recommendation, to be adopted as soon as possible by the General Conference.

37. The Committee also hoped that Member States of Unesco would take measures forthwith for the safeguarding of folklore such as those suggested in the conclusions contained in this document and in accordance with each State's own national priorities.

38. As regards activities that might also be undertaken by Unesco to safeguard folklore, the Committee expressed the hope that the Organization would undertake activities likely to promote international co-operation and the dissemination of information, by

- (a) establishing an inventory of the infrastructures which would help to obtain a better knowledge of folklore;
- (b) publishing at regular intervals a bulletin devoted to the presentation of folklore, which would serve as a link between all the institutions and individuals that Unesco might approach;
- (c) establishing, with the assistance of committees of appropriate experts, a worldwide standard typology of folklore and cultural property using language that lends itself to indexing;
- (d) providing intellectual and technical assistance to Member States, particularly the developing countries, for the establishment of infrastructures and the training of specialized personnel.

39. The Committee noted that the Director-General would report on the work to the General Conference at its twenty-fourth session, in accordance with 23 C/Resolution 15.3, and that a summary record of its deliberations would be communicated to the Intergovernmental Committee of the Universal Copyright Convention at its next session.

X. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

40. [.....]

41. [.....]

ANNEX I

CONCLUSIONS OF THE SPECIAL COMMITTEE OF TECHNICAL AND
LEGAL EXPERTS ON THE SAFEGUARDING OF FOLKLORE

Having discussed its agenda and taken its decision on the basis of the documents submitted for its consideration, the Committee found it necessary to take into account the urgency of the safeguarding of folklore which was reflected during the very indepth discussion and to formulate the following conclusions with a view to bringing them to the notice of the Director-General of Unesco.

The Special Committee of Technical and Legal Experts on the Safeguarding of Folklore,

Underlining the specificity and importance of folklore as an integral part of cultural heritage and living culture,

Considering that folklore is a powerful means of bringing together different peoples and social groups and of asserting national and cultural identity,

Noting its social, economic, cultural and political importance, its role in the history of the people, and its place in the contemporary culture,

Recognizing the extreme fragility of the traditional forms of folklore, particularly those aspects relating to oral tradition and the risk that they might be lost,

Stressing the need in all countries for recognition of folklore and the danger it faces from external factors,

Noting the considerable amount and high quality of preparatory work by previous Committees of Experts on the safeguarding of folklore which had met under the aegis of Unesco,

Judging that the governments should play a decisive role in the safeguarding of folklore and that they should act as quickly as possible,

Desires that the General Conference decide on the preparation of an international instrument which could be a recommendation to the States as already expressed in its Resolution 15.3, and also as unanimously accepted during the work of the Second Committee of Governmental Experts on the Safeguarding of Folklore, held in January 1985, and which could embrace the conclusions adopted by the present Committee.

A. Definition of folklore

Folklore could be defined as follows:

'Folklore (in a broader sense, traditional and popular folk 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; its standards and values are transmitted orally, by imitation or by other means. Its forms include, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts'.

B. 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. To this end, the following would be advisable:

- a) a national inventory of institutions concerned with folklore with a view to its inclusion in regional and global registers of folkloristic institutions;
- b) the creation of identification and recording systems (collection, cataloguing, transcription) or the development of those that already exist by way of handbooks, collecting guides, model catalogues, etc. in view of the need to coordinate the classification systems used by different institutions;
- c) participation in the creation of a standard typology of folklore by way of General Outlines of Folklore for global orientation, by way of contributing materials for a Comprehensive Register of Folklore and by supporting Regional Classifications of Folklore, especially fieldwork pilot projects.

C. Conservation of folklore

Conservation is concerned with documentation regarding folk traditions and its object is, in the event of the non-utilization or development of such traditions, to give researchers and tradition-bearers access to data enabling them to understand the process through which tradition evolves and changes. While living folklore, owing to its evolving character, cannot always be directly protected, folklore that has been fixed in a tangible form should be effectively protected. To this end, the following would be advisable:

- a) the establishment of national archives service where collected folklore can be properly stored and made available for controlled use;
- b) the establishment of a central national archive function for service purposes (central cataloguing, dissemination of information on folklore materials and standards of folklore work including the aspect of safeguarding);
- c) the creation of museums or folklore sections at existing museums including open air folk museum where folklore can be exhibited;
- d) Standardization archiving methods;
- e) the training of collectors, archivists, documentalists and other specialists in the conservation of folklore from physical conservation to analytic work;
- f) the provision of means for making security and working copies of all folklore materials, and copies for regional institutions of materials collected in that region;
- g) ensuring that the informants are protected and that the collected materials are not misused, taking all cares for their wide dissemination.

D. Preservation of folklore

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 the industrialized culture purveyed by the mass media. Measures must be taken to guarantee the status of and economic support for folk traditions both in the communities which produce them and beyond. To this end, the following would be advisable:

- a) to create and introduce into both formal and out of school curricula the teaching and study of folklore in an appropriate manner, taking into account not only village or rural cultures but also those created in urban areas by diverse social groups, professions, institutions, etc. and thus promoting a better understanding of cultural diversity and different world-views, especially those not participant in the dominating literary civilisation;
- b) the guaranteeing of the right of access of various ethnic and other social groups and national communities to their own folklore by also supporting their work in the fields of documentation, archiving, research, etc. as well as in the application of traditions in practice;
- c) the setting up on an interdisciplinary basis of a National Folklore Council or any other similar coordinating body in which various interest groups will be represented;

- d) supporting individuals and institutions holding items of folklore as for example by creating lists of collectors and informants.

E. Dissemination of folklore

The attention of people should be drawn to the importance of folklore as an ingredient of cultural identity. It is essential for the items that make up this cultural heritage to be widely disseminated so that the value of folklore and the need to preserve it can be recognized. However, any caricature or distortion during dissemination should be avoided so that the integrity of the traditions can be safeguarded. To this end, the following would be advisable:

- a) encouraging the organization of national, regional and international events such as fairs, festivals, films, exhibitions, seminars, symposia, workshops, training courses, congresses, etc. and supporting the dissemination and publication of their materials, papers and other results;
- b) the encouragement of a broader coverage of folklore material in the national and regional TV, radio and other media, for instance, through grants, by creating jobs for folklorists at these units, by ensuring the proper archiving and dissemination of these folklore materials collected by the mass media, and by the establishment of departments of folklore within broadcasting organizations;
- c) encouraging regions, municipalities, associations and other groups working in folklore to establish full-time jobs for folklorists for consultation and the planning of folklore activities in the region;
- d) supporting the existing and the creation of new units for the production of educational videofilms on the basis of recent fieldwork and other materials and encouraging their use in schools, folklore museums, at national and international folklore festivals and exhibitions;
- e) ensuring the availability of adequate information on folklore through documentation centres, libraries, museums, archives, as well as through special folklore bulletins and periodicals;
- f) facilitating meetings and exchanges between individuals, groups and institutions concerned with folklore, both nationally and internationally, taking into account bilateral cooperative contracts.

F. Use of folklore

In so far as folklore constitutes manifestations of intellectual creativity, it deserves to be protected in a manner inspired by the protection provided for intellectual productions. Such a protection 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.

Leaving aside the 'intellectual property aspects' of the protection of expressions of folklore, there are various categories of rights which are already protected and should be protected also in the future at the folklore documentation centres and archives. With this in view, it would be useful:

(a) regarding the 'intellectual property' aspects

1. to call attention of relevant authorities to important work of Unesco and WIPO in relation to intellectual property while recognizing that this work relates to only one aspect of folklore protection and that the need for separate action in a range of areas to safeguard folklore is urgent

(b) regarding the other rights involved

2. to protect the informant as the transmitter of tradition;
3. to ensure that the materials gathered are conserved in archives in good condition and in a methodical manner;
4. to adopt the necessary measures to safeguard the materials gathered, against misuse, whether intentional or due to negligence on the part of the collector, the research worker or the archives;
5. to recognize the right of archives to monitor the use made of the materials gathered.

G. International co-operation

In view of the need to intensify cultural co-operation and exchanges, in particular through the pooling of human and material resources, in order to carry out folklore development and revitalization programmes, Member States should be invited:

1. to co-operate with international and regional associations, institutions and organizations concerned with folklore;

2. to co-operate in the field of 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 cataloguing of folklore data and expressions;
3. In consultation with existing governmental, intergovernmental and non-governmental organizations with responsibility for aspects of folklore, Unesco is urged to create under its auspices, a world folklore council whose role would be to foster and coordinate international co-operation in the field of folklore and collect information relating to folklore protection, making available the information compiled, to national folklore councils or other relevant authorities in each country;
4. to 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 investigation, creation, composition, performance, recording and/or dissemination of folklore.