

| An Historical Overview of the Preparation of the UNESCO International Convention for the Safeguarding of the Intangible Cultural Heritage

by Noriko Aikawa

Noriko Aikawa, former director of the Intangible Cultural Heritage Section of UNESCO, has developed this programme since its creation in 1992. She thus followed the whole process of the genesis and development of the International Convention for the Safeguarding of the Intangible Cultural Heritage. She is currently an adviser to the Assistant Director-General for Culture of UNESCO and a professor of Cultural Studies at Kanda University of International Studies in Japan.

UNESCO travelled a long road before finally securing, in 2003 and without a dissenting vote,¹ the adoption of an International Convention for the Safeguarding of the Intangible Cultural Heritage. The first document drafted by UNESCO aimed at establishing an international instrument related to intangible cultural heritage goes as far back as 1971.² In 1989, after lengthy, laborious debates, UNESCO established the first international normative instrument: the Recommendation on the Safeguarding of Traditional Culture and Folklore. Ten years later, the authoritative international conference entitled 'A Global Assessment of the 1989 Recommendation'³ revisited the concept underpinning the instrument and examined the efficacy of its application among Member States. The Conference concluded that either the

instrument needed to be reviewed substantially or a new instrument having relevance to contemporary world contexts should be established. Several countries, complying with the conference's recommendation, requested UNESCO to launch a process for developing a new international normative instrument related to intangible cultural heritage. In the course of the negotiations, intense and often passionate debates took place at meetings of experts as well as within UNESCO's General Conference and Executive Board. It was reassuring to note, however, that at each step of the negotiations the obstacles were steadily replaced by a deep understanding of the issues at stake.

This article reviews the different factors which generated international standard-setting for the safeguarding of intangible cultural heritage, examines the conceptual evolution of the notion of the safeguarding of intangible cultural heritage and traces the various steps of negotiations leading to the memorable adoption of the Convention in 2003.

The establishment of the first normative instrument

Two vain attempts had been made to establish an international instrument for the protection of folklore during the 1970s and 1980s. They were both aimed at shaping the development of copyright and intellectual property protection measures.

Bolivia requested UNESCO in 1973 to address a protocol to the Universal Copyright Convention that would protect the popular arts and cultural patrimony of all nations. UNESCO

submitted a document entitled 'Possibility of Establishing an International Instrument for the Protection of Folklore' that it drafted in 1971 but it was considered that the international protection of folklore applying copyright was not realistic.⁴

At the twenty-first session of the General Conference (1980), UNESCO was requested to conduct studies concerning the establishment of an international regulation for the protection of folklore. UNESCO and WIPO⁵ jointly established in 1982 'Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit and Other Prejudicial Actions' and attempted in 1984 to develop an international instrument based on the model laws. This initiative to establish an international treaty was again considered premature.⁶ These unsuccessful experiences did not discourage some governments from continuing to develop an international normative instrument. Much attention had been paid during these first years to the question of Intellectual Property Rights until 1982 when UNESCO convened the first governmental expert meeting where a definition of 'folklore' was established in terms more adequate to the global approach than to the Intellectual Property Rights approach.⁷ In 1985 UNESCO, without WIPO participation, organized the second governmental expert meeting where the global approach was predominantly embraced leaving aside the intellectual property rights approach. The UNESCO General Conference⁸ of 1985 decided that the instrument should be a 'recommendation' rather than a 'convention'. Finally, in 1989, the General Conference adopted unanimously⁹ the Recommendation on the Safeguarding of Traditional Culture and Folklore.

The development of a new instrument

In 1992, a new programme, 'Intangible Cultural Heritage', was created in UNESCO. This event afforded an opportunity to develop a new concept.

Prior to the launching of the new programme, UNESCO conducted a scientific evaluation¹⁰ with respect to the basic concept and methodology applied to all activities implemented during the preceding two decades, in the different domains of intangible cultural heritage, namely those related to language, traditional music, 'non-physical heritage' and intellectual property rights.

The results of the evaluation were presented at an expert meeting¹¹ which drew up the following new guidelines for the programme. The aims of the programme should be to promote respect for intangible cultural heritage and recognition of the need for its preservation and transmission, and to acknowledge the crucial role of the practitioners and communities. As a modality of action, priority should be given to revitalization and transmission. An order of priority should be established among different forms of intangible cultural heritage to be safeguarded on the basis of the criterion 'in danger of disappearing' and their selection should be made by their actors/creators/practitioners and communities. In addition, several precautions to be taken were underscored as, for example, not to crystallize this heritage whose nature is to be permanently evolving, not to take it out of its context (folklorization), to be cautious against the threatening obstacles to the survival of the heritage, to include hybrid cultures of urban areas and to employ a different methodology to the

intangible cultural heritage than to the tangible cultural heritage'.

In 1993, the programme was reinforced by the creation of another significant project entitled *Living Human Treasures*.¹² This project encourages Member States to adopt a system which grants official recognition to the holders of outstanding artistry and skills in expressions of intangible cultural heritage aiming to increase self-motivation and to ensure transmission. The project's final goal, the establishment of a world list of *Living Human Treasures*,¹³ clearly demonstrates the desire for world recognition of artists/creators of this heritage.

The Intangible Cultural Heritage programme was significantly consolidated by the UNESCO/Japan Fund-in-Trust for the Safeguarding and Promotion of the Intangible Cultural Heritage which was established in the same year. This annual financial contribution has been the determining factor for the development of the programme.

Another important factor contributing to recognition of the significance of intangible heritage was the 1992 United Nations Convention on Biological Diversity, in particular its Article 8(j) which refers to the significance of the respect and preservation of traditional knowledge and practices of indigenous and local communities which have relevance for the conservation and sustained use of biodiversity. The subsequent setting-up of the United Nations decade for indigenous and minority people (1995–2004) generated a number of significant events in favour of the safeguarding of the intangible heritage of

indigenous people. The United Nations Draft Declaration on the Rights of Indigenous peoples, drawn up in 1994/95, also underscores the importance of their cultural rights in relation to their intangible heritage.

Once adopted, the Recommendation on the Safeguarding of Traditional Culture and Folklore did not rouse much attention among Member States. This must have been because the Recommendation is a soft law without binding force. It might also have been because the instrument gives neither specific mandate to UNESCO nor any explanation of how it should be implemented,¹⁴ or due to its 'shortcomings deriving from the dilemma posed by the opposition between two views: the global approach and the intellectual property right approach'.¹⁵

Between 1995 and 1999, following the initiative taken by the Czech Republic, a worldwide appraisal of the application of the Recommendation was undertaken through a questionnaire, and eight regional and sub-regional seminars were held to assess the results of the survey.

In 1999 an international conference on 'A Global Assessment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Local Empowerment and International Co-operation' was organized jointly by UNESCO and the Smithsonian Institution in Washington D.C. to scrutinize the replies to the questionnaire, the results of the eight regional seminars and the relevance of the Recommendation text in the contemporary context. During the Conference a group of Smithsonian experts presented a

thorough analysis of the text of the Recommendation.¹⁶ The principal points raised were that the Recommendation places too much emphasis on documentation and archiving and on the products rather than the producers of traditional culture. Recognition and respect for the active participation of grassroots practitioners in the production, transmission and preservation of their cultural expressions are essential to ensure the safeguarding of intangible cultural heritage. Protection measures should be focused towards the communities whose self-motivation needs to be enhanced. The Conference finally recommended in the Action Plan that the governments of states should submit to the UNESCO General Conference a draft resolution requesting UNESCO to undertake a study on the feasibility of adopting a new normative instrument on the safeguarding of traditional culture and folklore.

The Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity

In the area of globalization it has been argued that cultural standardization is a growing threat to the maintenance of cultural diversity and cultural pluralism. UNESCO's Member States increasingly expressed their recognition that intangible cultural heritage is the essential factor for the preservation of cultural identity and diversity and that its safeguarding is a matter of urgency. In 1997, the Intangible Cultural Heritage programme was given one of the highest priorities in the cultural field¹⁷ and a new project entitled: *Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity* was established.¹⁸ The project allowed UNESCO to proclaim biennially several forms of traditional and popular cultural expressions or

cultural spaces as masterpieces of the oral and intangible heritage of humanity. It was conceived as a means to fill the gap in the concept of 'world heritage' which refers only to natural and tangible cultural heritage. The creation of this new project gave rise to many lively debates, not only on conceptual aspects such as the definition of the 'oral and intangible heritage', the notion of 'masterpiece' and the selection criteria but also on operational aspects such as the mechanism for its implementation, the question of finance and staff and follow-up actions.¹⁹ Finally, it was decided to apply the definition of the 1989 Recommendation to which the anthropological concept of 'cultural space'²⁰ was added. In 2001, nineteen masterpieces and in 2003, twenty-eight masterpieces were proclaimed. This project was carried out along with the development of the Convention and the experience, gained from both conceptual and operational aspects of it, 'was of great help in designing the future convention'. These actions are parallel and complementary since, if it is obvious that a normative instrument is needed in order to safeguard the intangible cultural heritage efficiently, the Proclamation is a means of testing the validity of the concepts and problematic which we hope to address in the normative domain and to confront with reality in all its complexity'.²¹

In parallel with these programmes, the need to reassess the concept of heritage has been increasingly recognized in different international forums. 'In international discourse and practice, however, the notion of "heritage" has too long been limited to the tangible'.²² The indigenous people's holistic conception of heritage, which does not distinguish between natural, tangible and intangible heritage,²³ contributed extensively to

the revision of the concept of 'heritage'. In 1998, the Intergovernmental Conference on Cultural Policies for Development recommended that 'states renew the traditional definition of heritage, which today must be understood as all natural and cultural elements, tangible or intangible, which are inherited or newly created'.²⁴

The World Heritage Committee also revisited the concept of 'heritage'. The question of a balanced 'representivity' was raised during several World Heritage Committee meetings. The balance between cultural and natural sites, categories of sites and geographical distribution was at stake. The Operational Guidelines for the Implementation of the World Heritage Convention have been modified progressively to encompass intangible aspects embodied in the natural and cultural sites.²⁵

Regarding aspect of International Property Rights, UNESCO and WIPO had undertaken no joint actions in the field of intangible cultural heritage since 1985. In 1997, they attempted once again to develop jointly an international normative instrument for the protection of folklore and organized the World Forum on the Protection of Folklore.²⁶ The forum concluded that the copyright regime is not adequate to ensure the protection of folklore and it was therefore necessary to draft a new international agreement on the *sui generis* protection of folklore.²⁷ Pursuant to this conclusion, UNESCO and WIPO jointly organized regional meetings in 1999. In 2000, the General Assembly of WIPO established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional knowledge and Folklore (which holds biannual

sessions), a creation with which UNESCO was no longer associated.

The International Convention

In UNESCO, the first step in the preparation of a convention is to receive the mandate of the General Conference to undertake a feasibility study. Shortly after the above-mentioned Washington Conference, a draft resolution was submitted to the UNESCO General Conference at its thirtieth session.²⁸ Pursuant to the adopted Resolution,²⁹ UNESCO undertook a 'preliminary study on the question of developing a new standard-setting instrument for the safeguarding of intangible cultural heritage'.³⁰ The study concluded that a new standard-setting instrument needs to be developed. 'It would prove difficult to draft an Additional Protocol to the 1972 Convention for the protection of intangible heritage since this would require redrafting of core parts of the existing Convention, in particular its definition of cultural heritage . . . Existing international instruments in both the cultural heritage and intellectual property fields are inadequate for safeguarding this heritage and the development of a new standard-setting instrument by UNESCO would be an important move in providing protection.'³¹

With respect to the scope of the instrument the study advised UNESCO not to duplicate the initiatives already taken in this field by other international organizations. The study recommended that UNESCO's mandate is most suited to addressing this heritage through a cultural approach with broader scope rather than limiting its protection to the intellectual property type measures or to economic rights of holders of

traditional knowledge. It was strongly advised not to repeat the unfortunate experience of the 1989 Recommendation in the new instrument by resolving any confusion of applying a global approach and an intellectual property based approach to the same elements of heritage.³²

Definition, terminology and objectives were the fundamental elements to be resolved before developing an international normative instrument. UNESCO conducted an ambitious survey on the definition of the terms³³ related to intangible cultural heritage in use by different IGOs, NGOs and Member States.

A group of experts gathered in Turin examined the outcome of the survey and developed the definition of intangible cultural heritage and the objectives³⁴ of the future normative instrument. The definition and objectives, which were developed in Turin in line with the recommendation of the above-mentioned Washington Conference and the first expert meeting of 1993, constituted the basic conceptual framework of the Convention.

The 161st session of the Executive Board in May 2001 examined a report³⁵ containing the outline of the above-mentioned preliminary study as well as the report of the Turin Round Table and decided, after a lengthy debate, that this matter should be discussed at the General Conference in October 2001 to allow for continuation of the preparation of the new instrument.³⁶

The thirty-first session of the General Conference was the crucial moment at which the type of instrument and the timeframe of its

development were debated. 'A large majority of delegates spoke on the urgent need for an international standard-setting instrument for intangible cultural heritage following the widely supported 1972 Convention. However, some delegates stressed that it was necessary to clarify further the concept of intangible cultural heritage. It was strongly emphasized that the duplication of work with other organizations, such as WIPO, should be avoided.'³⁷ After turbulent debates,³⁸ the General Conference finally decided that this instrument should be an international convention and that the Director-General should submit a preliminary draft international convention to the thirty-second session of the General Conference.³⁹

This division among Member States, the majority of which were in favour of early establishment of an international convention and the minority attempting by any means to slow down the procedures, was recurrent throughout the whole process of negotiation for the Convention.

It is worthwhile noting here that the adoption at the same General Conference of two normative instruments (the International Convention on the Protection of the Underwater Cultural Heritage and the Universal Declaration on Cultural Diversity) had a certain implication on the negotiation of the new convention. Difficult negotiation of the former, resulting in a clear split among Member States, threw a shadow over the negotiation of the forthcoming instrument, while the unanimous adoption of the Declaration afforded a positive impact by acknowledging the significance of the preservation of all forms of heritage on equal

terms for the defence of cultural diversity. The Declaration also recognizes that cultural diversity is as necessary as biodiversity and it is the common heritage of humanity.⁴⁰ In January 2002, UNESCO convened a meeting⁴¹ of cultural and legal experts in Rio de Janeiro to discuss the priority domains to be covered in the future convention. Experts, led by Judge Mohammed Bedjaoui as Chairperson, recommended that a flexible concept should be applied for the safeguarding action; on the national level each country should determine the priority domains and on the international level the Convention should draw from the experiences of the Proclamation project aiming to promote public awareness of this heritage and with selection made on the basis of internal and external criteria.⁴²

In March, the Director-General convened a select drafting group⁴³ chaired by Judge Bedjaoui aiming to draft an outline workplan of the preliminary draft convention. As recommended by the majority of Member States during the General Conference, the experts confirmed that the successful 1972 Convention should be followed as a model. The 'list' system was accepted in principle as a driving force. A progress report on the preparation of the Convention was then submitted in May 2002 to the 164th session of the Executive Board⁴⁴ and debated vehemently. Major controversial issues were the question of the definition, taking the 1972 Convention as a model, and the timetable for future actions. The Executive Board finally decided⁴⁵ that the negotiations should be made through governmental expert meetings and expressed their endorsement of the

Director-General's intention to submit the final draft to the General Conference in 2005.

Fascinating debates on terminology took place in June 2002 with a view to constituting a glossary which would facilitate the further negotiation of the convention.⁴⁶ The select drafting group, which met for the second time in June, clarified further the question of definition and the institutional mechanism⁴⁷ and drew up the first preliminary draft international convention on intangible cultural heritage.⁴⁸

In September a Round Table of ministers of culture⁴⁹ was organized in Istanbul in which 74 ministers participated. They confirmed the significance of the intangible culture heritage and the urgency of safeguarding it and expressed their political will in supporting the action of UNESCO in developing a new international convention for the safeguarding of this heritage. The Istanbul Declaration served as one of the most important reference documents during the negotiation process of the Convention.

The first session of the Intergovernmental Meeting⁵⁰ of Experts was held in September. Conceptual and general discussions touched upon the texts of the preamble and definitions and practical aspects of the general framework were discussed such as the question of the lists and the mechanism of financing and committee. Some delegates were afraid that establishing a list would cause an artificial hierarchy among different expressions of intangible cultural heritage.⁵¹ As a matter of principle it was generally agreed that the 1972 Convention should be considered as a source of inspiration rather than a model

given the specificity of intangible cultural heritage.

The second session⁵² of the same meeting, which took place in February 2003 and examined the comments⁵³ made by 56 Member States concerning the First Preliminary Draft Convention, began drafting the text of the preliminary draft. Throughout six days of deliberations little progress was achieved.⁵⁴ This session was held in a new context whereby UNESCO had just accepted the request made by several countries⁵⁵ to elaborate an International Convention on Cultural Diversity.

In April 2003, a group of eighteen governmental experts⁵⁶ met to make progress in drafting the provisions of the preliminary draft convention. Experts managed to draft, in a spirit of consensus, almost all provisions (twenty-six articles of the Draft Convention).

The third session⁵⁷ of the Intergovernmental Meeting was held in June. It examined the Consolidated Preliminary Draft Convention, consisting of the provisions already adopted by the plenary meeting of the second session in February as well as those drafted by the Intersessional Expert Group in April with a view to drawing up the Preliminary Draft Convention in its complete form. In spite of vehement debates over the question of funding and the representative list, the totality of the much streamlined text was adopted by consensus. Noteworthy points of the draft were the principle of flexibility, the predominant role of actors/practitioners/communities, the subordination of the Committee to the General Assembly, a transitional clause to

integrate the masterpieces already proclaimed and Article 3 on the relationship with other instruments⁵⁸ to avoid overlapping. The proposed list of examples of intangible cultural heritage to be annexed was suppressed but instead UNESCO was requested to produce handbooks (including a list of examples) to harmonize the methods of work and help the Member States in establishing inventories. In the course of the finalization of the text of the Preliminary Draft Convention, UNESCO was encouraged by several regional meetings of ministers and heads of state.⁵⁹

The Director-General reported to the Executive Board⁶⁰ in September on the progress of work and presented the Preliminary Draft Convention. The Executive Board adopted by consensus and without amendment a draft decision⁶¹ submitted by forty-four Members recommending that the forthcoming General Conference consider the preliminary draft as a draft convention and adopt it as a UNESCO convention. It is worthwhile mentioning here that the majority of Members, who pronounced in favour of the subsequent adoption of the Convention, expressed also their support for launching the process for the establishment of an International Convention on Cultural Diversity.

A few weeks later, the General Conference adopted the Convention without amendment and almost by consensus.⁶² As stated by the Director-General this adoption 'marked the decisive turning point in our understanding of Intangible Cultural Heritage. It marked also a fundamental ethical positioning.'⁶³ The successful adoption of the Convention owes much to the strong and constant

impetus given by the Director-General who recalled: 'When I chaired the World Heritage Committee, I was very conscious of an imbalance of the geographical distribution of the sites on the Heritage List which were more broadly representative of the "North". That imbalance in fact reflected a weakness in our system, which, being exclusively concerned with protecting the tangible heritage overlooked the intangible heritage and thus left out a great many cultural features that are nevertheless fundamental in the map of cultural diversity often belonging to cultures of the "South". There as no way UNESCO could really do its job of preserving cultural diversity without giving equal attention to its two basic ingredients, namely, the tangible heritage and the intangible heritage . . . As soon as I came to UNESCO, in November 1999, I sought to make this a top-priority issue for the Organization. For it is an urgent matter.'⁶⁴

Conclusion

The creation of the *International Convention for the Safeguarding of the Intangible Heritage* finally filled the gap in the normative instruments related to heritage. To follow the development of this instrument over a decade has been a fascinating experience.

Since the creation of a new programme in 1992, different factors played catalytic roles in generating increasing demands for developing a new International Convention for the safeguarding of Intangible Cultural Heritage, i.e. the recognition of the significance of the Indigenous Peoples Intangible Cultural Heritage, the Assessment of the 1989 Recommendation, the creation of the *Proclamation of Masterpieces of the Oral and*

Intangible Heritage of Humanity, and the enlargement of the concept of heritage and WIPO's new initiative.

Renovating aspects of the concept underpinning the 2003 Convention compared with the 1989 Recommendation are (a) consideration of this heritage as process and practices rather than end products, (b) recognition of this heritage as a source of identity, creativity, diversity and social cohesion, (c) respect for its specificities, i.e. its constantly evolving and creative feature and its interaction with nature, (d) enhancement of respect for this heritage and its practitioners, (e) guaranteeing the primary role of the artists/practitioners/communities, (f) placing priority on

intergenerational transmission, education and training, (g) recognition of the interdependence between the intangible cultural heritage and the tangible cultural and natural heritage, and, finally, (h) observance of universally recognized human rights. These conceptual aspects are coherent with those developed by the first expert meeting (1993), the Washington Conference (1999) and the Turin Round Table (2001). Above all, the notion of 'respect' for this heritage and its artists/practitioners seems to me the most significant. 'Respect' inculcates in the mind of artists and practitioners a 'sense of pride'. The 'sense of pride' is the most powerful driving force in fostering self-motivation for the safeguarding of intangible cultural heritage.



© National Noh Theatre

26. Nôgaku theatre, proclaimed by UNESCO as a masterpiece of the oral and intangible heritage of humanity in 2001.

| NOTES

- 1 Eight abstentions.
- 2 Document B/EC/IX/II-IGC/XR.I/15.
- 3 Conference organized jointly by UNESCO and the Smithsonian Institution, Washington D.C., June 1999.
- 4 Samantha Sherkin, 'A Historical Study on the Preparation of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore', *Safeguarding Traditional Cultures: A Global Assessment*, p. 45. UNESCO/Smithsonian Center for Folklife and Cultural Heritage, 2001.
- 5 The World Intellectual Property Organization.
- 6 'They identified two problems: (i) lack of appropriate sources for identification of expressions of folklore to be protected; (ii) lack of workable mechanisms for protection of those which are found in several countries of origin. M. Ficsor, Report, p. 223. UNESCO-WIPO World Forum on the Protection of Folklore, April 1997.
- 7 Shekrin, Samantha, op.cit. No 5, pp. 47–48.
- 8 The twenty-third session of the General Conference of UNESCO, October/November 1985.
- 9 M. Denhez, Report of a Pre-evaluation of the 1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore, 1997, p. 6.
- 10 Serge Gruzinski, *Sauvegarde du patrimoine non-physique: bilan et nouvelles perspectives*, October 1992.
- 11 The International Consultation on New Perspectives for the Intangible Cultural Heritage Programme.
- 12 Thanks to the initiative of the Republic of Korea.
- 13 142 EX/Decisions 5.5.5, paras 5 and 6.
- 14 Denhez, op.cit. p. 6.
- 15 Sherkin, op.cit. p. 51.
- 16 A. McCann, *The 1989 Recommendation Ten Years On: Towards a Critical Analysis*, in Peter Seitel, (ed.), 'Safeguarding Traditional Cultures: A Global Assessment', UNESCO/Smithsonian Center for Folklife and Cultural Heritage, p. 57.
- 17 Noriko Aikawa, 'The UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore (1989): Actions Undertaken by UNESCO for its Implementation', in *Safeguard* Seitel, op. cit. p. 16.
- 18 29 C/DR.64 submitted by Morocco with the support of Saudi Arabia, Cape Verde, United Arab Emirates, Spain, Lebanon, Mali, and Venezuela. The project was designed on the basis of a case-study made on the popular cultural expressions manifested at Jâma' el-Fnâ Square in Marrakesh.
- 19 Two sessions of the Executive Board finalized the regulations relating to the Proclamation by UNESCO of the Oral and Intangible Heritage of Humanity. 154 EX/Decision 3.5.1 and 155 EX/Decision 3.5.5.
- 20 155 EX/ Decision 3.5.5. Annex Regulation (c) '... a cultural space which shall be taken to mean a place in which popular and traditional cultural activities are concentrated, but also a time generally characterized by a certain periodicity (cyclical, seasonal, calendar, etc.) or by an event. Finally, this temporal and physical space should owe its existence to the cultural activities that have traditionally taken place there.'
- 21 Introduction by the Director-General at the 161st session of the Executive Board, 28 May 2001.
- 22 World Commission on Culture and Development, *Our Creative Diversity*, p. 195. Paris, UNESCO, 1995.
- 23 Daes, Eeens-I, *Protection of the Heritage of Indigenous People*(UN Economic and Social Council, E/CN.4/sub.2/1996/22 & E/CN.4/sub.2/1997/15.
- 24 *Final Report*, Intergovernmental Conference on Cultural Policies for Development, Stockholm, 30 March–2 April, 1998, P.16, Recommendation objective 3, 3.
- 25 See: <http://whc.unesco.org/nwhc/>.
- 26 Phuket, 8–10 April, 1997.

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27 World Forum on the Protection of Folklore, Phuket, April 1997, *Final Report, A Plan of Action*, p. 235. WIPO/UNESCO.

28 The Czech Republic, Lithuania, and Bolivia, supported by Bulgaria, Côte d'Ivoire, Slovakia and Ukraine submitted a draft resolution (30 C/DR.84) in October 1999.

29 30 C/25 B.2(a)(iii).

30 J. Blake, *Developing a New Standard-setting Instrument for the Safeguarding of Intangible Cultural Heritage: Elements for Consideration*, UNESCO, 2001.

31 Ibid., p. 72.

32 Ibid., p. 86. The report also proposes several options of types of instrument, eventual obligations or recommendations to the states and objectives of a new instrument.

33 Terms such as intangible cultural heritage, folklore, traditional knowledge, indigenous knowledge and oral heritage.

34 The International Round Table on Intangible Cultural Heritage – Working Definitions, Turin, 14–17 March, 2001. Intangible cultural heritage as 'peoples' learned processes along with the knowledge, skills and creativity that inform and are developed by them, the products they create, and the resources, spaces and other aspects of social and natural context necessary to their sustainability; these processes provide living communities with a sense of continuity with previous generations and are important to cultural identity, as well as to the safeguarding of cultural diversity and creativity of humanity'. The objectives of the Convention are '(i) to conserve human creations that may disappear forever, (ii) to give world recognition, (iii) to strengthen identity, (iv) to enable social co-operation within and between groups, (v) to provide historical continuity, (vi) to enhance the creative diversity of humanity, and (vii) to foster enjoyment', Action Plan, para. 7.

35 The same report accompanied by the brief observation of the Executive Board on the question was sent to all Member States in August 2001 (CL/3597).

36 161 EX/Decision 3.4.4.

37 Oral report of the chairperson of commission IV(31C/INF.24), item 8.6, p. 6.

38 Ibid. 'In the end an amendment was proposed by Grenada to replace "convention" by "standard-setting instrument" and to propose a meeting

of experts which would study the appropriate form of instrument, the report of which would be examined at the following General Conference. The amendment was rejected by 36 votes against, 19 votes in favour and no abstentions.'. After the vote, 18 Member States (Argentina, Barbados, Costa Rica, Denmark, Finland, France, Germany, Grenada, Greece, Mexico, Norway, the Netherlands, Portugal, Switzerland, Sweden, Spain, Saint Lucia, Saint Vincent and the Grenadines and the United Kingdom) expressed their reservations stating that it is premature to decide on the nature of the instrument as a convention because the issue is a delicate and complex matter.

39 31C/Resolution 30.

40 UNESCO Universal Declaration on Cultural Diversity, Article 1 and Article 7.

41 International Meeting of Experts, *Intangible Cultural Heritage: Priority Domains for an International Convention, Final Report*. Rio de Janeiro, Brazil, 22–24 January 2002.

42 Such as the importance of the heritage in maintaining the group's identity, and the respect for human rights.

43 *Final Report*, Meeting of the Select Drafting Group, UNESCO, 20–22 March 2002.

44 May 2002. Before the Executive Board meeting the Secretariat organized seven information meetings chaired by M. Bedjaoui and addressed to different geographical groups of delegates.

45 164 EX/Decision 3.5.2.

46 The final report of an international expert meeting on 'Terminology and intangible heritage: Drafting of a glossary' UNESCO, 10–12 June 2002. The meeting underscored the important considerations: (i) culture is constantly being produced, reproduced and transformed; (ii) the relationship between social processes and cultural products is fundamental; (iii) the use of the term 'safeguarding' in the Convention was endorsed since 'conservation', 'preservation' and 'protection' are not all relevant to intangible cultural heritage; and (iv) the human rights aspect is very important as pointed out by the Turin meeting.

47 Experts established a list of numerous examples to be annexed to the preliminary draft. They discussed further the question of the list system, division of work with WIPO, states' duties, usefulness of examples of 'best practices' or models for plan of actions to be annexed to the Convention

and criteria of selection in particular the use of the terms 'outstanding', 'exceptional', 'unique' and 'universal' value. Second meeting of the select drafting group: 'Preliminary draft international convention on intangible cultural heritage', UNESCO, 13–15 June, 2002.

48 The first preliminary draft was sent in July 2002 to Member States for comments. (CL/3629).

49 Third Round Table of Ministers of Culture, 'Intangible Cultural Heritage – A Mirror of Cultural Diversity', Istanbul, 16–17 September 2002.

50 First session of the Intergovernmental Meeting of Experts on the Preliminary Draft Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, 24–27 September 2002.

51 Final Report of the meeting.

52 Second session of the Intergovernmental Meeting of Experts on the Preliminary Draft Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, 24 February–1 March 2002.

53 Compilation of amendments from Member States concerning the preliminary draft Convention for the Safeguarding of Intangible Cultural Heritage. Document prepared by the Intangible Heritage Section of the Division for Cultural Heritage.

54 Articles 1 (the purposes), 2 (definition and the field to be covered by the Convention), 3 (the role of states and the establishment of national inventories), 11 A (the establishment of national inventories) and the title of 11 B (the Principle of a list or register of intangible cultural heritage at risk) were adopted by the plenary meeting.

55 France, Canada, Germany, Morocco, Mexico, and Senegal supported by francophone countries.

56 The Intersession Working Group of Government Experts on the Preliminary Draft Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, 22–30 April 2003.

57 Third session of the Intergovernmental Meeting of Experts on the Preliminary Draft Convention for the Safeguarding of Intangible Cultural Heritage, UNESCO, 2–14 June 2003.

58 Reference to the World Heritage Convention, Convention on Biodiversity, and any instrument relating to intellectual property.

59 Namely, the Cusco consensus of the seventeenth Summit of the Rio Group (May 2003), The Declaration of Quirama (Summit of Andean countries), June 2003, and the Declaration of Dakar, by ministers of Culture of the countries of Asia, Pacific and the Caribbean, 20 June, 2003.

60 167 EX/22, September 2003.

61 167 EX/Decision 5.7.

62 No dissenting vote and eight abstentions.

63 Director-General's speech at the opening of 167th session of the Executive Board.

64 Director-General's speech at the first proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity, Paris, 18 May 2001.

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