Unit 17

Ratifying the Convention

Participant’s text

This unit covers the following topics:

* Legal aspects of ratification of the 2003 Convention for the Safegurading of Intangible Cultural Heritage.[[1]](#footnote-1)
* Possible paths to ratification.
* Ratification of the Convention to date.

Relevant entries in Unit 3 include ‘Ratification’ and ‘State Party’.

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17.1 Legal aspects of ratification

Ratification is ‘the international act... whereby a State establishes on the international plane its consent to be bound by a treaty’ (Article 2(1)(b) of the Vienna Convention on the Law of Treaties). Acceptance, approval and accession have the same legal effects as ratification.

The Intangible Heritage Convention entered into force in April 2006, three months after the day of deposit of the thirtieth instrument of ratification (Article 34). For States ratifying after that date, the Convention enters into force three months after the deposit – in good order - of their instrument of ratification (Article 34).

The provisions of the Convention only apply in the territories of the States that are party to the Convention and to activities conducted between these States. However, please note that States that are not party to the Convention that have on their territory a so-called ‘former Masterpiece’ that was included in the Representative List of the Intangible Cultural Heritage of Humanity (RL), have an obligation to report about it to the Committee (ODs, paragraphs 59, 60, 168, 169).

#### Instruments of ratification

Article 32 says that the Convention shall be subject to ratification, acceptance or approval by States Members of UNESCO in accordance with their respective constitutional procedures.

In order to become States Parties to the Convention, Member States of UNESCO have to deposit, with the Director-General of UNESCO, an instrument of ratification (or of acceptance, or approval), duly signed by the head of state, the head of government or the minister of foreign affairs. The instrument has to be drawn up in one of the six official languages of the UN system, or if drawn up in another language, accompanied by an official translation in one of these six languages.

A model instrument is available online (see also Unit 17 Hand-out 1): <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00023>

Upon reception by the Director-General of UNESCO, the instrument of ratification is studied by the Department of Legal Affairs of UNESCO to assess whether it is in good order. If it is not, contact will be taken up with the state concerned, in order to regularize the situation. This may considerably delay the date of that state becoming a State Party.

#### Declarations at the time of ratification

When it deposits its instrument of ratification (or of acceptance, approval or accession), a State may declare not to be bound by Article 26.1 of the Convention (see Article 26.2). A State may also declare it will not be bound by other articles of the Convention, as long as this is not incompatible with the object and purpose of the Convention.

A number of States have made declarations when sending their instrument of ratification to UNESCO:  
 <http://portal.unesco.org/en/ev.php-URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html#RESERVES>

Several states so far have declared they will not be bound by Article 26.1; other declarations mainly concern the territorial applicability of the Convention.

#### States that are not Member States of UNESCO

States that are not Member States of UNESCO may be invited by the Director-General of UNESCO to become States Parties to the Convention by depositing an instrument of accession (Article 33.1). For such States, too, the Convention enters into force three months after the deposit (in good order) of their instruments of accession (Article 34).

#### Obligations contained in 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.

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

**Article 11(a)** – Each State Party... shall 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 also have to identify and inventory the ICH present in their territory, with full involvement of the communities concerned:

**Article 11(b)** – Each State Party... shall... identify and define the various elements of the ICH present in its territory, with the participation of communities, groups and relevant NGOs.

**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 ICH present in its territory. These inventories shall be regularly updated.

At the international level, States Parties have a few administrative and financial obligations:

**Article 26.1** – States Parties undertake to pay contributions into the Fund for the Safeguarding of the Intangible Cultural Heritage.

**Article 29** – States Parties shall report about the implementation of the Convention at the national level.

There are no other Articles in the Convention that contain obligations; some Articles, however, do present strong recommendations (see for example Articles 14, 15 and 19.2).

#### Obligations contained in the Operational Directives (ODs)

Obligations on States Parties are usually expressed in the Convention by the use of the word ‘shall’. Note that ‘shall’ is also used in the ODs to underline the States Parties’ obligations to involve, sensitize (build awareness in) and build capacity in the communities concerned in the framework of the implementation of the Convention. Indications in the ODs concerning procedures, deadlines and forms are to be strictly observed by all parties involved.

Some obligations presented in the ODs are indicated below:

OD 24 Submitting States Parties shall involve the communities, groups and, where applicable, individuals concerned in the preparation of their [nomination] files.

OD 81 States Parties shall take necessary measures to raise the awareness of communities, groups and, where applicable, individuals to the importance and value of their intangible cultural heritage, as well as of the Convention, so that the bearers of this heritage may fully benefit from this standard-setting instrument.

OD 82 In conformity with the provisions of Articles 11 to 15 of the Convention, States Parties shall undertake appropriate measures to ensure capacity building of communities, groups and, where applicable, individuals.

Many ODs contain strong recommendations, for instance about how to involve various stakeholders in safeguarding and inventorying of the ICH, or in awareness raising about it.

#### Financial obligations/opportunities

Since States Parties are given considerable leeway in developing ways of meeting their obligations, the Convention does not commit them to specific activities. Approaches may vary widely: separate budgets may be reserved for creating new infrastructures for the implementation of the Convention in some States, in other States, existing heritage institutions may be given some additional tasks. Existing institutions may be well equipped and motivated to support the implementation of the Convention at the national level, for example to undertake or support inventorying tasks, with additional resources where considered necessary.

The implementation of the Convention need not be an expensive task but, however low-key, it will involve some additional expenditure. Developing states may seek some funding from the ICH Fund to engage in safeguarding, inventorying and capacity-building activities, for instance. States Parties may also exempt themselves from Article 26(1) – an article specifying their contributions to the ICH Fund.

17.2 Reaching agreement on ratification

In most States parliament has to authorize the signing of the instrument of ratification. There are many paths leading towards this step, depending on constitutional provisions, procedures, experiences and processes in each individual State. Procedures in federal States may be very complex. The process of ratification may thus take from a few months to several years.

Various different stakeholders may be involved in starting actions that may lead to the signing of an instrument of ratification:

* The relevant government ministry(ies), an interested minister or members of Parliament;
* NGOs, universities, research or documentation institutions;
* Communities; and/or
* Individual experts or otherwise interested persons.

In this process, stakeholders may wish to consider the possible benefits of ratifying the Convention.

#### possible Benefits of ratification

There are many potential benefits to be gained by States Parties and the communities concerned (and their ICH) as well as to relevant organizations and the general public, from implementing the Convention at the national and international level.

These potential benefits include:

* Enhanced enactment and transmission of ICH;
* Enhanced well-being of communities;
* Enhanced respect and understanding between communities;
* Enhancement of cultural diversity, at both national and international levels; and
* Progress towards sustainable development of the communities concerned and of their social and natural environment.
* States Parties to the Convention and other stakeholders can also benefit from international cooperation and assistance, by:
* 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 Best Safeguarding Practices;
* Having access to international assistance from the Fund of the Convention;
* 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 with other States Parties and organizations in other States on ICH safeguarding in the spirit of the Convention through cooperation on the regional and international level, 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; and
* Participating in the Organs of the Convention.
* Similar advantages and benefits may be enjoyed to varying degrees by States, NGOs and communities concerned when States become Parties to all the UNESCO conventions on protection of the cultural heritage.

#### Preparing for ratification

A State is not required to undertake or develop specific ICH-related activities, structures, networks or legislation prior to ratification. Inventories of the ICH in a State’s territory, for example, are not required in order for ratification to take place.

When a State becomes a State Party, it will have to organize itself thoroughly before it can start implementing the Convention. States that have ratified without much preparation are, as a rule, rather slower to implement the Convention on the national level, often concentrating on isolated actions such as the preparation of nominations for the RL and neglecting broader measures for the safeguarding of the ICH in their territory.

States (and the relevant stakeholders within them, including the communities concerned) will prepare for ratification in various ways suited to their circumstances. If some of the preparatory actions recommended here are implemented (and none is obligatory), they may be included in reports drafted for ministers or for organs of government about ratifying the Convention.

When there seems to be enough support for ratification of the Convention in various circles of stakeholders, including officials and politicians, preparatory activities might include:

Raising broad awareness about ICH, the Convention and the value of ratifying it

Before and during the preparation for ratification, all future stakeholders should ideally be informed about the Convention, the benefits of its ratification, what obligations it may impose and what resources this may require. This may involve:

* Translating the text of the Convention into national or local languages (by the relevant ministry, local authorities, NGOs or other institutions), disseminating this text and having it widely discussed;
* Collecting information about the intangible heritage in the territory of the State, and current issues and debates related to it;
* Collecting information on any previous and current inventorying and safeguarding activities in the country;
* Collecting information on existing ICH-related organizations and networks (including those within the communities concerned), and relevant legislation, policies and regulations;
* Collecting information from UNESCO and experiences from States in the region that are already States Parties about the implementation of the Convention; and
* Conducting media campaigns and mobilization of the media (including campaigns on social media such as Facebook) to raise awareness about ICH and the Convention. These activities can be initiated by communities, NGOs, etc. and can be directed at informing the public but also lobbying media organizations themselves.

Stakeholder involvement

* Consulting members of communities to inform them of the objectives and principles of the Convention, to discuss any problems they face in safeguarding their ICH and whether ratifying the Convention may help them in doing so;
* Establishing cooperation, trust, and formal or informal networks among future partners in implementation of the Convention;
* Consulting NGOs and community organizations about ratification of the Convention and possible ways of implementing it, discussing possibile responsibilities for the organizations concerned; and
* Consulting researchers and their institutions about ratification of the Convention and their possible contribution to its implementation.

Lobbying

* Lobbying relevant government agencies and/or members of parliament about ratification of the Convention; and
* Lobbying to increase (positive) press coverage of ICH and the Convention.

Technical preparation

* Reviewing, revising or adopting national laws and policies to safeguard ICH (by national authorities, parliamentary commissions, experts), although this is not required before ratification of the Convention; and
* Setting up a national coordinating committee on ICH.

#### The official process usually includes:

* Preparing a report for the Cabinet (compiled by the relevant ministries) on the legal, financial and social implications of ratification;
* Gaining Cabinet approval for ratification;
* Informing (committees of) parliament, relevant ministries, and Cabinet leading to approval by parliament;
* Signing the instrument of ratification (this has to be done by the head of state, the head of government or the minister of foreign affairs); and
* Sending the instrument of ratification (etc.) to the Director-General of UNESCO.

17.3 Ratification of the convention to date

The Intangible Heritage Convention has been rapidly ratified. The peak of ratifications occurred in 2006, the year of entry into force of the Convention. Many States wished to be part of the discussions in the General Assembly (and the Committee, in some cases) after the entry into force of the Convention in order to influence the way the Convention was going to be implemented.

The current list of States Parties to the Convention is available at: <http://portal.unesco.org/la/convention.asp?language=E&KO=17116&order=alpha>.

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)