

**Final Report of the Asian Regional Meeting for the Promotion
of the Convention for the Safeguarding of the Intangible Cultural Heritage,
20-22 September 2004, New Delhi, India**

The meeting was opened by a welcome speech pronounced by Prof. Mohsen Tawfik, Director of the UNESCO Office in New Delhi, and by introductory speeches delivered by Mr Riëks Smeets, Chief of the Intangible Heritage Section and by Mr Guido Carducci, Chief of the International Standards Section, both intervening from UNESCO Paris Headquarters.

The opening speech was given by H.E. Mr Jaipal Reddy, the Honorable Minister of Information, Broadcasting and Culture of India.

The Minister expressed his amazement that awareness for safeguarding ICH had taken such a long time before this important Convention was adopted. He expressed the view that the erosion of ICH is not readily recognized but that it nevertheless takes place and asks for critical attention. He pointed further at the possibilities for using modern technologies for the preservation and dissemination of the ICH. He emphasized the link the ICH assures not only with our contemporaries but also with our ancestors: safeguarding the ICH is therefore a sacred duty and a condition for understanding ourselves. The Minister also called for inclusive policies that take into account local communities and local sensitivities and contexts. Mr Reddy finally declared that the adoption of the Convention had given an important impetus for action to his Government, one of the results of which will be the creation before soon of a National Mission for safeguarding ICH.

The meeting was chaired by Dr B.P. Singh (India) and by Mr Barry Lane, Head of the UNESCO Office in Uzbekistan. The Rapporteurs were Prof. R.K. Bhattacharya (India) and Prof. Pedro Abraham (Philippines).

The first session, 'UNESCO and the safeguarding of the intangible cultural heritage', was started by Ms Françoise Girard, of the Intangible Heritage Section of UNESCO, who spoke about the history of the 2003 Convention, starting from a proposal of the Bolivian government which initiated the reflection process, passing by the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore, and finally mentioning the expert and intergovernmental meetings which led to the adoption of the 2003 Convention.

Mr Riëks Smeets then spoke about the definition of ICH as used for the purposes of the 2003 Convention. He first commented upon the descriptive part of that definition as given in article 2.1, highlighting the role given in this definition to communities and groups when it comes to defining elements of the ICH. He then presented the five domains in which the ICH is manifested that are mentioned in the non-exhaustive list presented in article 2.2 of the Convention.

The session continued in the afternoon with a presentation by Rieks Smeets on the relations between intangible and tangible cultural heritage. After having mentioned that a large part of the ICH does not need a specific location to be enacted and that a considerable part of the tangible heritage is not directly associated with intangible heritage as understood by the 2003 Convention, he dwelled upon instances where one finds interdependency between elements of the tangible and intangible heritage. He further highlighted such characteristics of the ICH as its evolving, ephemeral and mobile character and stressed the fact that the ICH is human borne: the required knowledge and skills are located in people`s mind, the main medium of enactment being the human body. Finally he spoke about recent developments in UNESCO that will see to it that a document will be prepared that will provide indications for co-operation and for avoiding overlap between the implementation of the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage and the new 2003 Convention.

Ms Girard then evoked reasons why the 2003 Convention deserves to be ratified. It is the first international instrument which addresses specifically the ICH, and it is a direct answer to the urgency to safeguard this heritage, much of which is in danger. It is a well-balanced text explicitly addressing the bearers of ICH and it constitutes a useful tool both for developing and developed countries. The Convention further leaves ample room for interpretation by States Parties, according to their own situation, and it will provide world recognition to the ICH and raise awareness through the system of lists.

Mr Smeets spoke at length about the programme of the *Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity* indicating the procedures and criteria at present in use. He explained that the experiences of the Secretariat and of the Jury of this programme allow to better prepare the implementation of the Convention. The experiences gained in the preparation and the implementation of the action plans, most of which are made possible by the UNESCO Japan Funds-in-Trust, are especially valuable. He pointed at the fact that the Member States tend to propose for this programme in the first place mainstream elements of their ICH. He further spoke about the future fate of the Proclamation programme which will come to an end after the entry into force of the 2003 Convention. Masterpieces located in States Parties to this Convention will be integrated into the Representative List of the Intangible Cultural Heritage of Humanity that is foreseen in article 16 of the Convention.

The next speaker, Ms Sudha Gopalakrishnan, spoke about her experiences in preparing the successful candidature files for the Kutiyattam Sanskrit Theater and the tradition of Vedic chanting that were proclaimed Masterpieces of the Oral and Intangible Heritage of Humanity in, respectively, 2001 and 2003. She also evoked the considerable impact experienced by these two masterpieces after their proclamation.

Mr Antonio Arantes, President of the Artistic and Historic Heritage Institute of Brazil (IPHAN) presented the development of legislation in Brazil geared to the protection of the cultural heritage, which started in the 1930s. He especially evoked the decree of 2000 providing the foundation for new policies aiming at the safeguarding of ICH in Brazil, including the creation of an encompassing inventory of the ICH which at present is being carried out by IPHAN.

Most of the sessions were followed by questions related to, among others, co-ordinated action of safeguarding tangible and intangible cultural heritage, safeguarding actions States Parties should undertake even before entering into force of the Convention, and the character of the inventory or inventories of the ICH that States Parties have to create according to article 12.

The first half of the second day was devoted to the presentation of national reports presenting the state-of-the-art concerning the safeguarding of ICH in the various participating countries. Most countries announced the existence of some form of legal protection for the cultural heritage. In certain cases this legislation mainly concerns intellectual property rights whereas in many cases the legislation does not specifically cover ICH. A few countries mentioned the urgent need for a holistic legal coverage of the ICH including clear administrative structures from the national down to the community level to implement them.

For all countries, an overview was given of the institutions dealing with the safeguarding of the ICH and of inventories listing elements of the ICH. Situations vary a great deal from country to country. Japan, the first Asian country to have ratified the Convention, appears to be followed soon by the following countries: Bhutan, China, India, Kyrgyzstan, Nepal, Pakistan, the Philippines, Uzbekistan and Vietnam. Other countries announced that the process has just started -Indonesia, Kazakhstan, Mongolia, whereas other countries are in the initial phase of consideration -Thailand. The written national reports will be collected by the UNESCO Office in New Delhi and the possibility of an online distribution or otherwise publication will be investigated.

Mr Carducci covered numerous legal issues raised by the Convention. For instance the significance and the consequences of several crucial elements: the definition of ICH adopted, the position taken vis-à-vis copyright law issues, the balance between national and international safeguarding, as well as between states and communities, the two lists system, “why” and “how” to ratify. Analogies and differences between the Convention and other relevant UNESCO instruments, the 1972 Convention and the 1989 Recommendation, were also considered. He stressed the importance of a complete and accurately drafted national legislation for the protection of cultural heritage, in particular for the safeguarding of ICH that conforms with the broad purposes of the Convention and even beyond, as in the case of States Parties.

At the end of the second day, a lively debate took place on a number of questions such as the possible safeguarding under the Convention of recently invented ICH and of belief systems, and the interpretation of the condition that ICH, in order to be safeguarded under the Convention has to be in conformity with internationally accepted human rights instruments. Having considered that intellectual property law aspects of the safeguarding of the ICH are not expressly covered by the Convention, the participants stressed the importance of having such issues considered at international level by the competent international organizations that deal with the subject of intellectual property law.

Other questions concerned the interpretation of the expression `from generation to generation`, how to deal with cases of non-coinciding cultural and national boundaries, and the reasons for not covering expressly intellectual property law issues in the Convention. While the Convention stands as it is, adopted after thorough expert debates and negotiations within UNESCO, some clarification of, or more emphasis on, some issues may be provided by the operational guidelines that will have to be elaborated by the future Intergovernmental Committee for the Safeguarding of the ICH.

All countries represented were explicitly or implicitly supportive of the Convention and the general sense is positively in favour of a ratification within a short period of time.

The third day of the meeting was started by the presentation of the last four national reports, after which Mr Carducci explained about the various ways in which states can become party to the 2003 Convention. After a presentation of an Indian initiative concerning the identification and listing of elements of the ICH in a large number of communities (“Indian Village”), the meeting was closed by final debates, a discussion and the adoption of the report of the meeting and by the adoption of a set of recommendations, one of them being an encouragement to the Asian States to ratify the new Convention.