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DESIRABILITY OF ADOPTING A GENERAL INTERNATIONAL INSTRUMENT
ON THE SAFEGUARDING OF FOLKLORE

SUMMARY

After examining the preliminary study on the technical, legal and administrative aspects of general international regulations on the safeguarding of folklore, the General Conference, in 23 C/Resolution 15.3, 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, invited the Director-General to convene a special committee of governmental experts to examine the question and invited him to report on this matter to the General Conference at its twenty-fourth session (the text of 23 C/Resolution 15.3 is to be found in paragraph 12 of this document).

This document reviews the work that has been done in this field and indicates the decisions which the General Conference will be called upon to take at its twenty-fourth session.

Annex I contains an extract from the report of Programme Commission I, summarizing the debates which took place on this question at the twenty-third session of the General Conference.

Annex II contains the preliminary study prepared by the Director-General and submitted to the General Conference at its twenty-third session.

Annex III contains the report of the special committee of technical and legal experts which met in June 1987 to examine the question.

Decision required: paragraph 21.

1. In resolution 5/03 adopted by the General Conference at its twenty-first session (September-October 1980), the Director-General was invited to prepare a preliminary study on the technical and legal aspects of the safeguarding of folklore with a view to establishing international regulations on that subject.

2. Paragraph 5024 of the Approved Programme and Budget for 1981-1983 (document 21 C/5) stated:

'Two committees of governmental experts (category II) will be convened. The first will be held at Headquarters in 1981, with a view to defining measures to safeguard the existence, development and authenticity of folklore and traditional popular culture and to protect them against the risk of distortion; the second, preceded by a committee meeting (category VI), will be organized jointly with WIPO in 1982 and will be responsible for drawing up proposals for regulating the "intellectual property" aspects of the protection of folklore and traditional popular culture. Three working groups will be convened jointly with WIPO in 1981, 1982 and 1983, in Latin America and the Caribbean, Africa, and Asia and the Pacific respectively, to seek means of applying such regulations at the regional level, taking account of the characteristics of this cultural heritage in each region as factors in identifying an ethnic group or a national community.... In the light of the findings of the 1981 and 1982 committees of governmental experts, and in pursuance of 21 C/Resolution 5/03, a preliminary study will be made for submission to the Executive Board in 1983, and possibly to the General Conference at its twenty-second session, to enable it to decide whether it would be advisable to adopt a recommendation to Member States on this question.'

3. The two committees of governmental experts referred to in the work plan of document 21 C/5 met in 1982, one from 22 to 26 February at the Headquarters of Unesco and the other from 28 June to 2 July 1982 at the Headquarters of WIPO. At those meetings the various aspects of the safeguarding of folklore were examined with a view to deciding on the content of possible international regulations on that matter. Three working groups also met, one in Bogotá (October 1981), one in New Delhi (January-February 1983) and one in Dakar (February 1983).

4. Following those meetings and in accordance with the above-mentioned resolution of the General Conference, a preliminary study on the technical and legal aspects of the safeguarding of folklore was prepared and was submitted to the Executive Board at its 116th session (May-June 1983).(1) After debate, the Executive Board adopted 116 EX/Decision 5.6.2 in which the Executive Board:

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;

(1) Document 116 EX/26.

4. Decides to this end, in accordance with Article 4 (2) of the above-mentioned Rules of Procedure,(1) 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;'

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.'

5. The Approved Programme and Budget for 1984-1985 (document 22 C/5) contains in paragraphs 15115, 15116 and 15117 the following provisions:

'Protection of folklore - In the light of the views expressed by the Executive Board at its 116th session, the interdisciplinary examination of ways and means of safeguarding folklore will be pursued in conjunction with the activities envisaged under Programme XI.2 (Culture and the future). A committee (category II) of governmental experts set up to make an in-depth study of the possible range and scope of general regulations concerning the safeguarding of folklore will meet in 1985. A report on the proceedings of that committee and on the results of the activities carried out in accordance with the terms of the following paragraphs will be made to the Executive Board at its 121st session and the question of the desirability of adopting general regulations in this field may be included in the agenda of the twenty-third session of the General Conference.

A series of regional meetings has been held to adapt to the particular needs of each region model national legislation on the protection of folklore against its illicit exploitation. This series will be completed with the convening in 1984, in association with WIPO, of a regional committee (category VII) of Arab experts.

A committee of experts (category VI) will be convened at Headquarters in 1984, in association with WIPO, to consider the international protection of the intellectual property aspects of the protection of folklore.'

6. In accordance with this work plan, the committee of governmental experts responsible for making an in-depth study of the possible range and scope of general regulations concerning the safeguarding of folklore, met at Unesco Headquarters from 14 to 18 January 1985.

(1) Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

7. Prior to that, within the framework of the series of regional meetings held to adapt, to the particular needs of each region, model national legislation on the protection of folklore against its illicit exploitation and other damaging action, a meeting was organized, in association with WIPO, at Doha (Qatar) from 8 to 10 October 1984.

8. In addition, a Committee of Experts on the International Protection of Folklore by Intellectual Property was convened at Headquarters, in association with WIPO, from 10 to 14 December 1984.

9. In implementation of 126 EX/Decision 5.6.2 of the Executive Board and in accordance with Article 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution, a preliminary study on the technical, legal and administrative aspects of general international regulations on the safeguarding of folklore was submitted to the Executive Board at its 121st session. That study, which is reproduced in Annex II of this document, (1) was prepared using not only the work of the above-mentioned committees of governmental experts, but also a survey among Member States, the conclusions of the working groups convened jointly with WIPO in Latin America and the Caribbean, Africa, Asia and the Arab States, and the work of the committee of experts referred to in paragraph 8 above.

10. In the light of that preliminary study and of the Director-General's accompanying report, the Executive Board, at its 121st session, adopted the following decision (121 EX/Decision 5.7.2):

The Executive Board,

1. Considering Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
2. Having examined the report and preliminary study contained in document 121 EX/18,
3. Decides to place the following question on the provisional agenda of the twenty-third session of the General Conference: 'Desirability of adopting general international regulations concerning the preservation of folklore'.

11. The preliminary study was therefore submitted to the General Conference at its twenty-third session. Annex I of this document contains an extract from the report of Programme Commission I summarizing the debates of the General Conference on this question.

12. After debate, the General Conference adopted 23 C/Resolution 15.3 which reads as follows:

(1) Only some appendices of the document submitted to the Executive Board are reproduced here.

The General Conference,

Having regard to Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

Having examined the report and preliminary study contained in document 23 C/32,

1. Decides 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;
 2. Invites the Director-General to convene a special committee of governmental experts to examine the question and invites him to report on this matter to the next session of the General Conference in 1987.
13. The work plan of the Approved Programme and Budget for 1986-1987 provides in paragraph 15109 for the convening in 1987 of a special committee of technical and legal experts (category II) responsible for preparing draft international regulations in this field, in order to examine, in conjunction with the activities planned under Major Programme XI, Subprogramme XI.1.2 (Culture and the future), the measures to be taken to guarantee, within the framework of a global approach and on an interdisciplinary basis, the preservation of folklore.
14. In accordance with that work plan, a special committee of technical and legal experts responsible for preparing draft international regulations on the safeguarding of folklore, met at Unesco Headquarters from 1 to 5 June 1987.
15. In the Committee's debates, unanimous agreement was reached on the urgent need for international regulations on the safeguarding of folklore, of which the importance, as an integral part of the cultural heritage and of living world culture, was becoming increasingly clear.
16. Thus, in view of the extreme vulnerability of traditional forms of folklore, particularly those pertaining to the oral traditions, the need was emphasized for greater awareness in all Member States of the danger threatening folklore, particularly from the outside influences that the new techniques of communication were fostering, and for rapid action to ensure its protection.
17. A number of suggestions were made as to the content of possible international regulations and to the measures which might be taken, nationally and internationally, for recording, collection, conservation and protection of folklore.
18. The strengthening of international co-operation and Unesco's possible role in this connection were frequently mentioned as one of the main lines of emphasis of any international regulation and the key to its success. This international co-operation was mentioned, for example, in connection with the preparation of a universal typology and the co-ordination of action in this field or the training of specialists. Consideration was given to the possibility of establishing international machinery for this purpose, perhaps in the form of a world folklore committee or council.
19. Lastly, attention was drawn to the substantial work already done jointly by Unesco and WIPO regarding the protection of folklore by intellectual property, which comes within the framework of action which States would have to take to protect folklore when it was used and communicated.

20. Annex III of this document contains the report on that meeting.

21. In accordance with Article 6 of the Rules of Procedure concerning Recommendations to Member States and International Conventions, it is now for the General Conference, in the light of the information contained in this document:

- (a) to decide whether the question of the safeguarding of folklore should be regulated at international level;
- (b) if so, to determine to what extent the question can be regulated through a recommendation to Member States, as envisaged in 23 C/Resolution 15.3; and
- (c) to decide whether a special committee of technical and legal experts appointed by Member States should be convened to prepare the final draft which will be submitted to the General Conference at its twenty-fifth session (1989).

22. It should be remembered that under the terms of Article 9 of the above-mentioned Rules of Procedure, the General Conference may not vote on the adoption of a draft convention or recommendation before the ordinary session following that at which it took the decision referred to above. It follows that, in the present instance, the General Conference cannot in any event adopt a recommendation to Member States on the subject in question before its twenty-fifth session in 1989.

23. If the General Conference decides that the question should be the subject of a recommendation to Member States, it will instruct the Director-General, in accordance with Article 10, paragraph 1, of the Rules of Procedure, to prepare a report setting forth the position with regard to the problem to be regulated and to the possible scope of the regulating action proposed. The report will be accompanied by a preliminary draft of the recommendation. These documents will be submitted to Member States for their observations. A final report including a revised draft will then be prepared on the basis of the comments and observations made.

24. In accordance with Article 10, paragraph 4, of the Rules of Procedure, the General Conference has also to decide, as indicated in paragraph 21 (c) above, whether the final report shall be submitted directly to it or whether it shall be submitted for preliminary examination to a special committee of technical and legal experts appointed by Member States. In the latter case, and in accordance with the same Article 10, paragraph 5, the Committee will submit a draft which has its approval to Member States, with a view to its discussion at the General Conference.

ANNEX I

REPORT OF PROGRAMME COMMISSION I
OF THE GENERAL CONFERENCE
(Twenty-third session)

PART II (item 6.7 of the agenda)

Desirability of adopting a general international instrument on the safeguarding of folklore

1. The Assistant Director-General for General Activities and Programme Support presented document 23 C/32 on the historical background to the question and the problems emerging from the study submitted by the Director-General, following which, 17 members of the Commission took the floor.
2. In general, the delegates speaking on this item were unanimous in emphasizing the need for action to safeguard folklore and expressed their agreement with this project's objectives. The great majority of them approved the plan for standard-setting action, preferably not mandatory, at the international level.
3. Several delegates stressed the importance of preserving the elements of the cultural identity of peoples and the necessity of endeavouring to protect works of folklore from misuse and any kind of distortion.
4. One delegate said that the protection of folklore was not a matter for the Division of Copyright but one for the Culture Sector.
5. Several representatives of Member States said that the protection of folklore should not be considered from the point of view of copyright, mainly because works of folklore were to be considered as in the public domain, and that it was the responsibility of each State to protect them through its national legislation. One delegate expressed his preference for co-operation between States where the safeguarding of folklore was concerned.
6. A few delegates, while asserting the need to undertake actions for the preservation of folklore, drew attention to the fact that the work preparatory to the elaboration of an international instrument in this field had not yet been completed, in that the questions of definition, identification, conservation and preservation had still not been clarified.
7. It was pointed out by two members of the Commission that international regulation might be detrimental to the freedom of creation and that insistence on a fee, or even on prior permission, for the use of a work of folklore could hamper the cultural development of Member States and in so doing paralyse the enlargement of folklore, since folklore was a living phenomenon which evolved over time.

8. Some delegates considered that each State could promulgate legislation in this field, based on model provisions which the Unesco Secretariat could prepare for Member States interested in such protection.
9. One member of the Commission expressed the view that consideration should be given to the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, which could be applicable in this case, at least where the services of performers were concerned.
10. Lastly, one member of the Commission stressed the need for a clear statement of the chosen objective, which was to safeguard folklore from any kind of distortion so as to preserve it, and not to protect it as a work subject to copyright.
11. After the discussion, the Commission, considering that it was not yet possible to move on to the preparation of a draft international instrument, recommended that the General Conference should adopt a draft resolution.

The General Conference,

Having regard to Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

Having examined the report and preliminary study contained in document 23 C/32,

1. Decides 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;
2. Invites the Director-General to convene a special committee of governmental experts to examine the question and invites him to report on this matter to the next session of the General Conference in 1987.

ANNEX II

PRELIMINARY STUDY OF THE TECHNICAL, LEGAL AND ADMINISTRATIVE
ASPECTS OF GENERAL INTERNATIONAL REGULATIONS CONCERNING
THE SAFEGUARDING OF FOLKLORE

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I. INTRODUCTION

1. Folklore contains everything a people provides itself with in order to constitute its existential basis. It is, and it makes manifest, the culture of a human group, a popular and traditional culture which changes in the course of a group's history as its needs change, but to which the group is strongly attached because it is the source of its community life.
2. Folklore is thus a basic element of human culture which reflects the human spirit.
3. The various manifestations of folklore are an aspect of the culture of a civilization or of a community of human beings. They are the product of a group, or of a people, which develops in accordance with rules and archetypes peculiar to that group or people, and which expresses the attitudes and reactions of their members to their natural environment. They are very close to everyday concerns, to the most urgent and essential preoccupations of a people. They give everyone something with which they can identify and encourage a sense of belonging. The individual amounts to little without the culture of the community from which he or she has sprung.
4. Expressions of folklore are always linked to their sources. It seems that when they are separated from them a vital element is missing; it may well be that they would no longer have the same signification. Their content can only be clearly perceived in the light of their cultural context. Outside that context the message changes completely, and says more about the person interpreting it than about the person who created and produced it.
5. The authenticity and preservation of folklore are crucial. Folklore is becoming more and more important at the moment, mainly because of the increase in cultural exchanges, and this is due as much to its aesthetic interest as to the interest in other peoples and civilizations. As international relations and contacts expand in today's world, cultural factors and traditions - of which folklore is an essential component - must be one of the main ingredients of exchanges between peoples.
6. Modern techniques of reproduction, representation, and, more generally, dissemination make an important contribution to these exchanges and are in fact their main medium. The words of the preamble to Unesco's Constitution:

'the States Parties to this Constitution, believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives',

are more relevant and up-to-date than ever, thanks mainly to these new technologies.
7. The scope of mankind's cultural heritage is seen more as a whole, and the components of which it is made up are receiving more and more attention. As the years go by, more and more types of expression are acquiring a status comparable with that of historic monuments and literary, artistic and musical works.
8. For that reason the need to make every effort to preserve the cultural heritage is becoming more real every day. Its outlines, which may have been

rather indistinct not very long ago, are gradually becoming clearer as a result of the work that has been done, particularly by Unesco. The same is true of its various components, which should be taken into consideration in the context of the establishment of systems of protection.

II. THE VARIOUS ASPECTS INVOLVED IN THE SAFEGUARDING OF FOLKLORE

9. The problems posed by folklore are extremely complex. This is due, in the first place, to its definition. In addition, the protection now being considered has several aspects - the identification of the component parts of each of the types of expression making up that cultural heritage, its conservation, preservation and dissemination and its protection against abuse.

1. Definition of folklore

10. The question of the definition of folklore is extremely problematical: it is a difficult phenomenon to pin down. However, the more work has been done, the more conceptions of folklore have evolved, changing and at the same time becoming clearer. Changes are occurring in the phenomena of folklore itself, in the thinking of those studying them and in the attitude of those with influence on the place of folklore in cultural policy. The reflection to which it has given rise so far has made it possible on the one hand to have a clearer grasp of it and, on the other, to begin to consider safeguarding measures.

11. 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 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.

12. Definitions of folklore have changed in the course of time. The first were based on such criteria as 'anonymous authorship, traditionality and popular origin'(1) and 'impersonal, oral and traditional artistic creation'(2).

(1) Proposal for international instrument for the protection of folklore. Intergovernmental Copyright Committee, Twelfth Session, Paris, 5-11 December 1973. Document IGC/XII/12.

(2) 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.

The idea of impersonal, collective creation was defended for a long time,(3) in a period when the role of the known interpreter of folklore was being emphasized, to the detriment of the original, unknown, authors. But at the meeting of the Committee of Experts on the Legal Protection of Folklore held in Tunis from 11 to 15 July 1977 it was demanded 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'(4). 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'.

13. It is generally accepted that the problem cannot be solved at a general level. What we need is an organized picture of folklore, which would be partly common property 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.

14. There are some genres that 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 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, the situation being 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. Experts say that in fieldwork situations they sometimes come across adaptations the author of which

(3) 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.

(4) For the report on this meeting see document UNESCO/FOLK/I/4.

can be identified. But since that person 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 concept of multiple authorship remains with us. Studies of a fairly large 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 reproduced 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 performance 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.

15. Often the content of the expression as such may not be absolutely 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.

16. The definition proposed by the Committee of Governmental Experts on the Safeguarding of Folklore at its meeting in Paris in 1982, as reworded and expanded by the Second Committee of Governmental Experts in 1985, is 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'(5).

17. This definition places the weight of the argument on cultural and social identity. 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

(5) See document UNESCO/PRS/CLT/TPC/II/5, Annex.

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.

2. Identification of folklore

18. The identification of folklore is a sensitive and complex process. There is a considerable amount of work to be done, for although a start has been made in some fields and in some States, in others everything still remains to be done.

19. For example, 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.

20. Two things must be done in order to identify folklore. On the one hand, an inventory must be drawn up of aspects of folklore to be identified, and on the other hand methods of identifying them have to be devised.

(a) Aspects covered by folklore

21. The field of investigation depends on the definition of folklore adopted. Folklore materials consist of the material and intellectual culture.

22. Physical expressions of folklore generally include musical instruments, costumes, carpets, textiles and textile designs, votive offerings, statuettes, amulets, totems, ritual masks and, in general, everything related to the plastic arts.

23. It must be agreed that the non-material expressions of folklore are many and various. Without drawing up a complete list, we can mention a number of genres which belong indisputably to folklore, such as stories, fairy stories, tales of the supernatural, legends, beliefs connected with particular periods or places, myths and symbols. Music, whether instrumental or choral - songs connected with the activities of everyday life in a particular community or with the events which have affected the history of the group, whether these songs are religious or profane - are also part of folklore. If songs are included, poetry must also be considered as folklore; and poetry automatically subsumes linguistics, which is undoubtedly, as Van Gennep has maintained in his Manuel de folklore, the discipline most closely related to folklore, as 'linguists are aware that every language, whether general or special, is in a

constant state of transformation'. We must therefore consider the question of dialects and patois and decide whether or not they should be defined as folklore.

24. Some regard forms of religious expression as part of folklore - practices connected with medicine, magic, sorcery, cooking recipes, even certain kinds of behaviour, the rituals observed at marriages and funeral ceremonies and processions, and certain sexual practices; the same is true of games and dances.

25. The work of identification and inventorying calls for techniques and methods of identification. Identification of the relevant forms is a priority, but it requires suitable research methods.

(b) Methods of identification

26. The work of collection has to be done first. It can be done in various ways: direct note-taking by the researcher, prepared questionnaires or mapping, but also recordings on tape and film which may then be transferred to another medium in clear or in coded version (micro-film, punched cards or computer memory). In general, the maximum of information should be collected on the phenomenon in question (time, place, performers). Each item collected should be accompanied by a filing card situating it in its environment, without which it would be meaningless.

27. The information collected should be classified and inserted in a system. Rather than attempting to bring every item under one register, which does not seem feasible, it would be possible to transfer to the documentation broad corpora of material. For example, the 100,000 items in the ethno-medicine 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. 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.

28. 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, even with 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 traditional culture and folklore, as was indicated in the recommendations of the Committee of Governmental Experts that met in Paris in February 1982.(6)

(6) Document UNESCO/CPY/TPC/I/4, Annex I, p.2, Recommendation IV.A.4.

29. 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. 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, as recommended by the Paris meeting, design and develop identification and registration systems. Data systematization thinking should 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.

30. An international unit could assume the responsibility of co-ordinating or making practical proposals for 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 shortcuts 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.

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

3. Conservation of folklore

32. Folklore, like language, is a living thing, and its habitat must be protected. In fact this cultural heritage can be seen, in some parts of the world, to be dying out as a result of the gradual deterioration of its natural environment and of encroachments from the outside.

33. Paragraph 25 of the Mexico City Declaration(7) reads as follows:

'The cultural heritage (8) has frequently suffered damage or destruction as a result of thoughtlessness as well as of the processes of urbanization, industrialization and technological penetration. But even more intolerable is the damage caused to the cultural heritage by colonialism, armed conflict, foreign occupation and the imposition of alien values. All these have the effect of severing a people's links with and obliterating the memory of its past...'

(7) The World Conference on Cultural Policies, 26 July-6 August 1982.

(8) According to paragraph 23 of the Mexico City Declaration, 'The cultural heritage of a people includes the works of its artists... and also the work of anonymous artists, expressions of the people's spirituality, and the body of values which give meaning to life...'

34. The best way to keep traditions alive is certainly to be aware of the importance of folklore and to take the measures necessary to preserve this cultural heritage. This was, indeed, the conclusion of the various regional conferences held in Helsinki in 1972, Yogyakarta in 1973, Accra in 1975, Bogotá in 1978 and Baghdad in 1981, at which many aspects of current cultural problems were considered in their different regional contexts. The World Conference on Cultural Policies, for its part, recommended that Member States 'accord the same recognition to hitherto non-recognized aspects of cultural tradition as to historic or artistic goods, and provide technical and financial support for activities aimed at their preservation, promotion and dissemination'.(9)

35. However, the principles underlying the measures to be taken are rather problematical. For, in the field of intellectual folklore, what is the relation between the notes, tapes, films, etc., amassed in the archives and living folklore? 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 does not change any more, nor does it participate in the communication of tradition in a natural context. Notes and tapes are not really folklore. They could be regarded as 'works derived from folklore'.

36. 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 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.

37. In addition, the problem with the archives for intellectual folklore concerns their dissimilarity, which is due to the fact that they 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.

38. Material folklore, on the other hand, is conserved in the collections of a 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

(9) Recommendation No. 64.

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 deal, in particular, with this question.

39. However, the use of publications for the conservation of intellectual folklore could be considered. Various magazines, such as the gypsy review, publish gypsy stories in order to form the basis for a record of the creative work of a people.

40. Facilities for intellectual as well as material folklore must certainly be established and organized, for neither can be conserved without such arrangements, which may, for example, take the form of museums, publications, recordings, or archives. The work of classification and conservation and the possibility of further use can be made much easier by processing information by means of filing cards, microfilm or computer.

41. In fact substantial progress has already been achieved in this respect. For example, a considerable amount of work has been put into prospection, collection, analysis, indexing, numbering, filing and records management in the field of music and dance. The International Folk Music Council co-ordinates the work of a large number of national institutes for this purpose. In Argentina the National Institute of Musicology, founded in 1931 by Carlos Vega, has made a complete inventory of the folk music of the indigenous inhabitants of all the provinces of Argentina, and of all that of Bolivia, Peru, Chile, Venezuela and Paraguay. The Society of Romanian Author-Composers, founded in 1936, has applied itself to the collection and inventorying of Romanian folklore. In Czechoslovakia, the Institute of Musicology of the Slovak Academy of Sciences in Bratislava has already collected over 120,000 tunes, of which more than 10,000 have already been published. This Institute is devising a system of classification and ordering and a typology of musical folklore.

42. In some fields the trail has thus already been blazed, but more remains to be done to ensure the conservation of folklore, which is one of the prerequisites for its preservation.

4. Preservation of folklore

43. Conservation and preservation may at first appear to be synonymous as far as folklore is concerned, but in reality this is far from being the case since the idea of preservation implies the existence of a threat, in a way which that of conservation does not. Folklore is liable to be destroyed or changed as much as a result of the action of time as that of men. It is important that its authenticity should be preserved.

44. Under certain circumstances the preservation of folklore can 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 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 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 (10) 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.

45. Folklore may be distorted if it is used outside its original setting. This lays it open to the same risks as other works of the mind: plagiarism, amputation, misappropriation, unlawful reproduction or use, etc. Such distortion must be opposed by strictly applied regulations, which should enable folklore to regain its identity and its authenticity. A certain flexibility is necessary, however, so as not to impede the dissemination of this heritage.

46. With this in mind, it would be advisable to determine precisely the sectors of activity or creation where folklore is involved and where there is a serious possibility of commercial exploitation. From this point of view there is no doubt that the arts lend themselves most readily to exploitation of a commercial nature. Folk music and folk dances, like folk poetry or folk tales, are easy to exploit, as also are certain religious or pagan rites which can be performed before an audience or filmed. Generally speaking, it would be advisable to draw up a list of the different forms of expression of folklore which might be reproduced in print, on tape, through recordings or films. Actually any reproduction involves potential exploitation of the work or happening reproduced. In this way it will be possible to distinguish forms of expression of folklore for which there is no material medium of transmission from those which can be recorded and the recording of which may be used to make a saleable reproduction. The two extreme examples are, on the one hand, music, which can be directly exploited, and, on the other, beliefs, which cannot be recorded but are only practised, such practices being seldom amenable to commercialization.

47. This being said, the attitude to commercial exploitation should not be wholly negative: although the abuse or fraudulent use of folklore should be prevented, it is a source of income which many countries quite rightly wish to exploit, so long as some prior or retrospective control is exercised.

48. The emphasis should be placed on improving our knowledge of the uses to which folklore might be put; more needs to be known about supply and demand and a better understanding is required of the commercial system for the dissemination of folklore, while the means of obtaining folklore material should be controlled. In this way, action can be taken against the distortion, plagiarism and unlawful or fraudulent use of folklore. This presupposes solidarity between countries, which should try to localize folklore phenomena accurately and exchange information on the ways in which folklore is used. Education, for

(10) Committee of Governmental Experts, February 1982, document UNESCO/CPY/TPC/I/4, Annex I, p. 3, recommendation IV.B.10.

example, should also create awareness of folk traditions, in order to ensure their harmonious development in the population groups concerned and their dissemination at national as well as international level.

5. Dissemination of folklore

49. If folklore is not to lose its vitality in the community from which it has sprung, or to be misused and distorted simply out of ignorance of tradition, the population group should always be aware of it and initiation should be provided, through education and research.

50. Time should be allowed in formal education and training courses of study of the expressions of folklore and of the phenomenon of folklore itself. Collectors should also be trained.

51. The promotion of knowledge of folklore means, lastly, organizing access to the material collected and allowing study and research. There seems to be a case for integrating folklore sections into the existing or yet to be established structures of institutes of ethnology or musicology. A choice may be made between creating a folklore sector which would cover all forms of expression or creating a folklore unit in each department of an institute.

52. Encouragement of the different forms of expression of folklore could be given at two levels. Firstly, budgetary incentives could be provided: it would indeed be possible to allocate part of the budget of local authorities for the perpetuation of old forms of expression or to encourage the development of new ones. Secondly, tax incentives could be provided: it would also be possible to devise fiscal arrangements to encourage performances devoted entirely or in part, the proportion in question to be determined, to folklore.

53. Performances and exhibitions of folk art are an essential part of the dissemination of folklore. Fêtes, festivals, film shows, exhibitions, seminars, symposia, workshops, short training courses and congresses, for example, must be organized in order to bring folklore to the attention of the public and disseminate it.

54. It seems to be generally accepted that the safeguarding of folklore requires the preservation of its authenticity, but also its dissemination, so that it may continue to be a living culture rather than being regarded as a subject of historical or ethnographic research. The dissemination of folklore is also a way of making it known and respected as a part of the cultural heritage. However, the use made of folklore gives rise to some concern.

6. Utilization of folklore

55. There are two sides to this question, and they should be distinguished. On the one hand there is the use of folklore as an intellectual property, and on the other are certain considerations attached to its material use.

(a) The 'intellectual property' aspect of the utilization of folklore

56. One way of using folklore is to reproduce a traditional form of expression of a community in a magazine or on a record. Another is to stage a performance which uses expressions of folklore but does not make use of all the local elements. This may result in deformations or distortions. Use may also be made of folklore without the name of the community of origin being mentioned or any information being given to the public of any adaptation that may have been carried out.

57. Uses of folklore which are based on reproduction, performance, translation or adaptation, for example, can be protected by copyright provisions. Copyright legislation in several countries provides protection for expressions of folklore.

58. At international level, the Berne Convention for the Protection of Literary and Artistic Works contains in its versions adopted at Stockholm in 1967 and in Paris in 1971 a provision which, although not using the word, concerns works of folklore, since Article 15, paragraph 4, provides:

- (a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.
- (b) Countries of the Union which make such designation under the terms of this provision shall notify the Director-General [of the World Intellectual Property Organization] by means of a written declaration giving full information concerning the authority thus designated. The Director-General shall at once communicate this declaration to all other countries of the Union'.

59. However, at the time of preparation of this document, the Director-General of WIPO had been notified by one State only of the designation of a national authority to protect in other countries of the Berne Union the rights pertaining to works by authors whose identity is unknown.

60. The Universal Copyright Convention contains no provision dealing specifically with works of folklore. Only Article II which states the general principle governing the national treatment of works may provide scope for folklore protection in the measures specified by national legislation.

61. The Pan-American conventions are not particularly effective. By making the publication of a work a precondition for protection, they rule out all works which are transmitted orally.

62. Folklore cannot be directly equated with literary and artistic works, and thus cannot as such benefit from copyright, for several reasons. Firstly, copyright implies knowledge of the identity of an author. Secondly, the criterion of this system of protection is the originality of the work, and thirdly certain legal systems make publication of the work the criterion for its protection. Also, copyright protection is limited to a certain period of time, and in any case it would be difficult to pay copyright dues to the author, for the identity of authors of folklore is unknown.

63. According to some, folklore stems from a community and is not the result of the efforts of a single creator. An author, if there ever was one, is seldom identifiable: folklore always has its beginnings in a cultural community. The expressions of folklore are developed and perpetuated by a multitude of persons. Emanating from a community, folklore must be identified with the traditional values of that community; imitation and reproduction are its earmarks, as distinct from originality viewed as the expression of a single personality. The criterion of originality applicable in copyright law has as its counterpart authenticity, the criterion applicable to folklore.

64. It is often observed that folklore changes with time and that it is not something 'hard and fast'. Copyright is generally held to protect completed

works(11). In fact, literary, artistic and musical works are only rarely modified by their authors, which is not the case with expressions of folklore; these evolve and bear the imprint of the vicissitudes of the life of the community that has produced them and that makes use of them. It was likewise stressed that the expressions of folklore are often oral, which is not generally a characteristic of works protected under copyright law even if copyright protection does extend to oral works.

65. Legislation which makes publication a condition for the granting of protection effectively excludes expressions of folklore from its scope.

66. Furthermore, the expressions of folklore present themselves as relatively long-standing, which under copyright implies their having passed into public domain. The institution of the system of 'domain public payant' is hardly a satisfactory prospect, for even though this would provide financial resources, it would not afford material safeguards against possible distortions of folklore, such safeguards being one of the principal concerns within the broad issue of folklore protection. This important characteristic may well constitute a major obstacle in the way of folklore protection under copyright law. It so happens that moral rights, where they exist, are perpetual, whereas economic rights are always temporary. The question of duration is a stumbling block. Legislators who assimilate folklore to works covered by copyright law implicitly admit protection of the former in perpetuity(12). Imposing restrictions on duration deprives folklore of protection. It is by no means certain that all national legislators would be prepared to accept protection without fixed duration for certain types of creative works.

67. Finally, while a community might conceivably be invested with a moral right exercised by a representative, it is more difficult to accept the idea of pecuniary right, which rewards the work of the author, in this case unknown. Yet remuneration in exchange for the use of folklore seems only fair. It might take the form of a financial interest agreed to on the signing of a contract, or a tax levied on the occasion of its use. Something similar to a licensing procedure might also be envisaged. The fact remains, however, that a problem will undoubtedly arise as to the allocation of the financial resources thus generated. It will have to be decided whether these sums should revert to a national, regional or local body, and then to what use they should be put. Should they be used for unspecified general purposes, cultural purposes or for folklore itself? In the latter case, should they be used to finance study and research or dissemination?

68. In this connection it may be noted that a very sophisticated legal procedure already exists in Bolivia. The provisions governing musical folklore are grouped together in the Supreme Decree of 19 June 1968, which sets forth the principles applicable to this subject, and the regulations thereunder of July 1968, which specify the procedure for the application of the Supreme Decree.

69. Supreme Decree No. 08396 declares folk music (anonymous, popular and traditional) of which the author has not been identified and which is performed at the present time in Bolivia by peasant and other folk groups, and the music of Bolivian composers deceased 30 or more years ago to be the property of the State. With respect to the use of folk music, the Supreme Decree requires that any printed or recorded version of folk music mention the name of the collector and/or the Folklore Department of the Ministry of National Education and

(11) Although it does protect unfinished works.

(12) See, for example, Section 10 (f), of the law of the Republic of Burkina-Faso and Section 6, paragraph 2, of the Tunis Model Law.

Culture (Art. 6). A royalty is collected for such uses. Thus, any person who records or publishes folk music must pay into the 'Preservation of Folklore' account at the Bolivian Central Bank a sum equivalent to the royalties which would be collected by a living author for his composition (Art. 3). The proceeds from this royalty are allocated exclusively for the preservation and study of Bolivian folk music (Art. 5). From these sums, the registrar receives 40 per cent (Art. 4). Finally, in order to keep an accurate inventory of folk melodies, the Folklore Department of the Ministry of National Education and Culture and the Public Prosecutor's Office are authorized to investigate the appropriation of melodic themes from folk music by third parties as 'original' compositions prior to the Decree (Art. 7).

70. The regulations of July 1968 specify the uses which may be made of the national folklore, the measures for its registration and the procedure for the restitution to the national community of melodies improperly appropriated by third parties.

71. The crux of the matter is how to ensure that the expressions of folklore used are not distorted, that the original source is mentioned, and that the country of origin has a right to inspect the ultimate use made of the expression or work of folklore of which the authenticity might be affected, an association which would include participation in the profits accruing from such use.

72. Familiar copyright procedures can be combined with new rules and the use of folklore can be regulated by different means, to be left to the discretion of the States concerned.

73. The material utilization of folklore can also raise difficulties.

(b) The rights implied by the material utilization of folklore

74. 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.

75. The first of these concerns the protection of the intimacy of the informant: an informant often makes statements on certain subjects 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.

76. 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 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.

77. Thirdly, there is the right of the collector to expect that the material he places in 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.

78. 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.

79. The efforts made by Unesco since 1973 to bring these difficulties to light with a view to the achievement of international protection should perhaps be recapitulated.

III. UNESCO'S ACTION

1. Background(13)

80. It was at the request of the Government of Bolivia, expressed in a communication dated 24 April 1973 (Ref. No. DG/01/1006-79) sent by the Minister of External Relations and Religious Affairs to the Director-General, that the Secretariat began to carry out studies concerning folklore.

81. The aim of the Bolivian Government's request was to add a protocol to the Universal Copyright Convention which would govern 'the conservation, the promotion and the diffusion of folklore...'. This question was submitted to the Intergovernmental Copyright Committee, established under Article XI of the Universal Copyright Convention and the body responsible for dealing with questions concerning the application and operation of the Convention and also making preparations for revisions thereof, and was examined at its session in December 1973. At the conclusion of the discussions on this topic, the Committee decided to entrust the study of this question to the Unesco Secretariat, which was to report on the results of its work to this Committee and also to the Executive Committee of the Berne Union in so far as the protection of folklore might involve copyright.

82. In pursuance of this decision, the Unesco Secretariat submitted to the Intergovernmental Copyright Committee and to the Executive Committee of the Berne Union, at their 1975 sessions, a study on the desirability of providing for the protection of folklore on an international scale. Following discussions of this topic, at which it became clear that the matter was essentially of a cultural nature, going beyond the scope of copyright, and therefore lay outside their fields of competence, the Committees requested Unesco to make an exhaustive study of the problems involved in the protection of folklore.

83. Within the framework of resolution 6.121 adopted by the General Conference at its nineteenth session held in Nairobi in 1976, the Director-General convened a Committee of Experts on the Legal Protection of Folklore, which met in Tunis in July 1977 and considered a preliminary study on this question prepared by the Secretariat. In the course of this meeting it became clear that the problems involved in the protection of folklore comprised defining it, identifying it, conserving it, preserving it and the ways in which it was used.

84. At their meetings held in November-December 1977, the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union decided

'that studies on this subject should be pursued by the Unesco Secretariat on an interdisciplinary basis within the framework of an overall approach, but that [the World Intellectual Property Organization] WIPO [which also has responsibilities in this field] should be associated in the examination of any copyright aspects involved...'

85. Since then the work of the Secretariat in this field has been pursued at two levels: firstly, a global study of the protection of folklore which, if it is to be complete, requires the adoption of measures within an integrated framework covering the definition of folklore, its identification, its conservation, its preservation, its dissemination, and its utilization and, secondly, a study of the copyright and broader '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(14)

86. Paragraph 5022 of the Work Plan of resolution 5/9.2/1 adopted by the General Conference at its twentieth session stated that studies would be carried out by the Secretariat in order 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 80 above. These five points were the following: the definition, identification, conservation, preservation and exploitation of folklore.

87. By 30 September 1981, the Secretariat had received one or several replies from 70 Member States: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Central African Republic, Chad, Chile, Colombia, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, German Democratic Republic, Federal Republic of Germany, Ghana, Greece, Guinea, Honduras, Hungary, India, Indonesia, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Luxembourg, Malta, Mauritius, Mexico, Monaco, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, San Marino, Singapore, Socialist People's Libyan Arab Jamahiriya, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, United Kingdom, Upper Volta, Venezuela, Yugoslavia, Zaire. On 22 February 1982, the Secretariat received a reply from Gabon as well.

88. Firstly, it seems that all the replies received agree as to the need for a definition of the term folklore, but have differing ideas of the form such a definition should take.

89. In the first place opinion is divided on the question of the origin and sources of folklore and, more specifically, on whether folklore is the result of collective or individual creation or whether it should be an integral part of the 'cultural heritage'.

90. A similar variety of opinions is to be found with regard to the features that entitle a manifestation to be regarded as folklore and several countries considered that the features suggested by the questionnaire were inadequate, these being: the impersonal nature of the elements constituting the manifestation and of their transmission, their anonymity, the traditional nature of these elements and of their transmission, the oral nature of transmission, its empirical nature, the collective and spontaneous participation of the entire audience.

(14) Cf. chapter III.2(a) of document 116 EX/26.

91. Regarding the question whether elements other than those mentioned in the questionnaire are taken into consideration in the definition of folklore 38 countries replied in the affirmative, mentioning such criteria as the regional character of the manifestation, its regional specificity (this element being in some cases associated with its temporal specificity), the collective memory, the manifestation's force of social cohesion, the appeal to the conscience which is reflected in a feeling of belonging to a community, the 'functionalism' of the manifestation, the way the manifestation develops over a period of time while maintaining its identity, the collective nature of the creation, its rural character.

92. In the second place, rules regarding the identification of folklore appear essential for the protection of this heritage.

93. As regards the question of the method or methods applied in the collection and recording of manifestations or expressions of folklore, the replies received show that more or less equal numbers of countries apply the extensive method (consisting in establishing a wide survey network over the whole area under consideration and then proceeding to sort out the information) and the intensive method (survey on specific, scientifically determined points carried out among persons qualified to provide such information: witch-doctors, singers, story-tellers, heads of castes, priests, master craftsmen, patriarchs, heads of family, etc.), while fifty-one countries use a combination of both methods. It appears that 40 countries consistently apply the method of drawing up one or several model questionnaires designed for the recording and collection of the contents of folklore, its manifestations and expressions.

94. With regard to the systematization of the elements collected, only 25 countries use a standardized procedure for transcription and translation; when such a procedure is used, it provides most often for transcription of the text in the vernacular language (standardized alphabet, African alphabet, etc.), secondly for literary translation, and finally for literal juxtalineral translation in a widely-spoken world language.

95. Thirdly, the need for rules regarding the conservation of folklore has been clearly affirmed.

96. As for the means used to attain this end, it appears that 40 countries use an inventory of manifestations and expressions of folklore and 30 a register centralizing information on the different manifestations of folklore.

97. With regard to the storage of manifestations or expressions of folklore, 49 countries use index cards, records, tapes, microfiches, films, microfilms, etc. From the replies received it can be seen that only ten countries currently use computers for this purpose.

98. Rules on the preservation of folklore appear to be just as essential, for instance keeping inventories of the groups producing manifestations or expressions of folklore, which is apparently already the case in 44 Member States.

99. Moreover, 52 Member States have structures (specialized institutes, museums, specialized sections in ministries, an arts centre, a national library, etc.) or have adopted measures providing access to the phenomenon of folklore (the curricula of schools, universities or other higher education establishments; the media, exhibitions, festivals, shows; interregional exchanges).

100. In 65 countries, cultural policies include measures in support of manifestations of folklore (the organization of seminars, exhibitions, festivals,

regional, interregional or national artistic competitions; the training of specialists in folklore; publications, financial support; the creation of museums and groups concerned with folklore, etc.).

101. Finally it appears that restrictions regarding the places in which folklore may be used and the persons entitled to use it exist in certain countries in order to preserve its authenticity and guarantee it against any distortion.

102. Finally, legal measures governing the utilization of folklore appear indispensable.

103. In 20 countries, folklore is already legally protected. On the other hand, in 49 countries it is regarded as belonging in the public domain.

104. Where folklore is protected by legislation, the legal principles applicable are those of copyright law, the notion of plagiarism, the notion of unfair competition, and those of a law sui generis.

105. Conditions governing the utilization of works of folklore exist in 25 countries (previous authorization, completion of formalities, payment of a royalty). In certain countries the conditions laid down for the utilization of folklore apply to all forms of utilization, whereas in others they relate only to commercial utilization. Likewise, in some countries these conditions are only applicable in the event of utilization by foreigners in the country of origin of the work.

106. When folklore is regarded as belonging in the public domain, its utilization is subject either to the system of 'domaine publique payant' as in 19 countries or to the payment of a royalty.

107. As regards the use to which royalties from the utilization of works of folklore are put, it should be noted that they are allocated to different cultural or social purposes (national fund for arts, music, literature; welfare services for authors and composers; aid for artistic creation or research; scholarships; support for public holidays; rewards for intellectual creativity; the provision of prizes, etc.).

108. It therefore appears that this survey has made it possible to attain the desired target, which is to obtain precise and detailed information on the current situation with regard to the protection of folklore in the Member States.

(b) The Committee of Governmental Experts of February 1982(15)

109. In pursuance of resolution 5/01 adopted by the General Conference at its twenty-first session, a Committee of Governmental Experts on the Safeguarding of Folklore met from 22 to 26 February 1982.

110. The purpose of the meeting was to analyse on an interdisciplinary basis, within the framework of an overall and integrated approach, various aspects of folklore with a view to defining measures to safeguard the existence, development and authenticity of folklore and to protect it against the risk of distortion; including the definition of folklore, its identification, its conservation, its preservation and its utilization. The representatives of 44 Member States participated in the work and experts from six Member States and one non-Member State attended the meeting as observers.

(15) Cf. chapter III.2(b) of document 116/EX/26.

111. 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.

112. With regard to the scope of the concept of folklore, the Committee acknowledged that it was a form of expression covering all phases and aspects of human life, as well as all types of cultural behaviour. As a social phenomenon in the broadest sense encompassing all cultural sectors, it could not be broken down into material folklore and intellectual folklore. This gave rise to the suggestion that the more comprehensive expression 'traditional popular culture' should be used instead.

113. The academic aspect of folklore (collection, storage and study) was also stressed as well as the crucial importance of folklore research within the context of the preservation of folklore. In this connection the Committee insisted on the importance of encouraging scientific research in this field, and of making the findings available to researchers and folklore specialists.

114. 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.

115. Several delegations presented folklore as a form of culture possessing an ethical role of social and cultural identification, one which contributed to the suppression of prejudices and the assertion of freedom. These considerations led the delegations in question to emphasize the importance of preserving those elements specific to the cultural identity of a people.

116. The Committee moreover 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 also drawn to the dangers of using folklore out of its original context, and to the need to ensure the continuation of tradition; it was said that this cultural heritage should not be sacrificed 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.

117. Another aspect emphasized was the need to generate awareness among the intellectual élite and interest among the media and in political circles; it was important to ensure that the element of tradition did not merely assume the guise of a show for public performance.

118. With regard to the protection of folklore, it was pointed out that when the safeguarding of folklore was referred to, it was usually its material aspect that was meant, whereas it was equally important to protect the populations concerned from cultural imperialism and to preserve the moral identity of individuals.

119. Upon concluding its deliberations, the Committee of Governmental Experts adopted a series of recommendations that are listed in the Appendix to this study and relate to the definition, identification, conservation and analysis of folklore as well as its preservation, enhancement and reactivation, and its utilization.

120. It should be noted, on the subject of the utilization of folklore, that the Committee of Governmental Experts, having regard to the work that has been carried out jointly by Unesco and WIPO on the 'intellectual property' aspects of its protection, recommended that the two Organizations continue their study of these aspects.

121. Furthermore, as regards the recommendations aimed at ensuring the preservation, enhancement and reactivation of folklore and among them those addressed to the Member States (Item IV.B recommendations 16 to 23), one delegation stated that while it was in favour of the intentions behind these texts, its government would have administrative difficulties in implementing all of them.

122. Finally, the Committee of Governmental Experts recommended that 'Unesco continue its studies and deliberations aimed at formulating an international recommendation on the preservation and safeguarding of folklore and of traditional popular culture, in accordance with resolution 5/03 adopted by the General Conference of Unesco at its twenty-first session'.

(c) The Second Committee of Governmental Experts of January 1985

123. This Second Committee of Governmental Experts was convened by the Director-General in pursuance of decision 5.6.2 adopted by the Executive Board at its 116th session, a decision of which the General Conference took note at its twenty-second session.

124. The aim of this meeting was to carry out a thorough study of the possible range and scope of general international regulations concerning the safeguarding of folklore. Representatives from 41 Member States participated in the proceedings, and experts from six Member States and from two non-Member States attended the meeting in the capacity of observers.

125. During this meeting, the need to identify, preserve and protect folklore from the risks of being forgotten, distorted, impaired, caricatured or pillaged, since folklore is an integral part of the heritage, and of the cultural identity of the various peoples, was recognized by a wide majority. Several delegations stressed the value of the safeguarding of folklore and its importance for certain States.

126. Reference was made on several occasions to the threatened loss and disappearance of certain elements of folklore, particularly in the face of modern communication technologies which facilitate the importation of foreign cultures, thus replacing local cultural traditions and promoting the hegemony of imported cultures.

127. Most delegations underscored the need for an international instrument of some description for the preservation of folklore.

128. Some delegations, however, expressed reservations as to the advisability of adopting a legally binding instrument. Two of them were opposed to any standard-setting action in that field at international level on grounds of practicality as well as principle. Others, although opposed to the preparation of a binding text such as an international convention, considered that a recommendation might serve to stimulate recognition of the cultures of different countries.

129. It was stated that although it would be premature to adopt an international instrument at that stage, that was the ultimate goal, while attention was also drawn to the prime importance of taking measures at national, rather than international, level.

130. Many observations were made regarding the definition of folklore to be adopted. Some delegations wished this to be extremely broad and flexible, since folklore comprises a great many manifestations which are both extremely various and constantly evolving. Others, however, hoped that the definition might be

precise and not too broad, in order to convey a clear idea of what might be safeguarded by protective measures. One delegation even pointed out that before defining folklore, it was necessary to determine the objectives sought in safeguarding it, and to draw up a list of the different aspects of folklore to be covered. One delegation pointed out, with regard to the content of the definition, that it was not advisable to include beliefs among the forms of folklore, these being totally different in essence.

131. Many delegations stressed the importance of the infrastructures responsible for safeguarding folklore, and particularly the operations of inventorying, storage in archives and documentation, even if it proved virtually impossible to inventory and archive everything. It was regarded as important to continue to seek out and to preserve manifestations of folklore, and thereby to build up archives. It was claimed that a catalogue could be drawn up on the basis of such work, and indexes established according to the types of folklore. Several delegations recommended establishing basic compendia that listed the works of folklore themselves together with the versions of work stored in archives, and all other relevant information; they also recommended drawing up an international register of cultural property in the form of such works. The publication of a newsletter containing information on systematization was mentioned. One delegation stated that information on cases of misuse and on any existing structures should be collected and disseminated, as well as information on the ways of inventorying folklore. Another delegation urged that archives services, similar to historical archives be established, specifying that these should be comprehensible at the international level. The possibility of devising a global typology of folklore and of cultural property was also mooted. The usefulness of having available a list of popular traditions that States regarded as most representative of their cultural values was also emphasized.

132. Particular stress was laid on the promotion and dissemination of folklore through teaching, scientific work, the production of documentation, the setting up of interdisciplinary committees on folklore within States, and the organization of competitions, conservatories, festivals, recordings, publications, conferences, etc. Furthermore, since building up infrastructures and training personnel required considerable technical, intellectual and financial resources, the need for international co-operation in these fields was emphasized. The importance of fostering awareness of folklore as such was also mentioned on several occasions.

133. Finally, several delegations expressed the wish that the Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions, adopted by a Committee of Government Experts on the 'intellectual property' aspects of the protection of folklore which met under the joint auspices of Unesco and the World Intellectual Property Organization (WIPO) in June-July 1982, be taken into consideration by States, and that they enact appropriate legislation.

134. In fact, it emerged in the course of the meeting, that it was considered necessary to protect folklore from commercial exploitation. Sources should be systematically quoted, and the proceeds from the utilization of folklore should be returned to the communities of origin. Nevertheless, certain delegations considered it difficult to control utilization beyond national frontiers. Accordingly, many of them expressed the view that it was essential to standardize the rules governing such utilization.

135. At the end of the meeting, although several reservations were expressed, the Committee identified possible solutions which it adopted as conclusions of its proceedings.

136. The text of the conclusions adopted by the Second Committee of Governmental Experts appears as an appendix to this preliminary study and constitutes Annex I to the report adopted by the Committee (Document Unesco/PRS/CLT/TPC/11/5).

137. Furthermore, the Committee - whose terms of reference, as laid down in decision 5.6.2 of the Executive Board at its 116th session, were to carry out a thorough study of the possible range and scope of general international regulations concerning the safeguarding of folklore - in the course of its proceedings also discussed, inter alia the nature of the instrument that might be drawn up, should the General Conference of Unesco decide that the adoption of such an instrument was advisable. It was of the opinion that this should not take the form of an international convention. On the other hand, there was unanimous agreement that it might take the form of an international recommendation to Member States, this being a flexible instrument whereby the General Conference formulates principles and norms that it invites Member States to adopt in the form of a national law or in some other way.

3. The study of the intellectual property aspects of the protection of expressions of folklore carried out jointly with WIPO

(a) The 1980 and 1981 expert committees (16)

138. 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 are examining in detail the question of the intellectual property aspects of the protection of folklore.

139. A working group requested to study a draft of model provisions intended for national legislation as well as international measures for the protection of works of folklore met at the WIPO Headquarters in Geneva from 7 to 9 January 1980. This working group was made up of 16 experts from different countries invited in a personal capacity by the Directors-General of Unesco and WIPO.

140. The working group agreed that: (i) adequate legal protection of folklore was desirable; (ii) such legal protection could be promoted at the national level by model provisions for legislation; (iii) such model provisions should be so elaborated as to be applicable both in countries where relevant legislation was in force and in countries where existing legislation could be further developed; (iv) the said model provisions should also allow for protection by means of copyright and neighbouring rights where such a form of protection could apply; and (v) the model provisions for national laws should pave the way for subregional, regional and international protection of creations of folklore.

141. At the conclusion of these deliberations, the working group recommended, in respect of the model provisions for national laws on the protection of creations of folklore, that the Secretariat of Unesco and the International Bureau of WIPO should prepare a revised draft and commentary thereon, taking into consideration the ideas put forward during the course of the debates, and that such a draft with its commentary should be presented for further consideration at a subsequent meeting.

142. Accordingly, the Secretariats prepared a revised draft of model provisions and a commentary thereon which were submitted to the working group convened for a second meeting held at Unesco Headquarters from 9 to 13 February

(16) Cf. chapter III.3(a) of document 116 EX/26.

1981. The working group examined the proposed model provisions and suggested several amendments to them as well as new sections. In conclusion, it adopted what are called 'Model Provisions for National Laws on the Protection of Expressions of Folklore', in order that they might be submitted to a Committee of Governmental Experts for further examination, together with a new commentary which the Secretariat of Unesco and the International Bureau of WIPO were to prepare.

(b) The Committee of Governmental Experts of June 1982 (17)

143. In pursuance of resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session and the decision taken by the governing bodies of WIPO at their sessions in November 1981, a Committee of Governmental Experts 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.

144. The Committee agreed that:

- (i) the Model Provisions should more explicitly reflect the fact that protection of expressions of folklore against prejudicial utilization services, ultimately, the purpose of further development and better dissemination of such expressions;
- (ii) the Model Provisions should leave enough room to national legislations for adopting a system of protection best corresponding to the conditions prevailing in a given country;
- (iii) the role of communities, developing and maintaining the expressions of folklore, in controlling the use thereof, should be dealt with in the Model Provisions in greater detail;
- (iv) the maintenance of an appropriate balance between the protection against abuses of expressions of folklore, on the one hand, and the freedom of legitimate development thereof within the community concerned as well as the creation of works inspired by folklore, on the other, should be recognized as a basic purpose to be served by the Model Provisions;
- (v) the relation of the proposed protection sui generis to other kinds of protection of intellectual creativity should be dealt with in the commentary in more detail, with special regard to the protection by means of neighbouring rights;
- (vi) the Model Provisions should be in harmony with relevant findings of the Committee of Governmental Experts on the Safeguarding of Folklore, which met in Paris in February 1982, and the special subject of the Model Provisions should be reflected also in the title thereof, avoiding confusion with other documents which may be established concerning various aspects of the protection of folklore.

145. After making the necessary amendments to the draft of model provisions submitted to it, the Committee of Governmental Experts definitively adopted the 'Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions'. It also

(17) Cf. Chapter III, 3(b) of document 116 EX/26.

requested the Secretariat of Unesco and the International Bureau of WIPO to prepare a final version of the commentary on these model provisions, reflecting the observations and suggestions made during the deliberations.

146. The Committee of Governmental Experts also discussed the advisability of establishing an international regulation concerning the protection of expressions of folklore.

147. The Committee was informed by the representative of the Director-General of Unesco that by resolution 5/03, adopted at its twenty-first session, 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 and invited the Director-General to prepare a preliminary study on the technical and legal aspects of this question.

148. With regard to the intellectual property aspects of the protection of folklore, most of the delegations were of the opinion that the Model Provisions should be conceived so as to serve as a basis for the elaboration of any international regulation on the protection of expressions of folklore. Some delegations considered that, while they were in favour of examining the possibility of adopting such regulations, priority should be given to national and regional considerations. One delegation declared that it was not in favour of international measures.

(c) The regional expert committees

149. In accordance with the Work Plan of 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, in Bogotá (October 1981), in New Delhi (January-February 1983), in Dakar (February 1983) and in Doha (October 1984), expert committees on the means of applying at the regional level model provisions for national laws on the intellectual property aspects of the protection of folklore.

150. The expert committee of Bogotá 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 expert committee of Doha recommended that Unesco and WIPO should prepare a draft multilateral international treaty on the protection of expressions of folklore and should take steps to encourage its adoption and application.

(d) The Group of experts on the international protection of expressions of folklore by intellectual property of December 1984

151. In accordance with the decisions adopted by the General Conference of Unesco at its twenty-second session (October-November 1983) and the Governing Bodies of WIPO at their fourteenth series of meetings in October 1983, the

Secretariat of Unesco and the International Bureau of WIPO jointly convened a 'Group of experts on the international protection of expressions of folklore by intellectual property', which met at Unesco Headquarters in Paris from 10 to 14 December 1984.

152. Under its terms of reference, the Group of Experts was asked to consider the need for a specific international regulation on the international protection of expressions of folklore by intellectual property and the contents of an appropriate draft.

153. The discussions reflected a general recognition of the need for international protection of expressions of folklore, in particular with regard to the rapidly increasing uncontrolled use of such expressions by means of modern technology, beyond the limits of the country or the community in which they originate.

154. A number of participants supported the idea of preparing an international multilateral treaty on the protection of expressions of folklore, on a sui generis basis of safeguarding intellectual property. However, several participants considered it premature to establish an international treaty since there was not sufficient experience available as regards the protection of expressions of folklore at the national level, in particular concerning the implementation of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, adopted in 1982 by a Committee of Governmental Experts. Other participants, however, referred to the inadequacy of the efforts aiming at the application of copyright protection to such expressions and to the fact that there was sufficient evidence as to the need for an international protection of expressions of folklore.

155. However, it was suggested that the necessity for the establishment of a proper infrastructure for the implementation of a treaty on the protection of the expressions of folklore be also considered. In this connection the Secretariats referred to the Recommendations, adopted by the governmental experts convened by Unesco in 1982, on the question of identification of folklore, the conservation and analysis of folklore and its preservation, enhancement and reactivation, as well as the utilization of folklore. The work of Unesco, carried out as part of a comprehensive study on an interdisciplinary basis, was mentioned on several occasions.

156. The measures already existing in several countries and the texts of international conventions relating to intellectual property were mentioned as a possible starting point, and it was observed that the existence of a specific international instrument might induce countries to legislate accordingly. However, it was pointed out that the urgency of the establishment of an international treaty on the protection of expressions of folklore may vary from one region to another.

157. The question of the protection of expressions of folklore originating in a community that extends over the territory of more than one country was mentioned. Some participants found it necessary to provide in the treaty itself some solution of the problem of national jurisdiction over such expressions. The obligation of Contracting States to settle such questions at the regional level or by means of bilateral agreements was also mentioned as a possible solution. It was mentioned that possible migration of tribes or members thereof should also be considered.

158. In the course of this meeting, attention was drawn to the importance of strengthening, in the proposed treaty, the links between the expressions of folklore and the respective communities in which they originated. It was even stated that the communities should be explicitly recognized as owners of the rights in such expressions. On the other hand, reference was made to the fact that in some countries the nation or the State is considered proprietor of the traditional culture developed by its communities and that the treaty is not supposed to deal with questions of ownership of rights in expressions of folklore but should provide for the administration of international protection of expressions of folklore so as to allow also for cases where they are property of the communities in which they originated.

159. It was suggested that the treaty should be prepared on a purely public law basis, obliging the Contracting States to regulate the protection of expressions of folklore themselves and without providing for new forms of private law type protection. However, mention was made of the danger that too much control by prior authorization might interfere with the orderly dissemination of expressions of folklore.

160. Some participants focused on the importance of the identification of protected expressions of folklore as a condition of their international protection. It was suggested to consider, in this connection, the question of formalities, in particular registration of expressions of folklore, or the establishment of relevant inventories. Some participants suggested utilizing better the existing network of national inventories in identifying expressions of folklore. One expert referred to the importance of registering expressions of folklore from the point of view of the information of the users and consumers of such expressions. In this context, the Secretariats referred to the interdisciplinary study conducted under the auspices of Unesco on the protection of folklore and which covers, inter alia, questions of inventories and registration of expressions of folklore.

161. During this meeting it was stated on several occasions that the dissemination of legitimately made recordings should not be restricted by the entry into force of a treaty, and that it was not advisable to establish a system of prior authorization.

162. After the general debate the Group of experts proceeded to examine the draft treaty which had been submitted to it by the Secretariats.

IV. PROSPECTIVE SOLUTIONS

163. The work undertaken since 1973 has made people aware of the fact that folklore is in the process of dying out in certain parts of the world, as a result of its gradual deterioration when used outside the community that produced it. It has also highlighted the urgent need for measures capable of providing an effective response to a steadily worsening situation. It was in this spirit that, with regard to the intellectual property aspects of the protection of folklore, model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions were adopted by the Committee of Governmental Experts of June 1982.

164. Because of the complexity of the subject of folklore, it can be maintained that the legal protection of the 'intellectual property aspects' of this cultural heritage is only one aspect of an overall approach aiming at one and the same time at the identification, conservation, preservation and dissemination of folklore.

165. The question of the safeguarding of folklore has two aspects. On the one hand, it involves the implementation of a number of measures of a material nature and, on the other, the possibility of legal protection.

166. With regard to the first point, it should be noted that the development of infrastructures varies from State to State. Furthermore, research and the establishment of infrastructures designed to identify, conserve and preserve folklore does not directly affect the vitality of folklore itself and conditions must be created in order to encourage its development. Any research undertaken provides us with a greater awareness of the past or present expressions of folklore and enables us to understand the very nature of this phenomenon.

167. Thus, while it is sometimes impossible to ensure that some expressions of folklore continue in being (for example, because of the difficulties of artificially maintaining cultural phenomena which no longer have any relevance to their times), it is possible to undertake action to analyse folklore and make it better known. Scientific action needs to be undertaken at the international level not only in order to pursue the work already undertaken by some States and to help other States, but also in order to harmonize activities at the international level.

168. The conclusions adopted by the Second Committee of Governmental Experts at the meeting of January 1985 form the foundations for the possible preparation of an international instrument.

169. In this connection, the Committee of Governmental Experts mentioned the role that Unesco might play to foster the safeguarding of folklore. The Committee considered that the General Conference might examine the following possibilities:

- (a) establishing an international register of cultural property in the form of folklore, preceded by an inventory of the infrastructures conducive to a better knowledge of folklore;
- (b) publishing at regular intervals a newsletter on the safeguarding of folklore, which would provide a link between all the institutions and persons to whom Unesco might wish to address itself;
- (c) establishing, at a worldwide level, a standard typology of folklore and cultural property in a common indexation language, with the help of appropriate committees of experts;
- (d) establishing a list of popular traditions selected by Member States as being most representative of their folklore heritage;
- (e) providing developing countries with intellectual and technical assistance in the establishment of infrastructures and the training of specialized staff.

170. With regard to the second point, namely legal protection, it should be noted that over and above the model provisions for national laws adopted by the Committee of Governmental Experts of June 1982, protective measures may also ensue from other laws and from certain international treaties.

171. Thus, when expressions of folklore meet the conditions which the texts lay down for their protection, it is possible to have recourse to copyright law. Some expressions of folklore may be regarded as works coming under copyright. Several national copyright laws protect folklore on such a legal basis.

This is, moreover, the case with the Tunis Model Law on copyright for the developing countries.

172. The law protecting performers may be used to cover events, representations and performances of expressions of folklore. The same is true of the provisions which protect producers of phonograms and broadcasting organizations that broadcast expressions of folklore.

173. Other techniques, admittedly somewhat more limited in scope, may possibly be used. An expression of folklore may appear on a trademark or an industrial model and accordingly give rise to the application of the relevant texts.

174. Finally, recourse may be had to the texts protecting the cultural heritage in so far as it is accepted that folklore forms part of this heritage, especially as regards the material forms of folklore.

175. At the international level, in so far as they are applied, the following instruments may possibly provide a legal basis for protection, even if these texts do not cover folklore in its entirety: the Universal Copyright Convention, by virtue of the principle of national treatment; the Berne Convention, which provides in Article 15(4) for the protection of 'unpublished works where the identity of the author is unknown; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; the Convention for the protection of producers of phonograms against unauthorized duplication of their phonograms; the Convention concerning the distribution of programme-carrying signals transmitted by satellite; the Convention for the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of Unesco in 1972, which recognizes that the duty of ensuring the protection of the cultural and natural heritage belongs primarily to the State and recommends the States to take appropriate measures to this end, and the Recommendation for the Safeguarding and Preservation of Moving Images, adopted by the General Conference of Unesco in 1980, which considers that moving images are an expression of the cultural identity of peoples and form an integral part of a nation's cultural heritage and invites the States to take all the requisite measures for the effective safeguarding and preservation of this heritage.

176. In legal terms, folklore does not exist in a complete vacuum and, particularly on account of the action carried out in the field of intellectual property, it is increasingly well-protected in the uses made of it. On the other hand, with regard to its material safeguarding, much still remains to be done and the infrastructures are lacking.

V. CONCLUSIONS

177. It emerges from the foregoing study that it is not only possible but even desirable to establish international regulations for the protection of folklore.

178. The state of research undertaken on a comprehensive and interdisciplinary basis is sufficiently advanced for such international regulations to be envisaged. If the Executive Board shares this point of view and decides to include the matter on the provisional agenda of the twenty-third session of the General Conference, it will then be for the latter to decide on the advisability of such general international regulations and on the most suitable form that might be assumed by normative action of this kind. In view of the nature of the question to be regulated, it may be felt that a recommendation would be a more flexible method and might be better suited to the complexity of the problems dealt with in this study.

179. It should, moreover, be noted that, in the course of its proceedings, the Second Committee of Governmental Experts discussed the possible nature of the international instrument that might be drawn up should the General Conference of Unesco decide that the adoption of such an instrument was advisable. It was of the opinion that the matter in question should not be the subject of an international convention. However, there was unanimous agreement that it might take the form of an international recommendation to Member States.

180. As for the content of a possible international instrument in this field, the studies carried out have brought to light the various legal procedures for reconciling the interests involved. The Second Committee of Governmental Experts on the Safeguarding of Folklore drew attention to possible solutions, which it adopted as conclusions of its proceedings and which might serve as a framework and basis for possible regulations.

181. As far as the intellectual property aspect is concerned, since the series of regional meetings responsible for adapting to the particular needs of each region the model provisions for national laws on the protection of expressions of folklore against illicit exploitation has come to an end, and since the conclusions of these meetings included the wish that an international instrument be prepared, and bearing in mind the proceedings of the Group of Experts which met in December 1984, the examination of international regulations for the protection of expressions of folklore in its 'intellectual property' aspects will henceforth be pursued jointly with the World Intellectual Property Organization (WIPO).

APPENDIX I

RECOMMENDATIONS

adopted by the Committee of Governmental Experts
at its meeting in February 1982

I. PREAMBLE

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.

II. DEFINITION OF FOLKLORE

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.

III. RECOMMENDATIONS CONCERNING 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.

It is therefore recommended that:

1. 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;
2. Unesco provide intellectual and technical assistance to the developing countries to enable them to obtain the recording materials (tape recorders, cassettes, video equipment) necessary for collecting the manifestations or expressions of folklore;
3. Unesco promote the training of specialized personnel in the fields of research, collection, transcription and storage of folklore elements and consider as part of the aid provided to the countries that are least developed technologically, the possibility of organizing training programmes in environments that resemble as closely as possible the conditions under which the researcher will have to work in the field rather than those familiar to the trainer;
4. Member States design identification and registration systems so as to provide classified records of folklore data;

5. Member States systematize and standardize methods of collecting, transcribing and classifying relevant data;
6. Member States prepare inventories, which should be as comprehensive as possible, of the manifestations or expressions of folklore.

IV. RECOMMENDATIONS CONCERNING THE CONSERVATION AND ANALYSIS OF FOLKLORE AND ITS PRESERVATION, ENHANCEMENT AND REACTIVATION

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.

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.

A. With a view to ensuring the conservation and analysis of folklore, it is recommended that:

1. Unesco help developing countries to establish centres for the teaching and conservation of folklore and popular tradition;
2. Unesco assist developing countries in defining the equipment and supply requirements and concerning the funds for the purchase thereof;
3. Unesco draw up an inventory of archival facilities in the field of traditional culture at present existing in Member States;
4. Unesco compile a list of existing university departments, academic institutions, research centres, tradition archives, museums, etc., interested in conservation and analysis of traditional culture and distribute this list to interested parties, preferably in the form of regular newsletters or similar serial communications;
5. international co-operation in the field of folklore studies and traditional popular culture be furthered considerably through the establishment of one basic working classification for data and another for the performance style in which the data were collected. Ultimately, the content of archives of folklore and traditional popular culture should be co-ordinated nationally through a data centre which in turn should be co-ordinated through international data centres. As a first step Unesco should initiate this work in co-operation with other similar efforts (N.A.T.I.S.) begun nationally and continued regionally as in the Nordic countries, for example, and leading to continental information services;
6. Unesco continue its work of collecting and producing audio-visual materials on the folklore of Member States;
7. Unesco promote contacts among researchers by means of methodological seminars at which they can exchange the results of their work and compare their experiences;

8. Member States collaborate with research institutes in publishing and disseminating works on past and present national or regional folklore and carry out exchanges among various groups and countries in this field;
9. Member States organize training courses for those interested in the conservation and analysis of folklore.

B. With a view to ensuring the preservation, enhancement and reactivation of folklore, it is recommended that:

10. Unesco encourage the organization at regional, national and international level of folklore events such as festivals, fêtes, exhibitions, films, seminars, symposia, congresses and so forth;
11. in view of the growing importance of urban popular cultures as a concomitant of increasing urbanization in the world, Unesco consider the holding of a meeting to study this phenomenon and promote a better understanding of it in order to give satisfaction to those engaged in creating urban popular cultures in the world today;
12. in their publications, Unesco and Member States link the concerns of conservation and analysis, on the one hand, with those of preservation, on the other. They provide a means for the universal availability and increased understanding and respect for folklore traditions;
13. Unesco and Member States encourage institutions, organizations and spontaneously formed groups to initiate or to support folklore festivals, exhibitions, programmes, etc.;
14. Unesco make available expert help for the above-mentioned purposes, through all feasible means;
15. Unesco formulate criteria to ensure that the use of folklore outside its original environment does not lead to its distortion or debasement;
16. Member States establish inventories of structures and measures providing assistance to people interested in folk traditions (their own or otherwise) and distribute them nationally in all necessary languages;
17. Member States include the systematic teaching of traditional culture in educational curricula at all levels;
18. existing archives or similar establishments in Member States make available copies of all materials collected in a community or region, or that such archives or establishments be set up for this purpose;
19. Member States take steps to encourage the competent authorities in the fields of folklore, popular tradition and tourism to co-ordinate their efforts with a view to safeguarding the authenticity of folklore events and the integrity of traditions;
20. Member States, in the context of action to preserve folklore, set up national committees on an interdisciplinary basis, made up of folklorists, ethnologists, sociologists, historians, musicologists, writers, artists, etc.;

21. Member States 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;
22. Member States formulate cultural policies aimed at reviving folklore in communities that so desire;
23. Member States ensure that action to preserve folklore is extended to include indigenous or aboriginal cultures since both types, folklore and indigenous cultures, are an integral part of the world's traditional popular cultures.

V: UTILIZATION OF FOLKLORE

Having regard to the work currently being conducted by Unesco jointly with WIPO on the intellectual property aspects of folklore protection, it is recommended that these two organizations continue their studies of these aspects, consulting experts in folklore research and taking into consideration all the factors relating to intellectual property.

VI. CONCLUSIONS

1. The Committee of Governmental Experts recommended that, in order to facilitate the programming of the implementation of the above recommendations, Unesco set up a task force of experts in documentation, archives and classification of material relating to traditional culture.
2. The Committee also recommended that Unesco continue its studies and deliberations aimed at formulating an international recommendation on the preservation and safeguarding of folklore and of traditional popular culture, in accordance with resolution 5/03 adopted by the General Conference of Unesco at its twenty-first session.

APPENDIX II

CONCLUSIONS OF THE SECOND COMMITTEE OF GOVERNMENTAL EXPERTS
(Paris, 14-18 January 1985)

The Committee of Governmental Experts feels it desirable that Member States should be invited to safeguard folklore using what follows as a basis:

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, it would be advisable:

1. to make a register of institutions concerned with folklore;
2. to set up identification and recording systems (collection, transcription, cataloguing) or to develop those that already exist;
3. to establish a standard typology of folklore;
4. to co-ordinate the classification systems used by different institutions.

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, it would be advisable:

1. to establish a network of archives where the information and documents collected would be stored;
2. to create museums where folklore will be exhibited, to develop museums of folklore or the folklore sections in the multidisciplinary museums and to establish data or archives centres;
3. to standardize archiving methods;

4. to establish an index of all institutions and persons holding items of folklore;
5. to train collectors, archivists, documentalists and other specialists in the conservation of folklore.

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, it would be advisable:

1. to introduce into educational curricula, at all levels, the study of folklore in appropriate manner;
2. to take into account not only popular and rural cultures but also those created in urban areas;
3. to make available to local institutions copies of documents stored in central archives concerning a particular community or region;
4. to guarantee the right of the various ethnic groups and national communities to their own folklore;
5. to set up on an interdisciplinary basis a National Folklore Council or similar bodies where various interest groups would be represented.

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, it would be advisable:

1. to encourage the organization of national, regional and international folklore events such as fairs, festivals, films, exhibitions, seminars, symposia, workshops, training courses, congresses and so on and to disseminate them;
2. to publish information in bulletins and periodicals;
3. to familiarize the mass media with all folklore events;
4. to establish institutes, documentation centres and libraries specializing in folklore;
5. to facilitate meetings and exchanges between individuals, groups and institutions concerned with folklore.

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 point out to the relevant authorities that the 'intellectual property' aspects of the protection of folklore do not cover all the questions involved in the preservation of folklore and that they only represent one aspect of such preservation which can be implemented separately from its other aspects;
2. to call the attention of the relevant authorities to the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, adopted by a Committee of Governmental Experts that met in Geneva from 28 June to 2 July 1982 under the joint auspices of Unesco and the World Intellectual Property Organization (WIPO);

(b) regarding the other rights involved

3. to protect the informant as the transmitter of tradition;
4. to ensure that the materials gathered are conserved in archives in good condition and in a methodical manner;
5. 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;
6. to recognize the right of archives to monitor the use made of the materials gathered. There should be co-ordination with the authorities empowered to issue authorizations in connection with uses relating to the 'intellectual property' aspects of the safeguarding of folklore.

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. 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.

ANNEX III

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

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 35 Member States of Unesco participated in the work of the Committee: Angola, Australia, Bangladesh, Bolivia, Brazil, Bulgaria, Burundi, Chile, China, Costa Rica, Dominican Republic, 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 State (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 five international non-governmental organizations, namely, International Confederation of Societies of Authors and Composers (CISAC), International Council for Film, Television and Audiovisual Communication (CICT), International Federation of Phonogram and Videogram Producers (IFPI), International Federation of Translators (FIT) and International Literary and Artistic Association (ALAI).

10. The list of participants appears as Annex II to this report.

II. OPENING OF THE MEETING

11. On behalf of the Director-General of Unesco, Mr Hassouna Ben-Amor, Director, Office 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 Ó'hógain (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 Safeguarding 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 and an observer from a non-governmental organization 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. Some delegations noted that protection through intellectual property was marginal on the work involved in safeguarding, and that questions of intellectual property were extremely complex. One of these delegations pointed out that, in its view, there were few instances of illicit use. Another delegation, while not agreeing that it was marginal, agreed however that it was extremely complex. Another delegation warned that what is to be subjected to laws of intellectual property were the by-products of folklore or those that implied commercial aspects and that the idea of distortion did not seem very consistent, considering that folklore is already distorted once it loses its original functions. Some delegations 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. 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 of the expressions of folklore from illicit exploitation.

33. At the end of this discussion, it was agreed to draw the attention of States to the work of Unesco and WIPO in the field of intellectual property aspects 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. Many delegations hoped that such a body would operate under the auspices of Unesco. The contribution that international non-governmental organizations are able to make in various fields for the safeguarding of folklore was deemed to be considerable and would provide for fruitful exchange of experiences and know-how. It was hoped that these resorts will be fully utilized by Unesco in the future.

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 Annex I of this report 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. The draft report, as amended, was unanimously adopted by the participants.

41. After the customary exchange of thanks, the Chairman declared the meeting closed.

ANNEX

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 in depth 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 specific nature 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 the role of folklore and the danger it faces from external factors,

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

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, it would be advisable:

- a) to develop a national inventory of institutions concerned with folklore with a view to its inclusion in regional and global registers of folkloristic institutions;
- b) to create identification and recording systems (collection, cataloguing, transcription) or develop 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) to participate in the creation of a standard typology of folklore by way of a general outline of folklore for global use by way of contributing materials for a comprehensive register of folklore and by supporting regional classifications of folklore, especially field-work 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, it would be advisable:

- a) to establish archives where collected folklore can be properly stored and made available for controlled use;
- b) to establish 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) to create museums or folklore sections at existing museums including open air folk museums where folklore can be exhibited;
- d) to standardize archiving methods;
- e) to train collectors, archivists, documentalists and other specialists in the conservation of folklore from physical conservation to analytic work;
- f) to provide means for making security and working copies of all folklore materials, and copies for regional institutions of materials collected in that region.

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, it 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 and other 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 reflected in dominant cultures;
- b) to guarantee the right of access of various ethnic and other social groups and national communities to their own folklore by supporting their work in the fields of documentation, archiving, research, etc., as well as in the practice of traditions;
- c) to set up on an interdisciplinary basis a National Folklore Council or similar coordinating body in which various interest groups will be represented;

- d) to support 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, it would be advisable:

- a) to encourage 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) to encourage 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) to encourage regions, municipalities, associations and other groups working in folklore to establish full-time jobs for folklorists to plan and co-ordinate folklore activities in the region;
- d) to support the existing and the creation of new units for the production of educational videofilms based on recent fieldwork and other materials and to encourage their use in schools, folklore museums, at national and international folklore festivals and exhibitions;
- e) to ensure the availability of adequate information on folklore through documentation centres, libraries, museums, archives, as well as through special folklore bulletins and periodicals;
- f) to facilitate meetings and exchanges between individuals, groups and institutions concerned with folklore, both nationally and internationally, taking into account bilateral cultural agreements.

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

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

- (i) to protect the informant as the transmitter of tradition;
- (ii) to ensure that the materials gathered are conserved in archives in good condition and in a methodical manner;
- (iii) to adopt the necessary measures to safeguard the materials gathered, against misuse, whether intentional or otherwise;
- (iv) 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:

- (a) to co-operate with international and regional associations, institutions and organizations concerned with folklore;

- (b) 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;
- (c) to urge Unesco to consult with existing governmental, intergovernmental and non-governmental organizations with responsibility for aspects of folklore, and to create under its auspices, a world folklore council or committee 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;
- (d) 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.



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ADDENDUM

Desirability of adopting a general international instrument on the
safeguarding of folklore:

Proposed resolution

The General Conference,

Having regard to Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4 of the Constitution,

Having examined the report and preliminary study contained in document 24 C/31,

1. Decides that the question of the safeguarding of folklore should be the subject of a recommendation to Member States,
2. Invites the Director-General to convene a special committee of technicians and lawyers appointed by Member States to draw up the final draft for submission to the General Conference at its twenty-fifth session in 1989.

28 OCT 1987