Unit 2

**Introducing the convention**

**participant’s text**

The main focus of this unit is the Convention for the Safeguarding of the Intangible Cultural Heritage,[[1]](#footnote-1) its mechanisms and its implementation. The unit covers topics such as: 

* UNESCO and its Conventions on culture and heritage
* Comparing the World Heritage Convention and the Intangible Heritage Convention
* Comparing the Intangible Heritage Convention and the Convention on the Diversity of Cultural Expressions
* Objectives of the Intangible Heritage Convention
* Lists and Register of Good Safeguarding Practices of the Convention
* Organs of the Convention
* Operational Directives
* Intangible Cultural Heritage Fund
* Obligations of States Parties to the Convention
* Benefits of implementing the Convention

See Participant’s text, Unit 3: ‘1989 Recommendation’, ‘Authenticity’, ‘Bureau of the Committee’, ‘General Assembly’, ‘Intergovernmental Committee’, ‘International assistance’, ‘International cooperation’, ‘Living Human Treasures’, ‘Masterpieces’, ‘Operational Directives’ and Rules of Procedure’.

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2.1 UNESCO AND ITS CONVENTIONS

The United Nations Educational, Scientific and Cultural Organization (UNESCO), is an intergovernmental organization established in 1946. At present, it has 195 Member States. Its main aim is to mobilize education, the sciences, culture and communication to foster peace, sustainable development and intercultural dialogue, and to contribute to the eradication of poverty and other inequalities.

A convention is a legally binding agreement between States that outlines common goals and sets out methods and standards for achieving them, usually at a national and international level. Multilateral conventions are necessarily compromises between different views and approaches, which is why they sometimes take many years to draft.

#### UNESCO Conventions in the area of culture

There are seven UNESCO Conventions in the area of culture:

* Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).
* Convention for the Safeguarding of the Intangible Cultural Heritage (2003).
* Convention on the Protection of the Underwater Cultural Heritage (2001).
* Convention concerning the Protection of the World Cultural and Natural Heritage (1972).
* Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970).
* Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).
* Universal Copyright Convention (1952, 1971).

For a complete list of UNESCO standard-setting instruments, see:
http://portal.unesco.org/en/ev.php-
URL\_ID=13649&URL\_DO=DO\_TOPIC&URL\_SECTION=-471.html

2.2 THREE RELATED UNESCO CONVENTIONS
ON CULTURE AND HERITAGE

Three UNESCO Conventions on culture and heritage contribute to the promotion of cultural diversity; they are largely – though far from completely – complementary.

* The Convention concerning the Protection of the World Cultural and Natural Heritage (1972), also known as the World Heritage Convention, aims at the conservation of cultural and natural sites (properties) of outstanding universal value. Most of the Member States of UNESCO have now ratified that Convention. This is the best known of all UNESCO’s Conventions, in particular because of its World Heritage List (WHL).
* The Convention for the Safeguarding of the Intangible Cultural Heritage (2003), also known as the Intangible Heritage Convention, aims at the safeguarding of the intangible heritage of communities, groups and individuals everywhere in the world. For the current number of States Parties to this Convention refer to the information on ratification on the Facts and figures webpage. It is significantly different from the World Heritage Convention in approach and scope, but has been heavily inspired by it in several of its provisions (see Participant’s text Unit 13).
* The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) aims to promote cultural diversity by strengthening the chain of creative endeavour, from production to the distribution/dissemination, access and enjoyment of cultural expressions.

2.3 PREPARATION AND ADOPTION OF THE CONVENTION

Discussions about the need to safeguard intangible cultural heritage and the need for an international legal instrument began in the 1970s among UNESCO Member States, led initially by Bolivia. UNESCO adopted a Recommendation on the Safeguarding of Traditional Culture and Folklore in 1989 and, inspired by experiences in East Asia, started the Living Human Treasures (LHT) programme in 1993 and the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity in 1998.

See Participant’s text, Unit 13 and Unit 3: ‘1989 Recommendation’, ‘Living Human Treasures’ and ‘Masterpieces’’

The approach adopted in the Recommendation, and in the LHT and Masterpieces programmes, was greatly influenced by expert-driven models and the focus on outstanding universal value in the World Heritage Convention. This approach was criticized and a consensus began to develop around the idea that ICH safeguarding required significant levels of community participation and the rejection of hierarchies between elements. More attention was to be paid to the transmission of knowledge and skills than to exceptional, individual tradition bearers.

#### A new standard-setting instrument

By the late 1990s, there was broad support for the elaboration of a new standard-setting instrument among the Member States of UNESCO, in particular from those in East Asia, Africa and Latin America. In 2001 the Organs of UNESCO instructed the Secretariat to organize an intergovernmental meeting aimed at reaching a consensus on a text for ‘a preliminary draft international convention’.

The Convention for the Safeguarding of the Intangible Cultural Heritage was then prepared at UNESCO between September 2002 and June 2003. It was adopted by UNESCO’s General Conference in October 2003; soon afterwards States started ratifying it and it came into force on 20 April 2006, three months after the number of ratifications had reached thirty (Article 34). The records of all the intergovernmental and expert meetings that led to the final text of the Convention can be viewed on the website of the Convention under the section on  ‘meetings’: http://www.unesco.org/culture/ich/index.php?lg=en&pg=00015

The Convention has been ratified at an unprecedented rate: by June 2016, 169 Member States had ratified it which is well over two thirds of UNESCO’s 195 Member States. Up-to-date information on the number of Member States that have ratified is available on the Facts and figures webpage.

2.4 COMPARING TWO CONVENTIONS (1): THE WORLD HERITAGE CONVENTION AND THE INTANGIBLE HERITAGE CONVENTION

#### Need for a separate Convention for ICH safeguarding

Intangible heritage often has tangible elements associated with it (places, buildings, objects, materials, costumes, instruments), and most tangible heritage has intangible values or practices associated with it. Although tangible and intangible heritage are often closely associated with each other, the Member States of UNESCO decided that it was necessary to develop a separate Convention for ICH and its safeguarding.

The main motivations for that position were that amending the World Heritage Convention to include intangible heritage would be very difficult; that definitions of World Heritage did not fit with the ideas Member States had about defining ICH; and that the measures envisaged to protect tangible heritage and to safeguard ICH, with the communities concerned, were very different.

While tangible heritage conservation had traditionally focused on preserving material traces of the past – objects and buildings, the new Intangible Heritage Convention was to focus on safeguarding living heritage. In some cases, of course, safeguarding may include ensuring the availability of tools and materials, or other material conditions, required for ICH enactment or transmission.

#### Authenticity and integrity

The significance of World Heritage properties is primarily defined by expert analysis (using criteria such as authenticity and integrity) although in a number of countries conservation management approaches for tangible heritage have started to take the values and interests of associated communities into account. Tangible and intangible heritage experts, meeting in Nara, Japan, in October 2004, took the view expressed in the Yamato Declaration (paragraph 8), that since intangible heritage is constantly recreated, the term ‘authenticity’ as applied to tangible heritage is not relevant when identifying and safeguarding intangible heritage; it is and should remain ‘living heritage’

The intention of the Intangible Heritage Convention is not to validate one authentic or historically accurate way of enacting or transmitting ICH elements; actions that may lead to the ‘freezing’ of ICH elements are not encouraged under the Convention. Intangible heritage is constantly being re-enacted in slightly different ways, creatively changing and adapting to changes in the socio-economic and natural environment.

#### Outstanding universal value

The main criterion for inscription on the World Heritage List is ‘outstanding universal value’ whereas inscription on the Intangible Heritage Convention’s Lists is justified primarily by the value of the ICH to the communities, groups and individuals who practise and transmit that heritage, as defined by them.

Inspired by the UNESCO Universal Declaration on Cultural Diversity (2001), the Intangible Heritage Convention assumes the fundamental equality of cultures and of cultural expressions and practices that are characteristic of specific peoples, communities and groups. The Convention cannot be invoked to justify the introduction of any hierarchies between the ICH of different groups, peoples or States, or between ICH elements of one and the same group. ICH elements inscribed on the Convention’s Lists, or included in an inventory, are not considered more important or more valuable than elements that are not inscribed or not inventoried.

Refer to Participant’s text Unit 13 for a more detailed comparison between the World Heritage and Intangible Heritage Conventions.

2.5 COMPARING Two CONVENTIONS (2): THE CONVENTION ON THE DIVERSITY OF CULTURAL EXPRESSIONS AND THE INTANGIBLE HERITAGE CONVENTION

Other aspects of the Intangible Heritage Convention can be illustrated by comparing it with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), often (incorrectly) referred to as the Cultural Diversity Convention.

* The Convention on the Diversity of Cultural Expressions focuses on contemporary, individual cultural expressions, which may include music, film, crafts, painting, performance, and so on. In most cases, these cultural expressions represent new creations – they are not necessarily transmitted from generation to generation (as intangible heritage is), nor are they necessarily constantly changing. The 2005 Convention aims to promote cultural productions and industries and to regulate the dissemination of cultural goods and services. It also seeks to promote development by strengthening the chain of creative endeavour, from production to distribution/dissemination, access and enjoyment of cultural expressions.
* The Intangible Heritage Convention focuses on a rather different aim: encouraging the sustainable practice and transmission of ICH by and within communities. Safeguarding ICH may also contribute, directly or indirectly, to the well-being and harmonious development of the communities and groups concerned. And, conversely, the wellbeing and the development of a community may be severely impaired when the enactment and/or transmission of a community’s ICH is suddenly interrupted. Some ICH is transmitted over generations because it helps to create livelihoods for people; the economic value of ICH is increasingly important as a motivation for the safeguarding of ICH, in developing States and elsewhere.

2.6 CONTENT OF THE INTANGIBLE HERITAGE CONVENTION

The Convention is available in six official versions: Arabic, Chinese, English, French, Russian and Spanish, which are all authoritative texts. Many States have translated the Convention into other languages, but these versions are not authoritative on the international level (See <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00102>).

The Convention’s text contains the following main sections:

* A Preamble that sets the background to the Convention and specifically mentions the important role of communities in the practice and transmission of ICH and factors that threaten its viability.
* An Article on objectives (Article 1) that explains what the Convention intends to achieve.
* An Article on definitions (Article 2) that outlines what is meant in the Convention by terms such as ICH and safeguarding.
* Articles on governing Organs (Articles 4–8) that establish a General Assembly and an Intergovernmental Committee, and on who may provide assistance to these Organs (Articles 9–10).
* Articles on safeguarding at the national level (Articles 11–15) that explain how States Parties should or may create favourable conditions for the safeguarding of the ICH present in their territory.
* Articles on safeguarding at the international level (Articles 16–18) that introduce the Convention’s Lists and the selection and dissemination of good safeguarding practices.
* Articles on international cooperation and assistance (Articles 19–28) that explain how States Parties can help each other to implement the Convention and how they may request financial assistance from the ICH Fund.
* Articles that set out the reporting obligations of States Parties to the Committee (Articles 29–30).
* An Article on the fate of the ICH elements that were proclaimed Masterpieces under the former UNESCO programme ‘Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity’ (Article 31).
* Final clauses of a legal or administrative nature, including articles on ratification (Articles 32–33) that explain how States may become States Parties to the Convention.

2.7 OBJECTIVES OF THE CONVENTION

**Article 1** of the Convention mentions as its objectives:

(a) to safeguard the intangible cultural heritage;

This is the main objective of the Convention, as is evident from its title.

(b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;

Negative attitudes, especially when expressed by more powerful social groups or the authorities, can restrict the continued enactment and transmission of intangible heritage.

(c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;

The Convention promotes acknowledgement and appreciation of cultural diversity not only between States but also – especially – within States.

(d) to provide for international cooperation and assistance.

Because the Convention’s approach is relatively new, much work remains to be done in developing methodologies (e.g. for ICH safeguarding) and sharing good practices. States Parties will benefit from assisting each other, providing expertise and information and sharing experiences about safeguarding their ICH. They may also profit from financial assistance granted by the Committee from the ICH Fund.

In order to achieve these objectives, two Lists and a Register of Good Safeguarding Practices have been established under the Convention. States Parties may nominate elements for inscription on the Lists; they may also nominate safeguarding practices and other experiences in implementing the Convention for selection on the Register.

2.8 THE TWO LISTS OF THE CONVENTION

**Article 17** of the Convention establishes the List of Intangible Cultural Heritage in Need of Urgent Safeguarding (Urgent Safeguarding List), which is aimed at safeguarding ICH elements whose viability is threatened.

**Article 16** establishes the Representative List of the Intangible Cultural Heritage of Humanity (Representative List). This List is intended to illustrate the diversity of the ICH of humanity across all its domains and across all communities and groups.

States Parties may nominate ICH elements for inscription on these Lists and programmes, activities or projects for recognition as good practices (discussed in Participant’s text Unit 11).

2.9 REGISTER OF GOOD SAFEGUARDING PRACTICES

**Article 18** of the Convention concerns the selection of programmes, projects and activities that best reflect the principles and objectives of the Convention. They are presented in a Register of Good Safeguarding Practices (ODs 42–46).

**Article 18.1** requires the Committee to elaborate selection criteria to this end (see ODs 3‑7).

**Article 18.2** specifies that preparatory assistance may be requested for making these nominations and **Article 18.3** requests the Committee to disseminate the selected good practices. After their inclusion on the Register, the Committee and Secretariat promote them so that other countries and people working in the field may learn from their experiences.

2.10 ORGANS OF THE CONVENTION

UNESCO Conventions are intergovernmental agreements (between States) that are managed by bodies or Organs made up of official representatives of the States that have ratified them. The ICH Convention has two such Organs, a General Assembly and an Intergovernmental Committee.

#### General Assembly

The General Assembly, established in Article 4 of the Convention, is the sovereign body of the Convention. It is not subordinate to any body or organization. The Committee functions under the control of the General Assembly and is also instructed by it. All States Parties to the Convention are members of the General Assembly, which meets every second year in the month of June.

#### Intergovernmental Committee

The Intergovernmental Committee is composed of representatives of twenty-four States Parties to the Convention (Articles 5–8); they are elected by the General Assembly for four years. The Committee has the mandate to oversee the implementation of the Convention, including the inscription of ICH on the Lists of the Convention and the inclusion of good safeguarding practices in the Register. The Intergovernmental Committee also prepares the Operational Directives for final discussion and approval by the General Assembly and, among many other tasks, it manages the ICH Fund (see Article 7). The Intergovernmental Committee meets in ordinary session once a year and reports on its activities to the General Assembly.

In order to ensure an equitable geographic distribution in the membership of the Committee and its subsidiary bodies (Article 6.1), the Committee decided to follow the principle of six electoral groups used within UNESCO Organs as a basis for the distribution of seats. Therefore, subsidiary bodies of the Committee usually have six or twelve members, one or two for each of the electoral groups. The Intergovernmental Committee has twenty-four seats and each of the six groups has at least three seats in the Committee at any one time, the remaining six being distributed over the electoral groups in proportion to the numbers of States Parties belonging to these groups (see chapter IV of the Rules of Procedure of the General Assembly).

For Committee membership, see:
http://www.unesco.org/culture/ich/index.php?lg=en&pg=00028

2.11 WORKING METHODS OF THE COMMITTEE

The Committee has a Chairperson, four Vice-Chairpersons and a Rapporteur, one from each of the six electoral groups. Together they form the Bureau of the Committee. The Chairperson, assisted by the other members of the Bureau as required, leads the sessions of the Committee. The Bureau is also mandated to act in the name of the Committee between sessions. According to Rule 12.2 of the Rules of Procedure of the Committee, the Bureau coordinates the work of the Committee and performs tasks foreseen in the ODs and any others assigned to it by the Committee.

#### Assisting the Committee

The Committee may establish ad hoc consultative bodies to assist it in carrying out its tasks (Article 8.3), as well as subsidiary bodies (Rule 21 of the Committee’s Rules of Procedure).

The UNESCO Secretariat assists the governing Organs of the Convention and their subsidiary and/or consultative bodies in the implementation of the Convention (Article 10). It also prepares and organizes the meetings of the Organs of the Convention, and of the Bureau, and of the various bodies created by the Committee.

Accredited NGOs (Article 9.1; ODs 90–99) and other organizations (OD 89) with recognized competencies in the field of ICH may be called upon to advise the Committee. The accreditation of NGOs and the functions they and other organizations may be called upon to execute are discussed further in Participant’s text Unit 4.

2.12 OPERATIONAL DIRECTIVES

The Operational Directives (ODs) are guidelines that provide regulations to the Committee and States Parties and that are meant to help States Parties to implement the Convention at the national and international levels. They include criteria, regulations and procedures for nominating elements to the Lists and good practices to the Register, and for making assistance requests from the Fund. The ODs also recommend ways in which States Parties may organize the safeguarding of the ICH present in their territory in general terms, thus elaborating Articles 11–15 of the Convention, and how they might undertake or promote awareness-raising about ICH, another major goal of the Convention.

In conformity with Article 7(e) of the Convention, the ODs were prepared by the Committee, for approval by the General Assembly. The first set of ODs was approved by the General Assembly in June 2008; they were amended and enlarged in June 2010, 2012 and 2014.

#### Work-in-progress

Unlike the Convention, the ODs may be changed, adapted and enlarged quite easily. Any change proposed by the Committee must be approved by the General Assembly, which meets every second year and discusses all proposals presented to it by the Committee and usually makes significant amendments to it. The ODs are likely to remain a work-in-progress. It is thus important to ensure that when implementing the Convention, the latest version of the ODs is consulted.

The ODs are available in Arabic, Chinese, English, French, Russian and Spanish in the Basic Texts and on the ICH website:
http://www.unesco.org/culture/ich/index.php?lg=en&pg=00503

http://www.unesco.org/culture/ich/index.php?lg=en&pg=00026

2.13 OPERATIONAL DIRECTIVES: CHAPTER 1

Chapter 1 of the Operational Directives (June 2014 version) covers the implementation of the Convention at the international level, including regulations and procedures for submitting, examining and evaluating nominations to the Lists and the Register and requests for international assistance:

OD 1 Inscription criteria for the Urgent Safeguarding List (USL)

OD 2 Inscription criteria for the Representative List (RL)

ODs 3–7 Criteria for selection of good safeguarding practices

ODs 8–12 Eligibility and selection criteria for international assistance requests

ODs 13–15 Multi-national files

ODs 16-19 Inscription on an extended or reduced basis

ODs 20-25 Submission of files

ODs 26–31 Evaluation of files

ODs 32 ICH in need of extremely urgent safeguarding

ODs 33–37 Examination of files by the Committee

ODs 38-40 Transfer of an element from one List to the other or removal of an element from a List

OD 41 Modification of name of an inscribed element

ODs 42–46 Dissemination of good safeguarding practices

ODs 47–53 International assistance

ODs 54–56 Timetable – overview of procedures

ODs 57–65 Incorporation of former Masterpieces in the Representative List (done in 2008)

2.14 OPERATIONAL DIRECTIVES: OTHER CHAPTERS

The other chapters of the Operational Directives cover:

* **Chapter II** (ODs 66–78): The ICH fund. ODs 66 and 67 contain guidelines for the use of the Fund and are complementary to Article 20 (‘Purposes of international assistance’) of the Convention.
* **Chapter III** (ODs 79-99): The participation of various role players (such as communities, groups, individuals, experts, centres, institutes and NGOs) in the implementation of the Convention. These directives provide detailed recommendations on how to implement Articles 11–15 of the Convention.
* **Chapter IV** (ODs 100-150): Raising awareness about ICH and the use of the emblem of the Convention. The ODs in this chapter also cover the development of ethical codes, intellectual property rights of communities over their ICH and the risks of over-commercialization and de-contextualization of ICH. (See Participant’s text Unit 3: ‘Commercialization’, ‘Contextualization’ and ‘Intellectual property’). Reporting to the Committee. Article 29 of the Convention indicates that the ‘States Parties shall submit to the Committee …reports on the… measures taken for the implementation of this Convention.’ General periodic reports are due every six years. Every four years, States Parties must report about elements inscribed on the USL.

2.15 ICH FUND: INTERNATIONAL COOPERATION AND ASSISTANCE

International cooperation and assistance is one of the main goals of the Convention. International cooperation is particularly recommended concerning internationally shared ICH and the exchange of experiences and good safeguarding practices (Article 19; ODs 13–15 and 86–88).

#### ICH Fund

International assistance is financial assistance granted by the Committee, using the Fund for the Safeguarding of the Intangible Cultural Heritage (ICH Fund) established by Article 25 of the Convention. In principle, all States Parties contribute to the Fund an amount corresponding to a proportion of their contribution to UNESCO (at present this is 1 per cent): see Article 26.

The ICH Fund primarily finances international cooperation and assistance as described in Chapter V of the Convention. The purposes for which such assistance may be granted are enumerated in Article 20 of the Convention (summarized below):

* the safeguarding of the heritage inscribed on the Urgent Safeguarding List;
* the preparation of inventories;
* support for other safeguarding activities; and
* other purposes the Committee considers important (such as capacity-building and awareness raising, see OD 67).

Guidelines for the use of the Fund are given in ODs 66 and 67.

2.16 OBLIGATIONS OF STATES PARTIES TO THE CONVENTION

By ratifying the Convention, States accept various obligations and they agree to undertake (or to endeavour to undertake) various tasks in pursuit of the aims of the Convention.

The main obligation of States Parties is to take measures to safeguard the ICH present in their territory in general and to allow, encourage and assist communities in safeguarding specific elements of their ICH:

**Article 11**: Each State Party *shall*: (a) take the necessary measures to ensure the safeguarding of the ICH present in its territory …

**Article 15**:Within the framework of its safeguarding activities … each State Party *shall endeavour* to ensure the widest possible participation of communities, groups and, where appropriate, individuals … and to involve them actively in its management.

States Parties must also identify and inventory the ICH present in their territory, with the full involvement of the communities concerned:

**Article 11**:Each State Party *shall*: … (b) …identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations.

**Article 12.1**:To ensure identification with a view to safeguarding, each State Party *shall* draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.

States Parties also have administrative and financial obligations:

**Article 26.1**: … States Parties ... undertake to pay into the Fund … a contribution …

**Article 29**: The States Parties shall submit to the Committee … reports on the … measures taken for the implementation of this Convention. (Emphasis added.)

Three ODs (OD 24, 81 and 82) also impose obligations on States Parties through the use of the term ‘shall’; various obligations for the Committee are also contained in the ODs*.*

2.17 Benefits of implementing the Convention

Implementing the Convention benefits States Parties, the communities concerned (and their ICH), relevant organizations as well as the general public. These benefits include:

* enhanced enactment and transmission of the ICH;
* enhanced well-being of communities;
* enhanced respect and understanding between communities;
* enhancement of cultural diversity, at both the national and international levels; and
* progress towards sustainable development of the communities concerned and of their social and natural environment.

States Parties and other stakeholders can also benefit from international cooperation and assistance in the following ways:

* Joining a worldwide network active in the domain of heritage to share ICH expertise and information internationally.
* Promoting and sharing good safeguarding practices through the Register of Good Safeguarding Practices.
* Having access to international assistance from the ICH Fund.
* Nominating elements to the Lists and – if all goes well – seeing them inscribed and sharing information about them worldwide.
* Establishing or consolidating good working relations on heritage issues with other States Parties and organizations in other States through cooperation at the regional and international levels, e.g. by joint inventorying and safeguarding of ICH elements shared across international borders and/or by nominating such heritage to the Convention’s Lists.
* Participating in the Organs of the Convention.

See Chapter VI in the Operational Directives on Sustainable Development

1. . Frequently referred to as the ‘Intangible Heritage Convention’, the ‘2003 Convention’ and, for the purpose of this unit, simply the ‘Convention’. [↑](#footnote-ref-1)